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**Glass Lewis Response to “Canadian Securities Administrators Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms”**

Dear Sirs / Madams:

Glass, Lewis & Co. (“Glass Lewis”) appreciates the opportunity to comment on the Consultation Paper (“CP”) issued by the Canadian Securities Administrators (“CSA”) regarding the proxy advisor (“PA”) industry and potential securities regulatory frameworks for the industry.

Founded in 2003, Glass Lewis is a leading independent governance services firm that provides proxy research, recommendation and voting services to institutional investors throughout the world. While, for the most part, clients use Glass Lewis’ research to help them make their 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.

Based in San Francisco, California, Glass Lewis’ 300-person team provides research and voting services to North American, European and Australian investors that collectively manage USD 15 trillion.

Since 2007, Glass Lewis has been a wholly-owned subsidiary of Ontario Teachers’ Pension Plan (“OTPP”), which manages CAD 117 billion as a fiduciary, on behalf of 300,000 current and retired teachers in Ontario. OTPP is subject to the Ontario Pension Benefits Act, which sets forth fiduciary duties for all pension plan administrators in Ontario and obliges them to administer the plan and invest assets with the same prudence expected of a person dealing with another's property. The standards of conduct

expected of a fiduciary are also set out in common law to which OTPP is subject. Consistent with these fiduciary responsibilities, OTPP votes according to its own proxy voting policies which, along with OTPP's proxy votes, are publicly-available here:

[http://www.otpp.com/wps/wcm/connect/otpp\\_en/Home/Responsible+Investing/Governance/](http://www.otpp.com/wps/wcm/connect/otpp_en/Home/Responsible+Investing/Governance/)

OTPP is the owner of Glass Lewis, not its operator; as an owner with a long-term investment horizon, OTPP is committed to ensuring Glass Lewis continues as an independent advisor that puts the interests of its clients ahead of all others.

In its CP, the CSA seeks feedback from market participants on perceived issues with PAs. The concerns highlighted in the CP include: (i) potential conflicts of interest; (ii) perceived lack of transparency; (iii) potential inaccuracies and limited engagement with issuers; (iv) potential inappropriate influence on corporate governance practices; and (v) the extent of reliance by institutional investors on the advice of PAs.

In addition, the CSA seeks feedback on regulatory framework options.

Glass Lewis welcomes the CSA's examination of the proxy voting process and the role of advisors in that process. Glass Lewis commends the CSA for the significant work it has done in preparing its thoughtful, balanced and comprehensive view of the industry, as well as its examination of options for enhancing the independence and integrity of PA research.

## **General**

### Conflicts of Interest

Glass Lewis prides itself on avoiding conflicts of interest to the maximum extent possible. As a result, Glass Lewis does not enter into business relationships that conflict with its mission: To serve institutional participants in the capital markets with objective advice and services. However, Glass Lewis recognizes it is not possible to be completely conflict-free. Where conflicts exist, it is absolutely critical for advisors to proactively and explicitly disclose those conflicts in a manner that is transparent and readily accessible for clients. Three factors are key to Glass Lewis' management of potential conflicts: (i) Glass Lewis does not offer consulting services to public corporations or directors; (ii) Glass Lewis maintains its independence from OTPP by excluding OTPP from any involvement in the making of Glass Lewis' proxy voting policies and vote recommendations; and (iii) Glass Lewis relies exclusively on publicly-available information for the purpose of developing its recommendations. Glass Lewis avoids 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.

Please see the *Potential Conflicts of Interest* section of this response for detailed information on Glass Lewis' conflict-management policies and procedures.

## Transparency

Since the US Securities and Exchange Commission (“SEC”) issued its Concept Release on the US proxy system in 2010, Glass Lewis has been actively engaging with all the stakeholders in the proxy voting process (i.e. investors, issuers and their advisors, regulators, and academics) regarding the issues outlined in this CP. Through these discussions, it became abundantly clear that Glass Lewis needed to provide easier access to information about its proxy voting policies, methodologies and models for analyzing governance matters, policies and procedures for managing conflicts and information on how and when to contact Glass Lewis. During 2011, Glass Lewis dedicated considerable resources to redesigning and redeveloping its public website, which now has sections dedicated to providing details on a variety of topics. Through the new “Issuer Engagement Portal,” which was launched in February 2012, issuers can also learn how to access copies of Glass Lewis reports and notify the Glass Lewis research team if they believe a Glass Lewis report contains a factual error.

