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Via email: dafca.contact@oecd.org

RE: OECD Principles of Corporate Governance - draft for public comment - November 2014

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the draft revised OECD Principles of Corporate Governance ("Draft Principles") issued by the Organisation for Economic Co-operation and Development ("OECD").

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,000 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

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

From its offices in North America, Europe and Australia, Glass Lewis' 300+ person team provides research and voting services to institutional investors globally that collectively manage more than US $30 trillion.

Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

Glass Lewis Views on OECD Principles of Corporate Governance

Glass Lewis commends the OECD for re-examining its Principles of Corporate Governance ("Principles") which will ensure the Principles reflect global trends and developments in corporate governance. Glass Lewis generally agrees with the draft Principles, as well as the current Principles, The response provided below includes Glass Lewis' views about some specific provisions outlined in the Principles.

I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

Glass Lewis believes corporate governance frameworks should take into account the context in which any given company operates since companies have widely varying corporate and board structures and

are subject to varying regulatory regimes. Good corporate governance should not necessarily be an end in itself but rather is a tool that can facilitate the preservation and creation of shareholder value and the efficient allocation of capital within the economy.

In its guidelines, Glass Lewis eschews a one-size-fits-all approach in favour of a contextual analysis of companies that acknowledges variables such as corporate size, complexity of the business, sector, ownership structure, geography, location and stage of development. However, Glass Lewis believes all companies should comply with broad global governance standards to ensure director accountability, to promote and protect shareholder rights and to foster a close alignment of remuneration with corporate and individual performance. Therefore, Glass Lewis supports the implementation of robust best practice frameworks and guiding principles as a starting point, coupled with a transparent reporting regime that encourages companies to provide a thorough and compelling rationale for any deviation from relevant best practice standards in lieu of compliance.

II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

Voting rights of shareholders (Paragraph 20)

Institutional investors routinely diversify their portfolio risk by investing in up to thousands of securities across many countries. Since it is unrealistic for investors to attend hundreds or, in some cases, thousands of general shareholder meetings in person, most shareholders vote through an appointed proxy. Glass Lewis therefore strongly supports efforts to facilitate proxy voting by electronic means, a common method of transmitting votes in many countries. Indeed, 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 believes that all stakeholders, including public companies, shareholders and regulators, would benefit from the implementation of an electronic voting system that includes end-to-end vote confirmation.

In addition, Glass Lewis believes companies should routinely tabulate all votes on each item and regardless of whether cast in person or by proxy. This will ensure the voice of all shareholders is heard and avoid the risk of disenfranchising shareholders where a company counts shares based on a show of hands where each person present at the meeting is entitled to only one vote, regardless of the size of that individual's shareholding, contravening the "one share one vote" principle. Voting by share of hands unnecessarily limits the full participation of all shareholders since minority and foreign shareholders less likely to vote in person at a general meeting.

Furthermore, a number of jurisdictions have no legal requirement for companies to disclose the outcome of the proxy votes prior to the vote on a show of hands. As a result, shareholders attending the meeting in person might not know until after the resolutions were voted on that there could have been a disconnect between the voting outcome and the show of hands. In other words, shareholders would

not be in a position to know whether they should call a poll until after the polls are closed. Glass Lewis believes that the OECD should consider taking a stronger approach against the use of voting by show of hands given that such a voting mechanism can undermine the ownership rights of shareholders not present at general shareholder meetings.

Finally, companies should be encouraged to disclose complete voting results promptly following the general meeting, not just whether or not a proposal passed.

Shareholder sponsored resolutions (Paragraph 21)

Glass Lewis generally believes decisions regarding day-to-day management and policy decisions are best left to management and the board as they in almost all cases have more and better information about company strategy and risk. However, when a company fails to address a material risk or respond to shareholder concerns, it is reasonable for shareholders to exercise their rights by bringing a resolution to vote at a general shareholder meeting.

We believe that shareholders should not attempt to micromanage a company, its businesses or its executives through the shareholder initiative process. Rather, we believe shareholders should use their influence to push for governance structures that protect shareholders and promote director accountability. Shareholders should then put in place a board they can trust to make informed decisions that are in the best interests of the business and its owners, and hold directors accountable for management and policy decisions through board elections. However, Glass Lewis recognises that support of appropriately crafted shareholder initiatives may at times serve to promote or protect shareholder value.

