



September 7, 2020

By email to: CMM.Taskforce@ontario.ca

Mr. Walied Soliman, Chair
Mr. Rupert Duchesne, Member
Mr. Wesley J. Hall, Member
Ms. Melissa Kennedy, Member
Ms. Cindy Tripp, Member
Capital Markets Modernization Taskforce
Ontario, Canada

Re: Consultation — Modernizing Ontario’s Capital Markets

Dear Members of the Capital Markets Modernization Taskforce:

Thank you for the opportunity to comment on the Capital Markets Modernization Taskforce Consultation Report. Glass, Lewis & Co., LLC (“Glass Lewis”) commends the Ontario government for establishing the Taskforce and the Taskforce Members for the thorough, inclusive and thoughtful manner in which they are reviewing the current regulation of the capital markets in Ontario.¹

Glass Lewis wholeheartedly shares the Taskforce’s vision that a “vibrant economy needs vibrant capital markets, driven by innovation, competition and diversity.” Since its founding in 2003, Glass Lewis has become a leading independent proxy advisor, injecting needed competition to the proxy advisor industry and continuing to innovate and drive improvements to the proxy advice and vote execution processes on behalf of its institutional investor clients.

Glass Lewis also fully supports the Taskforce’s recognition that proxy advisors “play an important role in the proxy voting process by providing services that facilitate investor participation such as analyzing proxy materials and providing vote recommendations.” The proxy process, through which shareholders exercise their basic right to have a say in the governance of companies they own, is a critical component of our corporate governance

¹ Glass Lewis is a portfolio company of the Ontario Teachers’ Pension Plan Board (“OTPP”) and Alberta Investment Management Corp. (“AIMCo”). Neither OTPP nor AIMCo is involved in the day-to-day management of Glass Lewis’ business.



system. Proxy advisors play an important support role in this process, providing resources and technical subject-matter expertise to help institutional investors meet their fiduciary responsibility to vote securities on behalf of their participants and beneficiaries in a cost-effective way.

From these basic premises, however, the Taskforce arrives at a surprising and unwarranted proposed recommendation. After reciting the “concerns” of “issuers and other stakeholders,” the Consultation Report proposes a new regulatory framework for proxy advisors. This new regulatory framework would include the prescriptive measures of “a statutory right to rebut (at no cost) the reports published by PAFs” and a prohibition on proxy advisors providing certain services. We are concerned that an adequate basis for these measures has not been established and that adopting them could have significant, adverse consequences on proxy advisors’ ability to meet their investor clients’ need for independent, timely and cost-effective proxy advice.

Glass Lewis fully supports the Taskforce’s objectives of promoting the accuracy of, and avoiding conflicts in, proxy advice. Glass Lewis also believes in appropriate engagement with the companies that are the subject of proxy advice and, as discussed further below, has built such engagement into its current business practices. In fact, we have committed to follow the internationally endorsed Best Practices Principles for Shareholder Voting Research Providers, which address these critical issues, and annually report on our compliance with those principles.

We would encourage the Taskforce to critically examine the concerns that have been expressed to it and consider whether other approaches - such as the approach taken in the European Union of overseeing the Best Practices Principles for Shareholder Voting Research Providers - might better serve Ontario’s objective of establishing a modern capital markets regulatory framework that promotes innovation, competition and diversity. To assist the Taskforce’s further deliberations on this issue, we include background information on Glass Lewis and the current regulatory framework for proxy advisors and then specifically address the two components of the Taskforce’s proposed recommendation on proxy advisors.

I. Background.

A. Glass Lewis

Founded in 2003, Glass Lewis is a leading independent proxy advisor. As a proxy advisor, Glass Lewis provides proxy research and vote management services to institutional investor clients throughout the world. While, for the most part, investor clients use Glass Lewis research to help them make proxy voting decisions, these institutions also use Glass Lewis research when



engaging with companies before and after shareholder meetings. Further, through Glass Lewis' Web-based vote management system, Viewpoint®, Glass Lewis 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.

Glass Lewis serves more than 1,300 institutional investor clients — primarily pension funds, mutual funds and other institutions that invest on behalf of individual investors and have a fiduciary duty to act, including through proxy voting, in the best interests of their beneficiaries. In 2019, Glass Lewis issued over 26,000 proxy research reports around the globe.