## Accuracy, Quality and Engagement

Glass Lewis has an obligation to provide high quality, timely research to its institutional investor clients, based on the analysis of accurate information culled from public disclosure.

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 100 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. In most countries, including Canada, Glass Lewis applies stricter corporate governance standards for large, multinational companies than it does for smaller companies. For example, Glass Lewis believes companies in the S&P/TSX Composite Index should have a higher level of board independence than smaller companies outside the Composite, as well as controlled companies and those listed on the TSX Venture Exchange. (Glass Lewis guidelines for Canadian companies can be accessed via the Glass Lewis Issuer Engagement Portal at [http://www.glasslewis.com/issuer/guidelines/.](http://www.glasslewis.com/issuer/guidelines/))

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. Recently, in response to feedback from clients and issuers alike, Glass Lewis launched an enhanced version of its proprietary pay-for-performance (“P4P”) model for US 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.

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 to discuss a meeting, proposal or issue in depth; these calls are open to the public. (For more information on this type of solicitation-period engagement, please see the *Issuer Engagement* section below.)

Outside the solicitation and proxy season blackout periods, Glass Lewis is open to meeting with companies to discuss research policies and methodologies, as well as perspectives on both general topics and issues specific to the company. Indeed, Glass Lewis meets with hundreds of public companies each year in person or by phone. Companies can request meetings via the Glass Lewis public website at <http://www.glasslewis.com/issuer/>.

In accordance with feedback from clients, Glass Lewis does not believe it is in the best interests of investors to provide previews of PA analysis to the subject companies. This type of "consultation" would open Glass Lewis up to being lobbied by companies, since companies could use this communication opportunity to push for a change in a recommendation against management. Furthermore, from a practical perspective, given the often tight timeframe between the issuance of the proxy circular and the vote deadline, any delay in the distribution of reports to investors would further inhibit their ability to review the analysis and make fully informed voting decisions. Glass Lewis is currently exploring how to provide issuers with access to the data used in the development of its analysis, on a company-by-company basis, for review by companies prior to issuing reports. Until that time, Glass Lewis does not intend to make any of its data or research available prior to publication to clients.

Glass Lewis typically publishes its reports on annual general meetings ("AGM") three weeks prior to meeting date. Publishing times may vary depending on the timing of disclosure and the types of issues up for vote. Analysis on mergers and acquisitions and other financial transactions, for example, is generally published closer to meeting date. For information on how to access individual Glass Lewis reports upon publication, go to "Accessing Glass Lewis Reports" at <http://www.glasslewis.com/issuer/>.

#### Qualifications and Experience

Glass Lewis employs an experienced, highly-educated, multi-disciplinary team that leverages formal training and real-world experience in finance, accounting, law, business management, public policy and international relations. The annual general meeting research team is led by Chief Policy Officer Robert McCormick, an attorney, and Chief Operating Officer John Wieck, an MBA graduate, who combined have more than 30 years experience working in corporate governance and proxy voting. Other members of the research management team include Managing Director of Merger & Acquisition Analysis Warren

Chen, who holds an MBA and, prior to joining Glass Lewis in 2004, worked as an investment banking analyst for a global investment bank; Vice President of AGM Research David Eaton, who also holds an MBA and has worked for several governance research firms in his career, including, most recently, a large compensation consultancy; and Associate Vice President of European and Emerging Markets Policy Carla Topino, an Italian attorney who was in-house corporate counsel for two Italian companies and whose law degree thesis was on takeover bids. The Glass Lewis team leverages the firm's sophisticated, proprietary research database that enables it to track company and director performance and governance over the past eight years at thousands of companies across the globe.

The Glass Lewis research team includes professionals born in 15 countries who collectively speak 25 languages. Many of these team members have advanced degrees and experience in subjects relevant to the research we conduct. Throughout the year, they monitor regulatory and corporate governance practices in the markets for which they are responsible in order to ensure the research approach to each company under coverage is consistent with local-market codes, guidelines and best practice and is reflective of general principles applicable to all public companies, such as director accountability, protection of shareholder rights and promotion of a closer link between pay and performance.

Regardless of education or experience, Glass Lewis research analysts must go through the Glass Lewis Research Associate Training Program, which provides a comprehensive overview of the industry in general and the Glass Lewis research process. After completing the training program, all new hires are placed into relevant teams and practice areas based on their experience, education, language proficiency, profession and interest to enable further specialization.