Within this framework, Glass Lewis is supportive of regulatory regimes that promote shareholders' ability, subject to reasonable safeguards such as minimum ownership thresholds, to place voting resolutions on the agenda at general shareholder meetings.

Director elections (Paragraph 22)

Since directors are shareholder representatives in the boardroom, the ability to elect and remove directors is one of the fundamental rights of shareholders. Glass Lewis generally supports affording shareholders the right to nominate director candidates and for the inclusion of such candidates in the company's voting materials as a means to ensure that significant, long-term shareholders have an ability to nominate candidates to the board. A number of jurisdictions already provide for this "proxy access" right, which significantly enhances the ability of shareholders to play a meaningful role in selecting their representatives (in lieu of running their own, costly contested election). However, like for shareholder proposals, Glass Lewis believes such proxy access rights should include safeguards including minimum ownership thresholds to avoid unnecessary distraction caused by nuisance contests for director elections.

Director commitments (Paragraphs 22 and 128)

Glass Lewis believes that directors, and especially the chairman, of a publicly listed company should be able to devote sufficient time and attention to the company as well as retain some spare capacity in case a crisis or other unforeseen event occurs that escalates the demand on the director role. In addition Glass Lewis recognises that such commitments vary greatly depending on the size, complexity and maturity of a company as the individual role of the director on the board, e.g. chairing the audit committee requires a substantially increased time commitment. Put differently, whilst Glass Lewis generally acknowledges the capacity of most directors to manage their various commitments when those companies are in steady state of affairs,[1] Glass Lewis believes directors should maintain a sufficient amount of capacity in reserve for crisis management (or for prolonged mergers and acquisitions activity for that matter). Glass Lewis generally believes non-executive directors should therefore not serve on more than six boards of significant companies, fewer if the director chairs the board or serves on the audit committee.

To the extent that a publicly listed company finds itself in the position of having a director who appears to be overstretched (including in relation to his/her commitments at other publicly listed companies as well as on other private organisations), Glass Lewis believes it is incumbent on that company to provide meaningful disclosure to shareholders as to why it believes that director is able to meet his/her commitments.

Remuneration policies (Paragraph 23)

Glass Lewis believes each listed company should design and apply specific remuneration policies and practices that are appropriate to the circumstances of the company and, in particular, will attract and retain competent executives and other staff and motivate them to grow the company's long-term shareholder value.

Given the complexity of most companies' remuneration programs, Glass Lewis applies a highly nuanced approach when analysing votes on executive remuneration. Glass Lewis reviews each company's remuneration on a case-by-case basis, recognising that each company must be examined in the context of industry, size, maturity, performance, financial condition, its historic pay for performance practices, and any other relevant internal or external factors.

To that end, Glass Lewis expects companies to provide a clear, comprehensive narrative of the company's remuneration policies and practices in the annual report, proxy statement or notice of meeting, as applicable. Disclosure of merely the prior year's remuneration policy and package does not

[1] By way of reference, a recent survey of non-executive directors in the United States indicated that the average time commitment is close to 300 hours per directorship. See http://www.nacdonline.org/Survey and http://www.bna.com/nacd-survey-directors-n17179918037/.

satisfy those information needs, given that elements of the current policy and package may differ materially from those of the prior year. In any event, the current elements will have to be disclosed in the next annual disclosures. There is no reason to not disclose all pertinent information, including individual compensation paid to the most senior executives, at the time that shareholders are required to make a rationally informed decision on one or more elements of an executive's remuneration.

Glass Lewis supports providing shareholders a range of levers (within reason) with which to communicate their opinions to the company. Shareholders in various jurisdictions can vote on the company's equity incentive schemes, overall remuneration policy, directors' fees, termination benefits, and specific equity grants to executives and directors, among other types of proposals. In the absence being afforded the opportunity to opine on a narrowly crafted resolution, shareholders may resort to using more blunt instruments such as the advisory vote on remuneration or even director elections.

Limits on voting rights (Paragraph 33)

Glass Lewis strongly supports the "one share one vote" principle which affirms equal and fair treatment of all shareholders without discrimination and believes limits on voting rights should therefore be discouraged. However, since many jurisdictions and exchanges provide for limitations on this principle in one form or another, Glass Lewis supports the OECD's view that listed companies should be required to disclose the nature and function of the mechanisms that limit voting rights of certain shareholders. Such disclosure helps facilitate investors to make informed investment decisions.

