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Glass Lewis Supports ESMA Principles for Proxy Advisors

Global proxy advisors are working to develop an industry code of conduct

Since the 2010 release of the SEC's concept release on the U.S. proxy system, Glass Lewis has been actively engaged with regulators, investors, issuers and other stakeholders across the globe regarding the role of proxy advisors.

In responses to three subsequent consultations, issued in 2012 by the European Securities and Markets Authority ("ESMA"), Canadian Securities Administrators ("CSA") and the Corporations and Markets Advisory Committee of Australia ("CAMAC"), Glass Lewis has consistently expressed the view that a market-based solution, in particular a code of best practices developed by proxy advisors, is the appropriate means to address the relevant issues raised in these consultations – namely conflict management, transparency of policies and methodologies, and engagement.

Glass Lewis is actively working with a group of proxy advisors operating in Europe to develop such a code. Given that the principles outlined in the ESMA Feedback Statement are broadly applicable to all markets, it is Glass Lewis' intention to apply the code under development to activities globally, not just in Europe.

Below are the ESMA principles for proxy advisors and summaries of Glass Lewis' views on the related issues. More detailed information on Glass Lewis' views is contained in the Glass Lewis consultation paper responses, which are available at http://www.glasslewis.com/about-glass-lewis/press-releases/.

1. Identifying, disclosing and managing conflicts of interest

Principle: *Proxy advisors should seek to avoid conflicts of interest with their clients. Where a conflict effectively or potentially arises the proxy advisor should adequately disclose this conflict and the steps which it has taken to mitigate the conflict, in order that the client can make a properly informed assessment of the proxy advisor's advice.*

ESMA Rationale: Considering their important role in the voting process, proxy advisors can, like many intermediaries, be subject to conflicts of interest. They should therefore identify, disclose and manage these conflicts to ensure the independence of their advice. ESMA learned from the market consultation that market participants are concerned regarding potential conflicts of interests, in particular about circumstances where: (i) the proxy advisor provides services both to the investor and to the issuer; and (ii) where the proxy advisor is owned by an institutional investor or by a listed company to whom, or about whom, the proxy advisor may be providing advice.

Glass Lewis Views: Proxy advisors ("PAs"), like many companies, may face conflicts in conducting their business. In the case of PAs, potential conflicts generally fall into three categories: (i) business, such as consulting for issuers or selling research reports to asset manager divisions of public companies; (ii) personal, where an employee, an employee's relative or an external advisor to the PA serves on a public company board; or (iii) organizational, such as being a public company itself or being owned by an institutional investor.

Glass Lewis believes PAs should eliminate, reduce or disclose conflicts to the greatest extent possible. Glass Lewis maintains strict policies, reviewed and revised annually, governing personal, business and organizational relationships that may present a conflict in independently evaluating companies. The policies, which all employees acknowledge receipt of at the beginning of each year, are disclosed on Glass Lewis' public website. For a complete copy of Glass Lewis' Conflict of Interest Statement, please visit http://www.glasslewis.com/company/disclosure.php.

Since conflicts can arise not just in the provision of services but even in the solicitation of them, the cleanest and most effective way to manage conflicts is to eliminate them where possible. Recognizing this, Glass Lewis was founded with the core policy of not providing any consulting services to corporate issuers.

Glass Lewis takes precautions to ensure its research is objective at all times and under all circumstances. As an indirect wholly-owned subsidiary of Ontario Teachers Pension Plan ("OTPP"), Glass Lewis maintains its independence and operates completely separate from OTPP. OTPP is not involved in the day-to-day management of Glass Lewis and is excluded from any involvement in how Glass Lewis formulates voting policies and recommendations.

The proxy voting and related corporate governance policies of Glass Lewis enforce that separation from OTPP. As part of Glass Lewis' continued commitment to its customers, Glass Lewis has an independent Research Advisory Council ("Council"). The Council ensures that Glass Lewis policies and guidelines reflect current and developing trends, including regulatory changes and market practices, and that Glass Lewis research meets the highest standards of quality, objectivity and independence.

Although Glass Lewis is not in the business of advising public companies on their governance structures or conduct, Glass Lewis may provide its research reports to investment managers that are affiliated with publicly-held companies. In such cases, however, Glass Lewis discloses with specificity any such relationship in the relevant research report.