A significant majority of Glass Lewis' clients today have their own custom voting policies. Glass Lewis helps these clients implement their policies by applying them to the circumstances presented by companies in their proxy statements and recommending how they vote accordingly. During the policy formulation process, an institution will review Glass Lewis' policies to assess the similarities and differences between the institution's views and Glass Lewis' "house policy." Glass Lewis engages extensively with institutional investors and aims to have policies that reflect the views of its clients. Accordingly, it is not uncommon for an investor client to elect to implement the same policy as Glass Lewis for some or all of the issues up for vote.

Glass Lewis also executes votes on behalf of investor clients in accordance with the specific instructions of those clients. To that end, Glass Lewis implements client voting policies on its vote management system so that each ballot populates with recommendations based on the specific policies of the client, enabling the client to submit votes in a timely and efficient manner. (Under no circumstance is Glass Lewis authorized to deviate from a client's instructions or to determine a vote that is not consistent with the policy specified by the client.) When a preliminary ballot is ready for review, the voting system will alert the client and provide such client with relevant disclosures and other information needed to review and evaluate the matters up for a vote. Clients can choose to restrict the submission of a ballot until after their authorized personnel have reviewed and approved the votes. Clients can also make — and often do make — changes to their preliminary ballots before signing off. And, assuming the voting deadline has not passed, they can even change their votes and resubmit them.

B. The role of proxy advisors

As noted above, Glass Lewis believes that proxy advisors play an important support role, providing resources and technical, subject-matter expertise to help institutional investors meet their fiduciary responsibility to vote securities on behalf of their participants and beneficiaries in a cost-effective way. As the U.S. Securities and Exchange Commission ("SEC") has explained,



“When making voting determinations on behalf of clients, many investment advisers retain proxy advisory firms to perform a variety of functions and services Contracting with proxy advisory firms to provide these types of functions and services can reduce burdens for investment advisers (and potentially reduce costs for their clients) as compared to conducting them in-house.”²

As an increasing share of investors own stock indirectly, such as through mutual and pension funds, these individual investors are dependent on those institutional investors to vote on their behalf and act in their best interest. In order to do so both effectively and efficiently, those institutional investors often leverage their resources by using the services of a proxy advisor. As the Council of Institutional Investors and a coalition of investors have explained:

Retail holders now invest much of their capital with institutional investors because they understand that institutional investors’ expertise and size bear the expectation of higher returns, lower costs and mitigated risks. Importantly, retail investors also understand that aggregating their individual holdings into larger, concentrated blocks through an institutional manager allows for more effective monitoring of company management.

Even so, institutional investors themselves face challenges in spending significant time and resources on voting decisions because the funds and other vehicles they manage receive only a portion of the benefits conveyed on all investors of the relevant enterprise.

Proxy advisors are a market-based solution to address many of these practical cost issues. Proxy advisors effectively serve as collective research providers for large numbers of institutional investors, providing these investors an affordable alternative to the high costs of individually performing the requisite analysis for literally hundreds of thousands of ballot proposals at thousands of shareholder meetings each proxy season.³

² U.S. Securities and Exchange Commission, Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5325 at 5 (Aug. 21, 2019) (“SEC August 2019 Guidance”).

³ Letter of Ken Bertsch, Executive Director, Council of Institutional Investors and 60 institutional investors to Chairman Jay Clayton, at 2 (Oct. 15, 2019), available at https://www.cii.org/files/issues_and_advocacy/correspondence/2019/201910015proxy_advisor_sign_on_final.pdf.