III. INSTITUTIONAL INVESTORS, STOCK MARKETS, AND OTHER INTERMEDIARIES

Conflicts of interest among proxy advisors (Paragraph 54)

Glass Lewis has always implemented robust conflict avoidance and management policies and discloses such policies publicly on its website. As detailed on the company website,[2] Glass Lewis has a formal Conflict of Interest Statement, Conflict Avoidance Procedures, Code of Ethics and several additional safeguards in place to mitigate potential conflicts. Glass Lewis employees must annually review and affirm their commitment to the Code of Ethics, which details the internal practices utilised to avoid conflicts of interest. Glass Lewis' Compliance Department regularly reviews the company's internal safeguards and Code of Ethics, along with employees' compliance with the company's codes and policies.

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 recognises it is not possible to be completely conflict-free. Where potential or actual conflicts exist, Glass Lewis

[2] See http://www.glasslewis.com/about-glass-lewis/disclosure-of-conflict/.

believes proxy advisors should 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 and AIMCo by excluding OTPP and AIMCo 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.

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 Glass Lewis Research Advisory 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; or (iv) if one or both of Glass Lewis' parent companies, OTPP and AIMCo, has a significant, reportable stake in a company or Glass Lewis becomes aware through public disclosure of OTPP's or AIMCo's ownership stake in a company.

In each of the instances described above, Glass Lewis makes specific and prominent disclosure as to the nature of the conflict to its customers on the cover of the relevant research report. Just as companies bear the burden to disclose potential conflicts, Glass Lewis recognises 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 formulation of voting recommendations of that company.

In respect of the OECD's new language acknowledging various jurisdictions' efforts to minimise conflicts of interest, Glass Lewis is supportive of self-regulatory efforts to this effect. Since the SEC issued the 2010 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.

In the ESMA Final Report and Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry ("ESMA Final Report"), published 19 February 2013, ESMA concluded that:

> *"(I)t has not been provided with clear evidence of market failure in relation to how proxy advisors interact with investors and issuers. On this basis, ESMA currently considers that the introduction of binding measures would not be justified. However, based on its analysis and the inputs from market participants, ESMA considers that there are several areas, in particular relating to transparency and disclosure, where a coordinated effort of the proxy advisory industry would foster greater understanding and assurance among other stakeholders in terms of what these can rightfully expect from proxy advisors. Such understanding and assurance will help to keep attention focused where it belongs, namely on how investors and issuers can, from their respective roles foster effective stewardship and robust corporate governance, and ensure efficient markets. Consequently, ESMA considers that the appropriate approach to be taken at this point in time is to encourage the proxy advisory industry to develop its own Code of Conduct."*

Following publication of the ESMA Final Report, a number of industry members – including Glass Lewis – formed the Best Practice Principles Group ("BPPG") to develop the Best Practice Principles for Providers of Shareholder Voting Research & Analysis ("Best Practice Principles"), which signatories to the Principles ("Best Practice Principles Signatories") should adopt on a comply-or-explain basis.

The Principles are designed to help investor clients and other stakeholders understand:

- The nature and character of shareholder voting research and analysis services;
- The standards of conduct that underpin those services; and,
- How signatories to the Principles interact with other market participants.

The Principles are intended to complement applicable legislation, regulation and other soft-law instruments. Glass Lewis has released a Compliance Statement (dated 22 August 2014) describing how Glass Lewis applies the Best Practice Principles and all related guidance.[3]

<u>Proxy advisor methodologies (Paragraph 55)</u>

Glass Lewis agrees with the OECD's recommendation for proxy advisors to provide clients with information regarding the development and internal oversight of their policies, research and vote recommendations. Indeed, Glass Lewis provides significant information regarding its research policies, approach and methodologies on its public website at http://www.glasslewis.com/.

[3] See http://www.glasslewis.com/assets/uploads/2013/03/2014_22-August_Glass-Lewis-Statement.pdf.

Guidelines

Glass Lewis believes proxy advisors that provide research based on a proprietary "house" policy should have detailed and thoughtful policies governing the provision of proxy voting research, analysis and voting recommendations. In addition, the policies should both reflect global governance principles and local-market laws, listing rules, codes and best practices, as well as allow for consideration of specific aspects of each company.

