

November 1, 2017

To: Superintendent of Market Development  
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**RE: Public hearing to enhance distance voting procedures**

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the proposed draft of an instruction to enhance CVM's Instruction 481 of December 17, 2009, in the chapter that regulates the participation and distance voting procedures in shareholders' meetings.

About Glass Lewis

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,200 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

From its offices in North America, Europe and Australia, Glass Lewis' team provides research and voting services to institutional investors globally that collectively manage more than US \$30 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

The responses provided below are not meant to be exhaustive but are designed to address what Glass Lewis sees as the main issues and concerns raised in the public hearing notice.

*Glass Lewis Views on the Proposed Amendments*

**2.1 Mandatory publication of proxy cards**

It is a common practice for Brazilian companies to hold an extraordinary shareholders' meeting on the same date as the annual general shareholders' meeting. The current

regulations only require the disclosure of a proxy card for the extraordinary meeting in the cases where there is an election of directors or members to the supervisory council, whether elected in a separate election or not.

The CVM is seeking to avoid preferential treatment to shareholders present at the meeting over those voting remotely and, therefore, suggests the inclusion of section III to paragraph 1 of art 21-A to implement the compulsory submission of proxy cards whenever an extraordinary meeting is held on the same date as the annual general meeting.

While we welcome the CVM's proposal to make proxy cards mandatory in these cases, we also believe this should be applied to *all* extraordinary meetings held throughout the year. Remote shareholder participation should not be limited to a specific day of the year or a specific item or meeting. In order to serve remote shareholders' best interest, they should be given the opportunity to participate in all meetings under the same conditions as shareholders attending in person. Thus, we feel that proxy cards should be mandatory for all shareholders' meetings carried out during the fiscal year irrespective of the type of meeting.

## **2.2 Resubmission of proxy cards by the company to include candidates**

The effective functioning of proxy voting is contingent on the accurate reflection of the deliberations to be carried out at the general meeting on the proxy card.

During the most recent proxy season, the CVM had refused the resubmission of proxy cards upon the presentation of new candidates to the board or the supervisory council by minority shareholders. Rather, companies only had the option to submit new management circulars with this information. This procedure effectively prevented the possibility to vote on said candidates and caused extra difficulties for agents involved in the voting chain for foreign investors.

The CVM, therefore, suggests that the proxy card be updated to include candidates nominated by non-controlling shareholders, or if determined by the *Superintendência de Relações com Empresas* ("SEP"). In this sense, the regulations propose that new proxy cards may be submitted: (i) up to 15 days before the meeting date, or (ii) any time, if required by the SEP. Finally, if a new proxy card is submitted, the votes already cast towards candidates included in the previous card will be considered valid unless new voting instructions are issued.

In this regard, although we welcome the inclusion of all relevant information in newly submitted proxy cards, we feel that republishing proxy cards up to 15 days before the meeting leaves shareholders very little time to review the candidates and submit votes on time, while going through the lengthy procedure that proxy voting requires. We do welcome the suggested deadline for shareholder submission of new candidates to be included on the proxy form, as discussed below. Recognising that shareholders may need time to evaluate the need to propose new candidates once the candidates proposed by the board have been determined, we understand that setting a final deadline for publication of the proxy card at

21 days—the international standard—may not be practicable in Brazil. As such, we would emphasise that setting a deadline for publishing new materials less than 18 days prior to the meeting would, in our experience, potentially jeopardise shareholders' ability to cast votes on time to meet voting deadlines.

Perhaps more importantly, it should be absolutely clearly required that companies provide a minimum level of transparency for shareholders voting by proxy. This could be accomplished by setting a clear requirement that:

- (i) The date for an annual meeting be announced at least 40 days prior to a meeting, in order for shareholders to have adequate time to prepare submissions.
- (ii) Any candidate submitted by a shareholder for election at least 35 days prior to the meeting must be included in the proxy card.
- (iii) Any submission by a shareholder between 35 days and 22 days before a meeting must be published on the company's website, CVM and B3's websites within 3 days of submission, even if the proxy card is not yet updated.

We recognise that some of these suggestions fall outside the scope of the current consultation. However, we believe it is important to take the opportunity to emphasise the importance of setting clear and consistent deadlines for all market participants to follow

### **2.3 Amend the deadline for shareholders to include candidates in the proxy card**

The CVM suggests the amendment of paragraph 1 or article 21 – L of CVM's Instruction 481, of 2009 to set the deadline for including new candidates to the board or supervisory council at 22 days before the meeting, whether this is an annual or extraordinary meeting.

The difference between these deadlines of 22 days and 15 days in advance to resubmit the card is explained due to the fact that companies have three days to verify that the proposal meets legal requirements, and takes into account possible weekends or local holidays.

We agree that 22 days is not an unreasonable deadline for submitting new candidates for consideration, although we would hope that in most cases shareholders will submit candidates even well in advance of this deadline. Unless there are unexpected changes in board composition, or an unscheduled election, we expect most shareholders will be able to submit candidates before the initial proxy card is published. While we acknowledge the CVM's reasons for proposing an extended period during which companies have to review these candidates before publishing a new proxy card, we believe the extended timeframe suggested may be unnecessarily generous, resulting in shareholders not receiving information in time to cast votes before voting deadlines. In general, we believe that reissuing proxy cards any later than 18 days prior to the meeting may put the entire vote at risk. Indeed, we must re-emphasise that a 21-day deadline would be preferable, but we recognise that it may not always be practicable for the election process in Brazil given current legal constraints and timeframes.

## **2.4 Minor changes to the proxy card**

The CVM has proposed several other amendments to the proxy card that we welcome, including:

- In the cases where cumulative voting is adopted, allow shareholders to distribute their votes in equal percentages over the board candidates
- Request cumulative voting
- Include an “ABSTAIN” option in those cases where it has not been available to date
- Other wording amendments for clarity

The most pressing concern in this area, from our perspective, is the lack of sufficient information on the cumulative voting process as a whole. We believe it is of utmost importance to provide detailed information on how cumulative voting works at each company, which options are valid if the election is held through cumulative voting and there is also a candidate to be elected in a separate election, what happens if not all candidates reach the minimum quorum required, etc. The current lack of clarity around each scenario risks a shareholder vote not being cast according to their wishes.

Further, we believe that the CVM should provide issuers sufficient clarity on which proposals are required on each proxy card. Presenting all voting options when these are not necessary (i.e. option to cast cumulative votes when the board directors are already being elected through individual election) creates unnecessary confusion for shareholders.

Shareholders should be completely certain of the implications of the cumulative voting procedure for their votes to be truly significant.

In any case, and as far as these specific changes are concerned, we find them overall positive.

## **2.5 Publication of analytical voting map or vote confirmation**

The CVM wishes to address the issue raised by several market participants regarding the lack of confirmation on whether their votes cast have been accounted for properly.

As such, the CVM understands that the least costly way to facilitate vote confirmation would be through the publication of the analytical voting map for each meeting, at the CVM's and company's respective webpages. This map would include the shareholders' CPF or CNPJ, shareholder position, and the vote allocation for each issue discussed. This appears to match the disclosure that is already provided by a number of companies in Brazil.

As far as this topic is concerned, we welcome further transparency of actual vote results. Further, we find that a categorical breakdown on the reasons why votes were disregarded would prove to be useful as well given the context of historical unexplained vote rejections in Brazil.

However, we also note that shareholders may prefer to keep sensitive account information confidential. As such, we encourage the CVM to seek broader input from investors—including foreign investors—on assuring that the available information does not violate the privacy of individual shareholders.

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted

/s/

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