In addition, proxy advisors provide a viable solution for asset managers and other investors seeking for a way to mitigate their own conflicts of interest when voting shares on behalf of their participants or beneficiaries. As the SEC has noted, an investment adviser “may look to the voting recommendations of a proxy advisory firm when the investment adviser has a conflict of interest, such as if, for example, the investment adviser’s interests in an issuer or voting matter differ from those of some or all of its clients.”⁴ While the ultimate responsibility of voting proxies in the best interest of its clients continues to lie with the investment adviser, the SEC has signaled that “this third-party input into such an investment adviser’s voting decision may mitigate the investment adviser’s potential conflict of interest.”⁵

C. The regulatory environment of proxy advisors

Proxy advisors are hired by and work to assist institutional investors in voting shares on behalf of their clients and beneficiaries. In many jurisdictions, these institutional investors are subject to robust regulatory regimes for the voting of proxies on behalf of their clients, including imposing specific responsibilities for their oversight of third-party service providers they use in the voting process.⁶ Glass Lewis’ experience is that its clients take their oversight responsibilities very seriously. Glass Lewis devotes substantial resources to regularly engaging with its clients as they carry out their due diligence by answering oral and written questions, providing written materials and facilitating visits to its office sites.

In addition to oversight by their investment adviser clients, proxy advisors hold themselves accountable to a set of best practices principles designed specifically for the proxy advisor industry. These principles have grown out of a number of regulatory consultations around the globe on the role of proxy advisors in recent years. Recognizing that proxy advisors are a voluntary, private-market response to investors’ need for independent, cost-effective advice, most jurisdictions to study these issues have concluded that encouraging the development of best practices, rather than government regulation, was the appropriate response.

Most notably, in 2013, after a public consultation, the European Securities and Markets Authority (“ESMA”) found no evidence of a market failure and therefore did not see a need for

⁴ SEC August 2019 Guidance at 5-6.

⁵ Id.

⁶ EU DIRECTIVE 2017/828 of 17 May 2017 (“SRD II”); SEC August 2019 Guidance.



binding or quasi-binding regulation of proxy advisors.⁷ Instead, ESMA said the “appropriate approach” was for the industry to develop a code of conduct, to be applied on a comply-or-explain basis that would address two areas of concern raised in the consultation: 1) identifying, disclosing and managing conflicts of interest; and 2) fostering transparency to ensure the accuracy and reliability of the advice.

In response, Glass Lewis and other leading proxy advisors formed the Best Practice Principles Group (“BPPG”) to develop a code of conduct (“Principles”) for the industry, which the signatories to the Principles said they would apply globally. The BPPG developed the Principles with input from ESMA and other stakeholders, including numerous issuer respondents to the consultation from both Europe and North America. Following a global, public consultation, the Principles were officially launched in March 2014.⁸

⁷ See Press Release, “ESMA recommends EU Code of Conduct for proxy advisor industry,” (Feb. 19, 2013), available at <https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-240.pdf>; see also U.S. General Accountability Office, Report to Congress, Corporate Shareholder Meetings—Proxy Advisory Firms’ Role in Voting and Corporate Governance Practices, at 11 (Nov. 2016) (“In recent years, [ESMA and the Canadian Securities Administrators] conducted reviews of the proxy advisory firm industry and concluded that *regulatory intervention was not needed*. Specifically, the European Securities and Markets Authority concluded that regulation was not justified because there was *no evidence of a market failure in relation to how proxy advisory firms interact with institutional investors and corporate issuers*. However, both entities proposed guidance and recommendations for the firms to enhance transparency, among other issues.”) (emphases added).

⁸ More information on the BPPG is available on its website, see <https://bppgrp.info/>. In 2017, the charter signatories to the Principles conducted another public consultation to elicit market feedback on the extent to which the Principles were achieving their original objectives and to identify opportunities for improving understanding and transparency. An advisory panel, comprised of stakeholders from companies, asset owners, asset managers and other constituencies, provided input to the preparation of the consultation under the guidance of an independent chairman. Among other things, the latest update to the Principles addresses the transparency requirements for proxy advisors outlined in SRD II as regards the encouragement of long-term shareholder engagement.



The Principles encourage transparency, conflict management and disclosure and engagement with companies when appropriate. Glass Lewis meets the Principles' standards by making the following publicly available on its website: detailed policy guidelines; research approach and methodologies; conflict avoidance and disclosure policies; and public-company engagement procedures. Since the launch of the Principles, Glass Lewis and the other charter signatories have each published their Statements of Compliance, featuring detailed information on how the organizations comply with the Principles. Glass Lewis applies the Code to its activities globally, including in Canada, and updates its Statement of Compliance annually.