Generally speaking, Glass Lewis covers US, UK, Canadian, Latin American and Asian companies from its San Francisco office; Australian, South African and New Zealand companies from its Sydney and Ireland offices; and EMEA companies from the New York and Ireland offices. Additionally, there is regular exchange of information among the offices, enabling analysts to share perspective on issues, particularly new and developing ones. This model affords close oversight of the research analysts, resulting in consistent, high quality research and case-by-case analysis of relevant issues across all markets; it also promotes cross-pollination of concepts from market to market.

Depending on their skills, education and experience, Glass Lewis research analysts work in specialized groups that cover specific markets or are devoted to analyzing specific types of issues, such as mergers and acquisitions, contested meetings, accounting matters, compensation and environmental or social issues. Multiple analysts collaborate in writing Glass Lewis' research reports depending on the complexity, novelty and breadth of issues presented for shareholder vote.

Prior to publication to clients, all draft reports are reviewed and edited by at least two additional senior analysts and managers up to and including a Director of Research, a Vice President of Research, the Managing Director of Mergers & Acquisition Analysis and/or the Chief Policy Officer.

## The Correlation Question

Since the issuance of the SEC Concept Release on the proxy voting industry, much of the debate around PAs has centered on the perceived influence of their voting advice, based on the belief that institutional investors “blindly follow” PA recommendations. Those raising concerns about the influence of PAs point to the correlation between PA advice and vote outcomes and the timing of voting by investors relative to when PAs issue recommendations or corrections as evidence of the purported influence.

The extent to which PAs influence voting outcomes is overstated.

For nearly all proposals, there are only a few possible vote options: For, Against/Withhold or Abstain. Given the limited number of voting options and the myriad reasons for arriving at any particular decision, a vote outcome that is the same as a PA’s recommendation could be the result of any of the following:

- i. Investor votes the same way as PA but for different reasons.
  - o These reasons are not necessarily transparent, as rationales for voting are generally not disclosed by investors even when votes are disclosed.
- ii. Investor votes the same way as PA for similar reasons, which investors believe are sound and appropriate reasons for their vote decision. Investors and PAs often share views on topics such as favoring shareholder approval to adopt anti-takeover provisions.
  - o Glass Lewis develops its policies for evaluating governance issues based on a review of the regional and local laws, regulations and governance codes applicable to the companies under coverage. Glass Lewis bases its research on publicly-available information. As such, it is likely that Glass Lewis will often recommend the same way an investor votes, for the same reasons.
- iii. Investor has adopted a PA’s policy toward one or more voting issues and, as such, is voting in line with a PA’s recommendations for that issue or those issues.
  - o The decision to follow a PA’s recommendations does not necessarily constitute “blind following” of an advisor’s advice. Investors select an advisor based on a thorough review of the advisor’s policy, methodologies, research samples, conflict management policies and procedures, as well as an assessment of the experience and qualifications of the advisor’s management and analysts. In addition to monitoring votes throughout the year, investors generally conduct annual due-diligence visits to review these same issues and review any questions or concerns that have arisen since their previous visit. Investors retain the right to review and override Glass Lewis recommendations – which they regularly exercise. In the first six months of 2012, Glass Lewis clients whose policy is to vote according to Glass Lewis’ recommendations on non-US Say on Pay proposals chose to override the Glass Lewis recommendation and vote differently more than 10 percent of the time.

Moreover, 80+ percent of Glass Lewis’ 1,000 clients – which include the majority of the world’s largest public pension funds, asset managers and mutual funds – vote according to a custom policy or via a

custom process for reaching vote decisions, such as reviewing multiple research providers prior to approving votes.

As described above, custom policies and vote decision-making processes often result in votes that match Glass Lewis' recommendations for the same or different reasons. A correlation between PA recommendations and vote outcomes does not mean that investors have not examined the issue or are not making their own voting decisions.

The counter-arguments made by issuers to what is stated above often point to the correlation between the timing of the issuance of PA recommendations and when shareholders submit their votes. However, this counter-argument reflects a lack of understanding of the custom policy implementation processes at PAs. At the same time that Glass Lewis publishes its own research, Glass Lewis also implements its clients' custom recommendations, prompting the clients to review and, if necessary, execute their vote. Also, depending on clients' vote instructions regarding when to submit their votes and/or how close to meeting date a correction is made to the analysis on which client votes are based, any re-voting based on both custom and Glass Lewis policies will happen nearly instantly – as soon as any changes to the research or analysis are published.

