

June 13, 2019

Ministerio de Economía y Empresa  
Gobierno de España

Via email: [audiencia@tesoro.mineco.es](mailto:audiencia@tesoro.mineco.es)

**Re: Loyalty shares in Spanish listed companies**

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the proposed new legislation by the Ministry of Economy and Finance transposing European Shareholder Rights Directive (SRD II) into Spanish national legislation (Ley de Sociedades de Capital or "LSC").

About Glass Lewis

Founded in 2003, Glass Lewis is the leading independent provider of global governance services, helping institutional investors understand and connect with the companies they invest in. More than 1,300 institutions rely on Glass Lewis' research and vote management services to drive value across the entire life cycle of their investments.

Institutional investor clients around the world use Glass Lewis research and data to help inform proxy voting decisions and engage with companies before and after shareholder meetings. In addition, Glass Lewis' vote management service provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and recordkeep, audit, report and disclose their proxy votes.

From its offices in the UK and Europe, North America and Australia, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US\$35 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.

## **Overview**

We acknowledge that Spain has been an early adopter of many of the corporate governance improvements also included in SRD II. In 2014, Law 31/2014 was introduced to update the LSC implementing key provisions affecting corporate governance including binding votes on remuneration policy. Further, in February 2015 the Spanish Good Governance Code of Listed Companies set out principles and provisions of best practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders.

More recently Law 11/2018, transposed EU Directive 2014/95/EU on disclosure of non-financial and diversity information into Spanish law. The law introduced a binding vote on non-financial information statement, giving shareholders a direct say on matters related to environment, social issues, human rights, anti-corruption and sustainable development.

However, following these positive developments our submission focuses on what Glass Lewis sees as a concerning aspect in the proposed new legislation, and a step backwards in Spain's ongoing corporate governance reform: the introduction of loyalty shares.

## **Proposed changes to legislation regarding loyalty shares**

The proposed law would introduce the possibility of increased voting rights as an incentive for shareholders to become long-term investors in listed companies. Once provided for in its articles of association, double voting rights would apply to shares held in a listed company by the same registered shareholder for at least two years. The articles may extend but not reduce the minimum period of uninterrupted ownership requirement.

For the general meeting to validly agree the inclusion of the additional voting rights, a favourable vote of at least two thirds of the capital present or represented at the meeting will be required if quorum reaches 50%. Approval of 80% of the share capital present or represented is required if quorum is below 50%. The removal of the regulation would not be subject to such supermajority requirements.

In the reasoning for the law it is stated that besides being a mechanism that can be used to encourage shareholders to maintain their investment in a company in the long term and reduce short-term pressure on the management, the Spanish companies and the stock market would be able to offer the same options as other European legislations allow, thus reinforcing their attractiveness. On the last point, we believe it is important to note that only France, Italy and the Netherlands have introduced the concept of loyalty shares in Europe. These measures, when introduced, faced significant opposition from institutional investors and, as a result, have not been widely adopted in the Netherlands or Italy.

### **Glass Lewis position on loyalty shares**

We recognise that some measures, such as granting loyalty dividends, bonus shares or warrants, or extra voting rights exclusively to long-term shareholders, are increasingly studied as acceptable methods for encouraging shareholders to remain invested in a company for an extended period of time. While recognising that such loyalty incentives for shareholders may accomplish the intended effect of maintaining a stable share ownership structure and decreasing volatility, we believe the benefit to shareholders of such measures has not been sufficiently proven by academic literature nor have the consequences been fully studied.

As a result, Glass Lewis is generally opposed to measures that treat shareholders unequally. In general, we do not favour the creation or extension of stock with differential voting rights as it implicitly creates multiple classes of stock, which we believe is detrimental to the equal exercise of shareholder rights. These concerns are even more pronounced in markets such as Spain, with a large number of companies with a concentrated shareholder structure, where control could be further cemented at the expense of minority shareholders. Indeed, we have observed that in practice, in the markets where loyalty shares are offered, they often serve to entrench the interests of families or other large shareholders at companies with poor governance practices. In our view long-term ownership can be encouraged with other measures, such as with focusing on sustainability and effective engagement, rather than with loyalty programs which unnecessarily create different classes of shareholders with disparate treatment.

### **Other comments**

We welcome the proposed change that all directors in a listed company must be natural persons, and thus election of legal entities, representatives of which could be changed without shareholder approval, will not be permitted. We believe this change will increase accountability to shareholders and improve transparency at the board level.

Regarding the introduction of regulation on the transparency of proxy advisors, we would like to highlight that we comply with the Best Practice Principles for Providers of Shareholder Voting Research & Analysis (the “BPP Principles”, as outlined in our annual statement of compliance (<http://www.glasslewis.com/best-practices-principles/>)). Further, Glass Lewis is a founding signatory of the Best Practice Principles for Providers of Shareholder Voting Research & Analysis Group (the “BPP Group”), which is currently completing a review and update of the BPP principles following a public consultation (<https://bpggrp.info/april-2019-review-process-update/>)

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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