To enhance its governance, per the recommendation of ESMA and complementary to the requirements of SRD II, as well as stewardship developments in other global markets, the BPPG has formed an Independent Oversight Committee. The Committee, chaired by Dr. Stephen Davis, a Senior Fellow at the Harvard Law School Program on Corporate Governance and a co-founder of the International Corporate Governance Network (ICGN), is comprised of both investor and issuer representatives.⁹ The Committee will provide an annual independent review of the Principles and the public Statements of Compliance of each signatory to hold all members accountable.

Glass Lewis continues to believe that a market-based solution to proxy advisor oversight and accountability is appropriate. In particular, Glass Lewis believes that an industry code of best practices is the appropriate means to address the issuer concerns raised in the Consultation Report – namely accuracy, conflict management, and issuer engagement. In our view, the existing standards of conduct, coupled with a mechanism to monitor and ensure compliance, would be a more appropriate way to address these issues and would best serve the interests of all market participants.

II. The Proposed Regulatory Framework

The Consultation Report describes the basis for the proposed regulatory framework as the concerns that were expressed to the Taskforce by “[i]ssuers and other stakeholders.” As described in the Consultation Report: “Issuers and other stakeholders have expressed concerns about the influence of PAFs, errors in the reports produced by PAFs, and conflicts of interest arising from PAFs’ provision of voting recommendations in respect of issuers to which PAFs also provide consulting services.” Based on these concerns, the Consultation Report includes a

⁹ See “BPP Group Announces Appointment of Oversight Committee Representatives” (July 16, 2020), available at <https://bppgrp.info/bpp-group-announces-appointment-of-oversight-committee-representatives/>.

proposed recommendation to: “Introduce a regulatory framework for proxy advisory firms (PAFs) to: (a) provide issuers with a right to “rebut” PAF reports, and (b) restrict PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations.” Below we describe our concerns with these two proposed recommendations.

A. Statutory right to rebut at no cost

“The Taskforce proposes providing an issuer with a statutory right to rebut (at no cost) the reports published by PAFs, provided that the issuer published the relevant materials (such as the Management Information Circular) within a specified time period prior to the meeting. This right of rebuttal would apply, with respect to each of the issuer’s resolution, when the PAF is recommending to its clients to vote against management’s recommendations. The PAF would be required to include the rebuttal in the report it provides to its clients.”

Glass Lewis has a number of concerns with this proposed recommendation. The first, and most basic, is that there is no basis for it. While the Consultation Report cites issuers’ expressed concerns about errors in proxy advisor reports, we would encourage the Taskforce to critically evaluate this claim before recommending regulation on that basis.

This issue was thoroughly explored as part of the recent U.S. Securities and Exchange Commission’s (“SEC”) proxy advisor rulemaking. There, as here, issuers and their advocacy groups expressed “concerns” about errors in proxy advice and the SEC proposed an issuer pre-review regime to “promote accuracy” in proxy advice.¹⁰ The comment process in that rulemaking, however, revealed that these “concerns” were anecdotes and generalized allegations based on surveys; there simply was no evidence of a significant error rate in proxy advice. The SEC’s own Investor Advisor Committee demonstrated that a chart used by the SEC in its proposal reflected that issuers only claimed proxy advice errors 0.3% of the time and “**none** of those [were] shown to be material or to have affected the outcome of the related vote.”¹¹ Even with respect to this small number of claimed errors, an analysis by the Council of

¹⁰ U.S. Securities and Exchange Commission, Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-87457, at 110 (Nov. 5, 2019).

¹¹ See Recommendation of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (Jan. 24, 2020) (emphasis in original), available at <https://www.sec.gov/comments/s7-22-19/s72219-6698769-206000.pdf>.