Policies should not be drafted in a vacuum but should be based on discussions with clients, companies and other stakeholders. In maintaining these policies, proxy advisors should take into consideration any relevant developments, such as changes to laws and regulations, and incorporate input from industry groups and associations. Although Glass Lewis believes proxy advisors should publicly disclose significant information about their policies, including how the policies are developed, they should not be compelled to disclose proprietary methodologies and analytical models for which clients have paid. And, as proxy advisors are not public utilities or regulators, they should not be obligated to put their policies up for public consultation, nor should proxy advisors necessarily attempt to address public policy issues through their policies or voting recommendations that do not otherwise affect shareholders.

Glass Lewis recognises its 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, country of origin and listing. 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 each of the various regional Research Directors that oversee a specific region or subject matter practice, such as compensation and Environmental, Social and Governance ("ESG") issues.

Glass Lewis applies general principles – including promoting director accountability, fostering close alignment of compensation and performance, and protecting shareholder rights – across all of these policies, while also closely tailoring them to recognise national and supranational regulations, codes of practice and governance trends, and size and development stage of companies, etc. In most countries, Glass Lewis applies stricter corporate governance standards for large, multinational companies than it does for smaller and early-stage development companies.

As part of Glass Lewis' continued commitment to its customers, Glass Lewis has an independent Research Advisory Council ("Council") that provides guidance with regard to the development and updating of Glass Lewis' proxy voting guidelines. 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, cofounder and former President of Glass, Lewis & Co.; Jesse Fried, Professor of Law at Harvard Law School; Stephanie LaChance, Vice President, Responsible Investment and Corporate Secretary, PSP Investments; and David Nierenberg, President of Nierenberg Investment Management Co.

Glass Lewis posts its complete proxy voting policies on its public website, as well as extensive information about research methodologies and approach to analysing various issues including compensation/remuneration.[4]

Safeguards for Accuracy

Implementing proper safeguards and internal structure to maximise accuracy should be a core policy of proxy advisory firms. Accuracy and consistency are perhaps the most essential components of Glass Lewis' research. Prior to the publication of Proxy Paper research reports 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.

Glass Lewis leverages technology and data providers (such as Capital IQ and Equilar) to ensure the highest level of accuracy possible, while enabling the delivery of research and recommendations in a timely fashion. This is particularly important given the short timeframe in which most investors have to analyse and vote thousands of proxies during the proxy season.

V. DISCLOSURE AND TRANSPARENCY

Disclosure of environmental and social policies (Paragraph 76)

Glass Lewis believes part of the board's role is to ensure that management conducts a complete risk analysis of company operations, including those that have environmental and social implications. Glass Lewis believes that directors should monitor management's performance in mitigating environmental and social risks related to operations in order to eliminate or minimise the risks to a company and its shareholders.

Given that companies face significant financial, legal and reputational risks resulting from poor environmental and social practices, or negligent oversight thereof, Glass Lewis is supportive of the OECD

[4] See http://www.glasslewis.com/resource/guidelines/.

encouraging companies to disclose their policies on these matters. However, Glass Lewis believes that disclosure of policies alone may be insufficient for investors to fully assess the risks associated with companies' operations. Rather, Glass Lewis believes that disclosure of how those policies are implemented in practice can be significantly more valuable to investors, given that information on the practical application of policies would enable investors to assess the efficacy of the policies themselves.

Reporting on corporate governance practices (Paragraphs 90 and 128)

Glass Lewis notes that the OECD's proposed language here is more prescriptive than the language contained in the original principles. Glass Lewis generally supports requirements for companies to disclose their corporate governance practices as part of their regular reporting requirements. Additionally, Glass Lewis generally supports the clear articulation of any material changes to a company's corporate governance practices enacted since the prior reporting period. Corporate websites enable easy disclosure of the articles of association and board and committee charters, and many companies provide links to these documents within their annual reports or proxy statements as applicable.

In respect of the second sentence of Paragraph 128 relating to implementation of corporate governance principles on a "comply or explain" basis, Glass Lewis notes that many listing authorities do not embed the "comply or explain" principle into their corporate governance regime for listed companies. Instead, compliance with corporate governance provisions is required as part of the company's listing with the exchange. Glass Lewis respectfully suggests that the OECD take this into account when considering the phrasing of the language in this paragraph.