Furthermore, Glass Lewis maintains additional conflict disclosure and avoidance safeguards to mitigate potential conflicts. These apply when: (i) a Glass Lewis employee, or relative of an employee of Glass Lewis, or any of its subsidiaries, a member of the Council, or a member of Glass Lewis' Strategic Committee serves as an executive or director of a public company; (ii) an investment manager customer is a public company or a division of a public company; (iii) a Glass Lewis customer submits a shareholder proposal or is a dissident shareholder in a proxy contest; and (iv) when Glass Lewis provides coverage on a company in which OTPP holds a stake significant enough to be subject to public disclosure rules regarding its ownership in accordance with the local market's regulatory requirements; or Glass Lewis becomes aware of OTPP's disclosure to the public of its ownership stake in such company, through OTPP's published annual report or any other publicly available information disclosed by OTPP.

In each of the instances described above, Glass Lewis makes full, specific and prominent disclosure to its customers in the relevant research report. Just as companies bear the burden to disclose potential conflicts, Glass Lewis recognizes that the onus should be on the conflicted party to disclose any potential conflicts. In addition, where any employee or relative of an employee is an executive or director of a public company, that relationship is not only disclosed but that employee plays no role in the analysis or voting recommendations of that company.

2. Fostering transparency to ensure the accuracy and reliability of the advice

Principle: *Proxy advisors should provide investors with information on the process they have used in making their general and specific recommendations and any limitations or conditions to be taken into account on the advice provided so that investors can make appropriate use of the proxy advice.*

ESMA Rationale: Proxy advisors may have systems and controls in place that guarantee proper and sound advice. These systems and controls may increase the reliability of the advice and enlarge accuracy. ESMA learned from the market consultation that the market would specifically favour greater transparency of these systems and controls, including, but not limited to (i) disclosure of general voting policies and methodologies, (ii) consideration of local market conditions and (iii) providing information on engagement with issuers.

Glass Lewis Views: Glass Lewis reports are typically available three weeks prior to meeting date, which provides sufficient time for Glass Lewis to receive and respond to notifications of potential factual errors. (Publishing times may vary depending on the timing of the disclosure and the types of issues up for vote, such as mergers and acquisitions or control contests.)

Information on how to access individual Glass Lewis reports upon publication is available via the Issuer Engagement Portal, at http://www.glasslewis.com/issuer/, under "Accessing Glass Lewis Reports." Information on how to report a possible factual error is available at the same location under "Reporting a Data Discrepancy."

Just as Glass Lewis discloses information about potential conflicts on the front page of its reports, the exact nature of all report updates and revisions are described in the reports, including changes to recommendations. When a report is updated to reflect new disclosure or the correction of an error, Glass Lewis notifies all clients that have accessed the report or that have ballots in the system for the meeting tied to that report – whether or not the update affected Glass Lewis and/or clients' custom recommendations.

2.i. Disclosing general voting policies and methodologies

Principle: *Proxy advisors should, where appropriate in each context, disclose both publicly and to client investors the methodology and the nature of the specific information sources they use in making their voting recommendations, and how their voting policies and guidelines are applied to produce voting recommendations.*

ESMA Rationale: To allow all stakeholders, especially investors and issuers, to better assess the accuracy and reliability of the proxy advisor's services, proxy advisors are expected to be transparent on their voting policy and on the main characteristics of the methodology they apply, which form the rationale of their recommendations. This is also in line with the overall message that ESMA received from the market consultation for greater transparency, where appropriate, by proxy advisors about their activities and processes.

Glass Lewis Views: Glass Lewis guidelines are available at http://www.glasslewis.com/resource/. In addition, information on Glass Lewis' approach to analyzing financial transactions is available at http://www.glasslewis.com/issuer/evaluation-of-financial-transactions/. Also, information on Glass Lewis methodologies for evaluating pay for performance, advisory votes on compensation ("Say on Pay") and equity-based compensation is available at http://www.glasslewis.com/issuer/compensation-analysis/.

In developing its individual reports, Glass Lewis relies only upon publicly-available information; it will not incorporate into its research information that is not available to clients and other shareholders. When Glass Lewis analysts require clarification on a particular issue, they will reach out to companies but otherwise generally refrain from meeting privately with companies during the solicitation period, which begins when the proxy circular is released. Throughout the year, however, Glass Lewis hosts "Proxy Talk" conference calls for investors to discuss a meeting, proposal or issue in depth; depending on the topic, these calls may be open to the public.

2.ii. Considering local market conditions

Principle: *Proxy advisors should be aware of the local market, legal and regulatory conditions to which issuers are subject, and disclose whether/how these conditions are taken into due account in the proxy advisor's advice.*

ESMA Rationale: Proxy advice generally is a cross-border activity which requires the awareness of different laws, rules and regulations governing issuers' activities in each relevant jurisdiction. Therefore proxy advisors, as ESMA also learned from the market consultation, are expected to have a proper knowledge of the national and regional context, irrespective of whether proxy advisors choose to apply an international benchmark, or their client's own preferences/policies, in forming their opinion of individual meeting resolutions. Such knowledge of local/regional conditions is needed in order to develop an accurate voting policy, and, as a result, an appropriate advice.