#### Regulation of Proxy Advisors

As detailed in the *Proposed Regulatory Responses and Framework(s)* section of this response, Glass Lewis believes that any binding or quasi-binding regulation by the CSA of PAs could negatively impact investors and create barriers to entry for potential proxy advisors. However, Glass Lewis supports the development of an industry code of conduct, similar to the UK Stewardship Code, that sets out best practice on engagement between investors and their advisors with investee companies and operates on a “comply or explain” basis. The process for developing such a code for PAs would involve input from a variety of stakeholders.

#### ***Potential Conflicts of Interest***

Proxy research providers, 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 proxy research providers 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>.



Glass Lewis provides independent research, analysis and proxy voting advice to institutional investors. Its voting recommendations are based on Glass Lewis' independent determination of what would be in the best interests of long-term investors. As a result, Glass Lewis does not enter into business relationships that conflict with its mission of serving institutional participants in the capital markets with objective advice and services.

However, Glass Lewis recognizes that some conflicts are unavoidable. In those cases, regulatory bodies in many markets have historically required entities, including public companies, to provide significant disclosure about potential conflicts. For example, in many countries issuers must disclose fees paid to audit firms for both audit and non-audit work to highlight any conflicts. Similarly, companies must disclose certain related-party transactions of executives and directors so that investors are able to determine if those conflicts affected the independence and ultimately the performance of the director. Furthermore, similar to the approach of Canadian regulators, other regulators, such as the SEC, require companies to disclose certain fees paid to compensation consultants as an indication of potential conflicts when the consultants provide additional services to the company.

Research providers should be required to proactively provide robust and specific disclosure about their potential conflicts. Only in this way can the users of the research make a determination if the research is tainted by the conflict.

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 believes PAs that do provide consulting services to companies on which they subsequently write research reports should disclose the extent of their business relationships proactively, specifically and in detail, as should the public companies receiving such consulting services, similar to how Canadian companies disclose the details of their compensation consultant relationships.

Glass Lewis takes precautions to ensure its research is objective at all times and under all circumstances. As an indirect wholly-owned subsidiary of 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' research consistently meets the quality standards, objectivity and independence criteria set by Glass Lewis' research team leaders. The Council, chaired by Charles A. Bowsher, former Comptroller General of the United States, and supported by Robert McCormick, Glass Lewis' Chief Policy Officer, includes the following experts in the fields of corporate governance, finance, law, management and accounting: Kevin J. Cameron, co-founder and former President of Glass, Lewis & Co.; Jesse Fried, Professor of Law at Harvard Law School; Bengt Hallqvist, Founder of the Brazilian Institute for Corporate Governance; Stephanie LaChance, Vice



President, Responsible Investment and Corporate Secretary, PSP Investments; David Nierenberg, President of Nierenberg Investment Management Company; and Ned Regan, Professor, Baruch College.

As discussed above, Glass Lewis does not offer consulting services to public corporations or directors. Glass Lewis is not in the business of advising public companies on their governance structures or conduct, and does not use its position as trusted advisor to institutional investors to win consulting mandates with issuers.

In certain instances, Glass Lewis may provide its research reports to investment managers that may be affiliated with publicly-held companies. In such cases, however, Glass Lewis discloses any such relationship on the cover of the relevant research report. Moreover, Glass Lewis makes its research reports generally available post-publication.

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 on the cover of 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.

Glass Lewis believes examining the treatment of other conflicts is illustrative for determining the precedent for successful examples of conflict avoidance and disclosure. One example of an industry where the current solution was found ineffective is the credit ratings industry. Some credit rating agencies, which in effect sell their ratings to the companies they rate, have been found to have altered ratings at the request of issuers.<sup>1</sup> This ability to potentially negotiate a better rating creates the opportunity to "game" the system.

On the other hand, the treatment of audit firm conflicts under the Sarbanes-Oxley Act in the United States provides an example of an effective means of limiting conflicts by significantly limiting an audit firm's ability to work for both the audit committee and company executives, coupled with specific disclosure requirements.

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<sup>1</sup> In re Moody's Corporation Securities Litigation, Case 1:07-cv-08375-SWK

## ***Issuer Engagement***

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. While dialogue between investors and companies can be constructive during the vote decision-making process, given the short timeframe most investors have to analyze and vote, in many cases, thousands of proxies during the proxy season, dialogue during the proxy solicitation period should be in the form of a "follow-up" to earlier discussions. Therefore, it would be helpful for the CSA to examine whether any rules governing proxy solicitation or selective disclosure unintentionally inhibit robust and frank dialogue.