Disclosure of beneficial owners (Paragraphs 78 and 79)

Glass Lewis supports the notion that companies should disclose ownership data of significant shareholders once certain thresholds of ownership are passed. Of particular importance are data on beneficial ownership, as the beneficial owners frequently have the ultimate ownership rights and entitlements as shareholders, and because of the importance of monitoring potential conflicts of interest. Glass Lewis believes that such data should be updated frequently, and notes that some jurisdictions require any so-called substantial shareholder (i.e. a shareholder whose ownership percentage exceeds the designated threshold) to make a market announcement/filing immediately upon any change in that investor's shareholding.

Director independence (Paragraph 82)

Glass Lewis believes that, in order for shareholders to make informed investment decisions including voting on the election of directors, companies should clearly identify whether and why each board member is considered independent. Notwithstanding the company's own assessment of each director's

independence, the independence of directors, or lack thereof, is ultimately demonstrated to investors through the decisions they make.

In assessing the independence of directors, Glass Lewis will take into consideration, when appropriate and among other factors, whether a director has a track record indicative of making objective decisions. Likewise, when assessing the independence of directors Glass Lewis will also weigh indications a director's track record on multiple boards indicates a lack of objective decision-making. Ultimately, Glass Lewis believes the determination of whether a director is independent or not must take into consideration both compliance with the applicable independence listing requirements as well as judgments made by the director. Glass Lewis looks at each director to examine the director's relationships with the company, the company's executives, and other directors. Glass Lewis does this to evaluate whether personal, familial, or financial relationships (not including director remuneration) may impact the director's decisions. Glass Lewis believes that such relationships make it difficult for a director to put shareholders' interests above the director's or the related party's interests.

Related party transactions (Paragraphs 83-85)

Glass Lewis is generally supportive of the OECD's proposed language in respect of related party transactions. Glass Lewis believes that investors would benefit from transparent, meaningful disclosure of all related party transactions, including terms, on a timely basis. Companies can use this disclosure to show that such transactions do not compromise the director's ability to independently represent shareholders, whilst investors can use such information to evaluate whether transactions are at arm's length or are otherwise are not contrary to the best interest of all investors.

Auditors and the audit committee (Paragraphs 93-95)

Glass Lewis supports requirements for auditor independence and accountability. The auditor's role as gatekeeper is crucial in ensuring the integrity and transparency of the financial information necessary for protecting shareholder value. Shareholders rely on the auditor to ask tough questions and to do a thorough analysis of a company's financial reports to ensure that the information provided to shareholders is complete, accurate, fair, and that it is a reasonable representation of a company's financial position. As such, shareholders should demand an objective, competent and diligent auditor who performs at or above professional standards at every company in which the investors hold an interest. Like directors, auditors should be free from conflicts of interest and should avoid situations requiring a choice between the auditor's interests and shareholders' interests. In view of this, Glass Lewis believes that companies should provide full disclosure of the amount and nature of any non-audit services provided by the external auditor.

Similarly, Glass Lewis support's the OECD's recommendations that the audit committee should provide oversight of the internal audit activities and the relationship with the external auditor, including

recommending and appointment as appropriate. Glass Lewis believes that such practices can ensure the independence of the external auditor and the integrity of financial reporting.

VI. THE RESPONSIBILITIES OF THE BOARD

Remuneration policies (Paragraphs 111-112)

Glass Lewis carefully reviews the remuneration awarded to senior executives, as we believe that this is an important area in which the board's priorities are revealed. Glass Lewis strongly believes executive remuneration should be linked directly with the performance of the business the executive is charged with managing and be measured against performance metrics which the executive has the ability to influence. We believe the most effective remuneration arrangements provide for an appropriate mix of performance-based short- and long-term incentives in addition to fixed pay elements while promoting a prudent and sustainable level of risk-taking.

Glass Lewis believes that comprehensive, timely and transparent disclosure of executive pay is critical to allowing shareholders to evaluate the extent to which pay is aligned with company performance. When reviewing annual reports, proxy materials and other relevant information, Glass Lewis examines whether the company discloses the performance metrics used to determine executive compensation. Glass Lewis recognises performance metrics must necessarily vary depending on the company and industry, among other factors, and may include a wide variety of financial measures as well as industry-specific performance indicators. However, Glass Lewis believes companies should disclose why the specific performance metrics were selected and how the actions they are designed to incentivise will lead to better corporate performance.