Glass Lewis Views: Glass Lewis was founded on the principle that each company should be evaluated based on its own unique facts and circumstances, including performance, size, maturity, governance structure, responsiveness to shareholders and, last but not least, location. Therefore, Glass Lewis has policy approaches for each of the countries where it provides research on public companies. These policies are based in large part on the regulatory and market practices of each country, which are monitored and reviewed throughout the year by Glass Lewis' Chief Policy Officer, Associate Vice President of European and Emerging Markets Policy, Vice President of Proxy Research and research directors. Glass Lewis applies general principles, including promoting director accountability, fostering close alignment of remuneration and performance, and protecting shareholder rights across all of these policies while also closely tailoring them to recognize national and supranational regulations, codes of practice and governance trends, size and development stage of companies, etc.

Glass Lewis engages in discussions with clients, public companies and other relevant industry participants and observers in the development and refinement of proxy voting policies. In 2012, in response to feedback from clients and issuers alike, Glass Lewis launched an enhanced version of its proprietary pay-for-performance ("P4P") model for U.S. companies. A key change to the model was the source of peer group information, which had been a major point of contention for public companies.

The newly enhanced model now features peers derived from company-defined peer groups. Glass Lewis displays the peers used in its analysis and identifies any differences between the peer group used in the model and companies' self-selected peer groups.

2.iii. Providing information on engagement with issuers

Principle: *Proxy advisors should inform investors about their dialogue with issuers, and of the nature of that dialogue.*

ESMA Rationale: Proxy advisors can choose whether or not to have a dialogue with issuers. If they do choose to have such a dialogue, it is up to the proxy advisor what should be the timing, frequency, intensity and format for this dialogue. A proxy advisor should disclose to investors whether there is a dialogue between the proxy advisor and an issuer. Where such a dialogue takes place, it should inform investors about the nature of the dialogue, which may also include informing clients of the outcome of that dialogue. ESMA learned from the market consultation that some proxy advisors do not conduct dialogue with issuers. When there is dialogue, the nature and degree of that dialogue differs significantly among proxy advisors, as well as the level of transparency on the fact that dialogue is taking place.

Glass Lewis Views: Dialogue between investors and companies can be an effective means for investors and companies to gain a better understanding of each other's goals and strategies and is therefore to be encouraged. This dialogue should be undertaken year-round to develop meaningful relationships and ensure a high level of trust. Glass Lewis often engages in discussions with companies outside the proxy season, but prefers not to have off-the-record discussions with companies during the proxy solicitation period to ensure the independence of its research and advice – something that is highly valued by clients – and to avoid receiving information, including material non-public information, not otherwise available to shareholders. It has been Glass Lewis' experience that issuers generally try to use solicitation-period discussions to lobby for the support of a recommendation or to learn what changes Glass Lewis requires in order to "win" Glass Lewis support for items up for vote. This is not appropriate, given that Glass Lewis is not empowered to negotiate on behalf of clients, who often hold different or even opposing points of view on certain issues.

Glass Lewis' research professionals analyze public company filings, specifically proxy statements and financial statements, as well as multiple external original research sources to evaluate board effectiveness and company risk profiles. If Glass Lewis analysts require clarification on a particular issue, they will reach out to companies.

As previously stated, throughout the year and very frequently during the proxy season, Glass Lewis hosts "Proxy Talk" conference calls with issuers and shareholders, as relevant, to discuss a meeting, proposal or issue in depth. Glass Lewis' clients and other shareholders are invited to listen to the call and submit questions to the speakers, with representatives from Glass Lewis serving as moderators. Proxy Talks are held prior to the publishing of research in order to glean additional information for Glass Lewis' analysis and to provide more information for clients. For certain meetings, such as control contests, Glass Lewis will host separate Proxy Talks with both sides, i.e. management and the dissident shareholder.

Glass Lewis encourages corporate issuers to contact Glass Lewis via the Issuer Engagement Portal. Glass Lewis designed the Issuer Engagement Portal to facilitate and track communication with companies, including arranging calls, meetings and Proxy Talk conference calls. The portal also provides a means for companies to comment and provide feedback on reports and to notify Glass Lewis of subsequent proxy circulars and press releases, as well as perceived errors or omissions in Glass Lewis reports.