Glass Lewis often engages in discussions with companies outside the proxy season, but generally does not engage in private discussions with companies during the proxy solicitation period. Glass Lewis strongly believes its analysis, research and recommendations should be based on publicly available information. To that end, it encourages companies to clearly and comprehensively disclose information about relevant issues for consideration by shareholders. 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. When Glass Lewis analysts require clarification on a particular issue, they will reach out to companies but otherwise generally refrain from meeting with companies during the solicitation period, which is marked by the date a notice of meeting is released to the meeting date itself.

However, 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.

In 2012, for example, Glass Lewis hosted two Proxy Talks to discuss several shareholder proposals relating to compensation and board composition at Viscofan SA, a €1.5 billion market capitalization company headquartered in Spain, one with the shareholder proponent and the second with the representatives of Viscofan. Typically, calls are held to provide participants (e.g. company representatives, dissidents, shareholder proposal proponents) an open forum to give shareholders further insight into specific issues.

Glass Lewis 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.

However, Glass Lewis does encourage corporate issuers to contact Glass Lewis via the Issuer Engagement Portal. Glass Lewis designed the Issuer Engagement Portal to facilitate 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.

Furthermore, Glass Lewis often engages in discussions with clients, companies and other relevant industry participants and observers in the development and refinement of its proxy voting policies.

Since, as the CP notes, the relationship between PAs and investors is a commercial one and subject to termination like any other, Glass Lewis does not believe a particular form of engagement should be prescribed. On the other hand, PAs should be free to determine and implement an engagement process that suits the advisor and its clients’ best interests. This approach would ensure investor client input in the design of the engagement process and allow for the ongoing refinement of engagement procedures.

Although Glass Lewis does not consult directly for companies, all corporate issuers can access Glass Lewis’ research reports via Glass Lewis’ partner, Equilar, the leading provider of tools for benchmarking and tracking executive compensation, board compensation, equity grants and award policies and compensation practices. In addition, issuers that employ service providers (e.g. proxy solicitors and law firms) that are clients of Glass Lewis can access information about Glass Lewis analysis and recommendations through such providers well prior to the vote cutoff date. (Issuers can find more information on how to acquire copies of Glass Lewis research reports at <http://www.glasslewis.com/issuer/>.)

In most markets, including Canada, Glass Lewis publishes its reports well in advance of meeting date. This provides sufficient time for Glass Lewis to receive and respond to notifications of any factual errors. Just as Glass Lewis discloses specific information about conflicts on the front page of its reports, the exact nature of all report updates and revisions are described, including changes to recommendations, on the front page of reports. 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.

For more information on Glass Lewis’ Corporate Engagement Policy, go to: <http://www.glasslewis.com/for-issuers/glass-lewis-corporate-engagement-policy/>.

### ***Proposed Regulatory Responses and Framework(s)***

The CP outlines two potential regulatory courses of action:

- i. Amend or apply existing regulatory frameworks for the purpose of regulating PAs
  - a. Require PAs to register as “advisers”
  - b. Treat proxy advice as proxy solicitation
  - c. Apply the same framework to PAs that is proposed for credit rating agencies
- ii. Develop a new securities regulatory framework specifically for PAs
  - a. Requirements and Disclosure and Certification frameworks (binding)
  - b. Comply or Explain (quasi-binding)
  - c. Best Practices Guidance (non-binding)

Glass Lewis agrees with the following conclusions reached by the CSA: (i) PAs should not be required to register as “advisers;” (ii) the work of PAs does not amount to “soliciting” proxies; and (iii) PAs should not be regulated under the framework contemplated for credit rating agencies.

In addition, Glass Lewis believes that any binding or quasi-binding regulation of PAs by the CSA would be inappropriate and potentially harmful. The reasons for this view include:

- *Investors are fiduciaries that already hold their advisors accountable for the quality and accuracy of the services they provide. ... The market does work.*

Institutional investors have a fiduciary responsibility to vote proxies in a manner that is in the best interests of their beneficiaries. It has been Glass Lewis’ experience, as a provider of governance services to nearly 1,000 investors across the globe, that investors take very seriously this responsibility. Institutional investors hold PAs accountable for providing objective, high-quality research services that are developed and delivered in accordance with client instructions. In addition, PAs must meet the requirements set forth by their clients for managing and disclosing conflicts of interest.

If an advisor fails to meet the standards and requirements set forth by the client, that client has the option to select another provider.