However, it is rarely in shareholders' interests to disclose competitive data about individual salaries below the senior executive level. Such disclosure could create internal personnel discord that would be counterproductive for the company and its shareholders. While Glass Lewis favours full disclosure for senior executives and view pay disclosure at the aggregate level (e.g. the number of employees being paid over a certain amount or in certain categories) as potentially useful, Glass Lewis does not believe shareholders need or will benefit from detailed reports about individual management employees other than the most senior executives.

Furthermore, Glass Lewis believes that most publicly listed companies should establish a separate remuneration committee on the board. Such committees should be solely comprised of non-executive directors because of the potential conflicts of interest that could arise from executive directors serving on this committee. Glass Lewis notes that exclusion from membership would not preclude the executive from attending part of a meeting of the committee by invitation if input from the executive were required. Glass Lewis also believes that interlocking directorships, where executives serve on each others' remuneration committees, should be discouraged in order to minimise the potential for conflicts of interest.

Clawback and malus provisions (Paragraph 112)

Glass Lewis believes it is prudent for boards to adopt detailed and stringent bonus recoupment policies to prevent executives from retaining performance-based awards that were not truly earned. Such policies should clearly disclose whether recoupment provisions allow for the recovery of paid awards (i.e. clawback), or are limited to withholding or adjusting outstanding/deferred awards (i.e. malus). Glass Lewis notes that malus provisions may be easier and less costly to enforce than clawback provisions, given that in such circumstances awards have not technically been paid to the recipient.

Recoupment policies should be triggered in the event of a restatement of financial results or similar revision of performance indicators upon which bonuses were based. Such policies would allow the board to review all performance-related bonuses and awards made to senior executives during the period covered by a restatement and would, to the extent feasible, allow the company to recoup such bonuses in the event that performance goals were not actually achieved.[5]

Glass Lewis believes board discretion in the implementation of recoupment policies should be not be used in a manner that undermines the integrity of such policies. For example, board discretion not to recoup part of a variable award paid out on the basis of financial results that were subsequently restated would appear to undermine the integrity of a recoupment policy. By contrast, the same could be said if the board did not exercise its discretion to recoup "unwarranted remuneration flowing from extreme formula-based bonus calculations."[6] In any case, board discretion over the implementation of recoupment policies should be clearly stated in the recoupment policy. Overall, Glass Lewis believes that publicly listed companies should disclose whether and why (or why not) they have a recoupment policy, how the policy operates including the role of board discretion, and whether and how the policy was used in the most recent reporting period.

Chairman and CEO roles (Paragraph 120)

Glass Lewis believes that separating the roles of CEO and chairman creates a better governance structure than a combined CEO/chairman position. The CEO leads the executive team that manages the

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[5] We note that some jurisdictions encourage the use of recoupment provisions in respect of non-financial measures. For example, Paragraph 53 of the Australian Prudential Regulation Authority's Prudential Practice Guide PPG 511 - Remuneration states, "*It is important for an institution to recognise and adjust remuneration for non-financial measures, such as compliance with risk management and internal audit frameworks, management of staff, adherence to corporate values and displaying acceptable corporate citizenship. Performance against risk-related non-financial measures may be identified through various mechanisms. These include internal or external audit findings, risk management assessments including any compliance breaches, unexpected taxation or litigation consequences, or administrative, civil or criminal actions taken against the institution. Adverse performance by an individual in these areas would usually be reflected in reductions to, or elimination of, any current or deferred performance-based remuneration.*" See http://www.apra.gov.au/adi/Documents/cfdocs/PPG511_REM_revised-Dec-09.pdf.

[6] *Ibid.* Paragraph 75.

business according to a course the board charts while the chairman leads the body (i.e. the board) that oversees the executives and their performance. Executives should therefore report to the board regarding their performance in achieving goals set by the board. This is needlessly complicated when a CEO chairs the board, since a CEO/chairman presumably will have a significant influence over the board.

It can become difficult for a board to fulfil its role of overseer and policy setter when a CEO/chairman controls the agenda and the boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of the business operation, and limitations on independent, shareholder-focused goal-setting by the board.

A CEO should set the strategic course for the company, with the board's approval, and the board should enable the CEO to carry out the CEO's vision for accomplishing the board's objectives. Failure to achieve the board's objectives should lead the board to replace that CEO with someone in whom the board has greater confidence.