Institutional Investors revealed that “most of the claimed “errors” actually [were] disagreements on analysis and methodologies, and that some other alleged proxy advisory firm errors derive from errors in the company proxy statements.”¹² Tellingly, the SEC disavowed its claim of proxy advisor inaccuracy as the basis for its final rules, merely asserting that its aim was to “improve the overall mix of information available to investors.” In the words of an SEC Commissioner (who dissented from the final rules), proxy advisor inaccuracy “failed as a justification for the proposal because there simply was not evidence of any significant error rate in proxy voting advice.”¹³

Even if there were a basis for regulatory intervention, issuer review of proxy advisor recommendations threatens to adversely affect proxy advisor independence and the time institutional investors have to consider that advice, engage with companies, and determine how to vote. Here, too, the SEC’s rulemaking is instructive. Institutional investors expressed significant concern that issuer pre-review of recommendations would risk compromising their ability to obtain proxy advice based on their selected policies and submit their votes, as well as imposing significantly increased and unnecessary costs. The logistical challenges and costs of administering these processes would be exacerbated by the intense seasonality of the proxy advice business. Moreover, these issues are even more challenging in mergers and acquisitions and other special situations - situations the Consultation Report asks specifically for comment on. Given the fluid nature of such situations, proxy advisor research reports are often delivered to clients much closer in time to the vote cut-off date and are much more likely to be amended or supplemented as deal terms change or additional information becomes available. Mandatory issuer review and feedback in some circumstances may not be workable.

¹² Letter of Ken Bertsch, Executive Director, Council of Institutional Investors to Chairman Jay Clayton, at 2 (Oct. 24, 2019), available at https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191024%20SEC%20comment%20letter%20proxy%20advisor%20accuracy.pdf.

¹³ Statement of the Honorable Allison Herren Lee at SEC Open Meeting (July 22, 2020) (“Lee Open Meeting Statement”), available at <https://www.sec.gov/news/public-statement/lee-open-meeting-2020-07-22>; see also id. (“The final rules will still add significant complexity and cost into a system that just isn’t broken, as we still have not produced any objective evidence of a problem with proxy advisory firms’ voting recommendations. No lawsuits, no enforcement cases, no exam findings, and no objective evidence of material error—in nature or number. Nothing.”).

The proposed recommendation also threatens a key attribute institutional investors look for in a proxy advisor – independence. Both by mandating issuer review and publication of company responses, the Consultation Report would give company management two opportunities to try to influence the work of or even retaliate against proxy advisors who recommend against their proposals. From an investor’s perspective, the previously objective advice they paid for would now be potentially conflicted. As a prominent U.S. institutional investor put it: “While proxy advisory firms should, and do, have procedures in place to mitigate any potential conflicts of interest, I can conceive of no conflict of interest more insidious than the one created by a Proposal that would grant a company that is the subject of proxy voting advice the right to review and provide feedback on that advice.”¹⁴

We were particularly surprised by the unexplained parenthetical in the proposed recommendation specifying that issuers should be provided with proxy advisors’ research “at no cost.” While we recognize that this is naturally issuers’ preference, we are not aware of any other advice provider who is required by law to give their work product away for free for the purpose of being rebutted. Nor is it apparent to us why our paying investor clients should effectively be forced to subsidize free access for issuers – particularly since they have been clear that they do not want issuer review and actually view it as potentially harmful to the product they are paying for.¹⁵ As described in greater detail below, issuers today can and do purchase Glass Lewis research reports when they wish to review them and can submit a “report feedback statement” with respect to any such report that they disagree with or just want to respond to. There is no need or basis for the government to mandate free access for companies.¹⁶

¹⁴ Comments of Scott M. Stringer, Comptroller, City of New York, at 3 (Nov. 20, 2019), available at <https://www.sec.gov/comments/s7-22-19/s72219-6451863-198927.pdf>.

¹⁵ This fee-shifting effect would be exacerbated if this recommendation were coupled with the Taskforce’s second proposed recommendation, which would eliminate another potential source of revenue for proxy advisors.

¹⁶ While we cannot comment specifically on the legal parameters of freedom of expression under the Canadian Charter of Rights and Freedoms, we note that the proposed recommendation would violate the U.S. Constitution’s First Amendment in two respects. First, mandating that the issuer’s right of rebuttal applies “when the PAF is recommending to its clients to vote against management’s recommendations” would be an impermissible, content-based restriction on speech. *Reed v. Town of Gilbert*, 576 U.S. ___ (2015) (“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”). Second, mandating that proxy advisors “include the rebuttal in the report it provides to its clients” would unconstitutionally compel access to



Last, but not least, we do not believe regulatory intervention on this point is necessary. Among other things, the Best Practices Principles encourage appropriate communication with issuers, shareholder proponents and other stakeholders. To that point, Glass Lewis, like other proxy advisors, already has incentives to produce accurate research and provide its clients with useful information and therefore has designed and implemented several processes to engage with issuers as part of its work.