- *PAs are just one participant in a large voting chain, which includes issuers, ballot distributors, custodians, sub-custodians and registrars, among others.*

Research development by PAs is dependent on the activities of several members of the voting chain. It would be inappropriate and potentially harmful to investors if any regulator were to mandate quasi-binding or binding instruments without mandating related instruments for other participants in the chain.

- *A proliferation of differing binding or quasi-binding regulatory instruments in different jurisdictions would be potentially burdensome for both investors and PAs, impacting shareholder rights and creating barriers to entry into the proxy advisory industry.*

Glass Lewis welcomes the opportunity to work with the rest of the proxy advisory industry in developing an industry code of conduct that could apply globally and would govern policy and research development; conflict management and disclosure; and transparency.

Indeed, Glass Lewis strongly supports much of what the CSA outlines in section 5.2.1. As stated earlier, Glass Lewis has robust policies and procedures for managing and disclosing potential conflicts and provides transparency into its practices for developing its research and vote recommendations. More information about these are available at [www.glasslewis.com/issuer/](http://www.glasslewis.com/issuer/) and <http://www.glasslewis.com/about-glass-lewis/disclosure-of-conflict/>.

However, any requirement that a publisher, such as a PA, must provide the subject of a report with an opportunity to review and comment on the report before it is published would have a deeply chilling effect on the freedom of expression and of the press and cannot be justified merely because the views expressed in such reports might be controversial or even erroneous.

Section 2 of the *Canadian Charter of Rights and Freedoms* (the “Charter”) sets forth the fundamental freedoms guaranteed by the Constitution Act, 1982. In particular, Section 2 states the following:

“Everyone has the following fundamental freedoms: . . . (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

Section 1 of the Charter explains the scope of these rights and freedoms:

“The Canadian Charter of Rights and Freedoms guarantees the rights set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Applying these constitutional principles, the Supreme Court of Canada has repeatedly found that attempts to regulate the content of expression are a violation of these fundamental freedoms. In determining whether a communication falls within the constitutionally protected freedoms, the Supreme Court “has consistently refused to take into account the content of the communication, adhering to the precept that it is often the unpopular statement which is most in need of protection under the guarantee of free speech.”

In addition, Glass Lewis strongly believes that it would not serve investors’ interests to allow subject companies to review their reports prior to publication and does not feel any distinction is warranted among various circumstances. Since the AGM season of most countries’ takes place over just a few months, PAs must procure and analyze thousands of proxy circulars and annual reports and then write and publish a large number of research reports in a very compressed timeframe. Clients, in turn, must review and vote thousands of proposals in a short timeframe, subject to strict voting deadlines. Adding additional days of issuer review to this process would further exacerbate the limited time investors have to comprehensively review voting items and engage with companies, as necessary.

Furthermore, companies would undoubtedly take advantage of the report-review opportunity to lobby PAs on policy and vote recommendations, severely limiting the utility of the exercise. Often, what companies indicate is an error is strictly a different point of view on a given issue and, therefore,

requires no revision to the report. To be clear, Glass Lewis believes conversations about the nuances of policy setting and interpretation are more constructive when conducted outside the proxy season, when such discussions are not constrained by the limited time available.

### ***Additional Questions for Proxy Advisory Firms***

While Glass Lewis provides significant information regarding its policies, procedures and methodologies on its public website and even more information to paying clients, Glass Lewis does not believe disclosure of proprietary models and research prior to publication to clients would be beneficial to clients. Glass Lewis' guidelines and compensation evaluation tools are designed for paying subscribers, who bear the expense of Glass Lewis' services through the subscription fees they pay. While institutional investor clients are the most proximate beneficiaries of Glass Lewis research and voting services, the costs of Glass Lewis' services ultimately fall on clients' beneficiaries (e.g., mutual fund shareholders and public pension plan participants) through the fees and costs they pay and bear. Glass Lewis does not believe these ultimate beneficiaries should subsidize the public disclosure of proprietary research and models for which they have paid. Furthermore, other proprietary research providers, including those making buy and sell recommendations, do not give away their research methodologies.

Glass Lewis recognizes that there has been a growing examination of the role of PAs in many countries, including Canada. Glass Lewis welcomes the examination and believes the findings of inquiries like this CP will illustrate how institutional investors use PAs. Glass Lewis believes a voluntary code of conduct, preferably global in scope, is the most practical solution since – as the CP notes and other regulators recognize – PAs do not fit into existing regulatory structures.

Glass Lewis welcomes this opportunity to comment on the CSA's Consultation Paper and is available to answer any questions the CSA may have regarding the role of proxy advisors.

Respectfully submitted,

/s/

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/s/

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