First, Glass Lewis recognizes that dialogue with corporate issuers and investors can foster mutual understanding, transparency and feedback with respect to Glass Lewis' policies, methodologies and analysis. In 2019, Glass Lewis conducted approximately 1600 engagement meetings and calls with issuers, dissident shareholders, and shareholder proponents globally outside of the solicitation period. In addition to providing an opportunity for Glass Lewis to better understand the company's governance practices, these engagement meetings often focus on Glass Lewis' research policies and methodologies and issuers' views on governance practices.

Glass Lewis also provides the subjects of its research with its Issuer Data Report ("IDR"), which details the key facts underlying the relevant report for their review before the report is finalized. This practice is deliberately limited to data. Glass Lewis finds that by providing the facts underlying the report, it can gain any benefit of company review without inviting time consuming and unproductive debates about Glass Lewis' methodology or what result that methodology should lead to in the context of a particular recommendation. This free service has been available for several years and more than 1,400 companies from 22 countries participated during 2019.

Finally, in March 2019, Glass Lewis introduced the Report Feedback Statement ("RFS"), through which companies can opt to have a statement responding to Glass Lewis' research transmitted to Glass Lewis clients through its client and voting platforms. In 2019, the RFS was available to all companies in the United States, Canada and Australia. The Report Feedback Statement provides a unique opportunity for corporate issuers and shareholder proposal proponents – the subjects of Glass Lewis' research reports – to submit feedback about the analysis of their proposals, and have comments delivered directly to Glass Lewis' institutional investor clients. Corporate issuers and shareholder proponents alike are eligible to participate in this service and provide their statements directly to Glass Lewis' research and engagement

proxy advisor's expression. Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 256 (1974); Pacific Gas & Electric v. Public Utility Commission, 475 U.S. 1 (1986).



teams, which in turn distribute them to clients within the firm’s research and voting platforms. This service was rolled out successfully on a global basis for the 2020 proxy season.

B. Prohibition on consulting

“The Taskforce also proposes a framework that ensures PAFs are not in a conflicted position when providing services to issuers and recommendations to clients by restricting PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations.”

Glass Lewis supports the Taskforce’s objective of ensuring that proxy advisors appropriately manage and disclose conflicts. Glass Lewis understands and takes seriously the potential for conflicts of interest to affect the independence and integrity of its research and analysis. Accordingly, Glass Lewis has always taken a conservative approach to identifying and avoiding conflicts, including by not providing consulting services to issuers. Of course, possible conflicts can arise in all businesses and, where conflicts cannot be eliminated, they must be managed and mitigated. Glass Lewis believes that, in such circumstances, proxy advisors must proactively and explicitly disclose those conflicts in a manner that is transparent and readily accessible to clients.

At the same time, we are not persuaded that this conflict of interest requires a regulatory response, let alone government prohibition. Proxy advisors can and do manage and disclose conflicts today, as well as actively competing on the basis of the rigor of their conflicts policies. Proxy advisors’ clients are sophisticated and can evaluate proxy advisors’ conflicts and conflict disclosure practices. Clients can select a proxy advisor based in part on their avoidance of conflicts and – if it were needed – they could demand enhanced conflicts disclosure. In fact, most proxy advisor clients have not expressed concern over the current level of proxy advisor conflict disclosure or asked for other government protection from their proxy advice service providers.¹⁷

¹⁷ Lee Open Meeting Statement (“Clients of proxy advisory firms have consistently stated that they support conflicts disclosure generally, but they maintain that the current disclosure is adequate”); see also Comments of Simon Frechet, Chair, Pension Investment Association of Canada, to the US SEC (Jan. 23, 2020) (“we agree that it is beneficial to receive disclosure of relationships, transactions, or other interests that might result in a conflict between the interests of a proxy advisor and those of shareholders. However, we have found the disclosures already provided to be adequate and have not encountered significant conflict of interest problems with proxy advisors, so do not believe that specific rulemaking is necessary to address

Moreover, conflict avoidance and disclosure is a focus of the BPPG regime. Principle II of the Best Practices Principles requires that: “Signatories should have and publicly disclose a conflicts-of-interest policy that details their procedures for avoiding or addressing potential or actual conflicts of interest that may arise in connection with the provision of services.” Consistent with this principle, Glass Lewis makes its Policies and Procedures for Managing and Disclosing Conflicts of Interest available on its public website.¹⁸ These policies and procedures are reviewed and revised annually by Glass Lewis’ Compliance Committee and reported on as part of Glass Lewis’ annual Best Practices Principles Statement of Compliance.

Finally, we would encourage the Taskforce to critically examine which stakeholders are asking for regulatory intervention on proxy advisor conflicts and their goals in doing so. We are concerned that, in some jurisdictions, concerns over proxy advisor conflicts have been raised by issuers - as opposed to proxy advisor clients - as a pretext for regulation that aims to bias proxy advice towards management’s perspective. As SEC Commissioner Lee noted when the SEC adopted its final rules: “While enhanced conflicts disclosure is generally a laudable goal, it does not justify this specific rulemaking, and in fact may function more as a fig leaf for a rule that is otherwise unsupported and strenuously opposed by investors.”¹⁹ Again, we suggest the Taskforce look closely at market practices, as well as the merits of the market-led accountability regime of the BPPG, before concluding that proxy advisor conflicts practices warrant governmental prohibitions or other prescriptive regulation.

III. Conclusion

For the reasons above, we would encourage the Taskforce to critically evaluate and seek to substantiate the asserted concerns before proposing a new regulatory framework. To the extent it determines such a regulatory framework is warranted, the Taskforce should consider the significant costs, timing pressures, complexities and other potential adverse consequences that could be created by an overly prescriptive regime.

disclosures of conflicts by proxy advisors.”), available at <https://www.sec.gov/comments/s7-22-19/s72219-6687749-205913.pdf>.

¹⁸ See “Glass Lewis’ Policies and Procedures for Managing and Disclosing Conflicts of Interest,” (may 8, 2019), available at <https://www.glasslewis.com/wp-content/uploads/2019/11/GL-Policies-and-Procedures-for-Managing-and-Disclosing-Conflicts-of-Interest-050819-FINAL.pdf>

¹⁹ Lee Open Meeting Statement, at note 7.



We continue to believe that the market-based framework of the Best Practices Principles, coupled with the independent oversight of those principles now in place, is the appropriate mechanism to promote accountability in the proxy advisor industry. A principles-based approach allows for evolution of practices and the Best Practices Principles' comply-or-explain framework avoids the fixed costs and potential anti-competitive effects of prescriptive conduct regulation. It also would avoid Ontario becoming an outlier in proxy advisor regulation, thereby potentially creating an impediment to global investors' willingness to participate in the province's capital markets.

The Best Practices Principles approach also better reflects the global nature of proxy advisors' work. While most domestic regulatory authorities only regulate companies or asset managers based in their jurisdiction, the work of the largest proxy advisors is global. Glass Lewis operates from six countries, has clients in numerous jurisdictions and issued over 26,000 research reports in 2019 providing voting advice on matters from over 20,000 companies based in 106 jurisdictions. Glass Lewis manages its business on a global basis and, as noted above, applies the Principles to its activities globally. Accordingly, regulatory authorities within each of the jurisdictions who look to the Best Practices Principles have a comprehensive overview of Glass Lewis' operations as they affect investors, asset managers, companies or other stakeholders within their jurisdiction.

* * *

Again, we would like to commend the Taskforce for the thoughtful and deliberative manner in which it is undertaking its comprehensive review of Ontario's capital markets regulatory framework and we thank you specifically for the opportunity to comment on the Consultation Report. If we can provide any further information, please contact me at 415-678-4256.

Sincerely,

Nichol Garzon-Mitchell
Senior Vice President, General Counsel