Likewise, an independent chairman can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO and other executive insiders often face. Such oversight and concern for shareholders allows for a more proactive and effective board of directors that is better able to look out for the interests of shareholders.

Further, it is the board's responsibility to select a chief executive who can best serve a company and its shareholders and to replace this person when his or her duties have not been appropriately fulfilled. Such a replacement becomes more difficult and happens less frequently when the chief executive is also in the position of overseeing the board.

Glass Lewis believes that the installation of an independent chairman is almost always a positive step from a corporate governance perspective and promotes the best interests of shareholders. Further, the presence of an independent chairman fosters the creation of a thoughtful and dynamic board, not dominated by the views of senior management. While many companies have an independent lead or presiding director who performs many of the same functions of an independent chairman (e.g., setting the board meeting agenda), Glass Lewis does not believe this alternate form of independent board leadership provides as robust protection for shareholders as an independent chairman.

<u>Board committees to manage conflicts of interest (Paragraph 126)</u>

Glass Lewis is of the view that boards of publicly listed companies should ensure that potential conflicts of interest are managed in such a fashion to preserve the integrity of the organisation. In that regard, Glass Lewis believes it is inappropriate for individual directors to participate in discussions and decisions regarding transactions or other matters in which they, or their related party, has an interest or where there is otherwise the potential incentive for that director to place other interests ahead of those of the company and its shareholders. The OECD's recommendation to set up a separate committee to consider

the issue in question can be an appropriate response to such issues as they arise. As a general principle, Glass Lewis believes the response needs to be fit for purpose in respect of managing the potential conflict.

Board committees (Paragraph 127)

Glass Lewis supports the OECD's proposed removal of the language that suggests the presence of board committees potential undermines the collective responsibility of the board and of individual board members. Glass Lewis notes that the actions (or lack thereof) of the board overall, including any delegated authority to committees, fall under the umbrella of individual directors' duties and liabilities in many jurisdictions. As such, there should be no ambiguity for directors on where responsibility ultimately lies, regardless of a board's establishment of committees charged with specific oversight duties such as audit, remuneration and nominating/governance.

Glass Lewis recognises that it may be impractical for smaller, developing publicly listed companies to have committees other than the audit committee if the company has a small board. However, Glass Lewis generally does not see small firm size as a sufficient reason not to have a formal audit committee comprised solely of non-executive directors. Given that a key function of an audit committee is to oversee the company's accounting policy and financial reporting, to have executive directors performing these functions creates a potential conflict of interest.

Make-up of the board and selection process (Paragraphs 82 and 129)

Glass Lewis believes that many boards of publicly listed companies already evaluate, to some degree or another, the balance of skills and experiences represented at the board. However, there is an opacity around most boards' thinking in this regard, with investors frequently only having the prima facie evidence of how such board evaluation is reflected in the current composition of the board.

Glass Lewis believes that investors would benefit from more disclosure of the processes and outcomes relating to boards' periodic evaluation of their composition over time. Glass Lewis notes that at least one major jurisdiction, Australia, now recommends publicly listed companies have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.[7] When used effectively, a board skills matrix can help the board equip itself with a proper diversity of backgrounds and expertise to meet current issues as well as future scenarios the company is likely to face. Additionally, a board skills matrix can identify areas of focus for professional

[7] See Recommendation 2.2 of the ASX Corporate Governance Council's *Principles and Recommendations, 3rd edition*: http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf. The New Zealand Financial Markets Authority is also considering recommending companies implement a board skills matrix under its revised Corporate Governance Handbook. See Principle 2.6 in the consultation draft here: http://www.fma.govt.nz/assets/Report-and-Papers/Consultation/Corporate-Governance-in-New-Zealand-Principles-and-Guidelines-Consultation.pdf.

development for the board's existing directors. As such, Glass Lewis encourages the OECD to consider recommending that publicly listed companies not just formalise but also provide meaningful disclose on this process. Nevertheless, Glass Lewis recognises that this issue is a manifestation of the board's succession planning process more generally, which is still opaque at most companies. In that respect, Glass Lewis supports OECD's view that companies should disclose more information on the director succession planning and selection processes.

More broadly, consistent with Glass Lewis' philosophy that boards should have diverse backgrounds and members with a breadth and depth of relevant experience, Glass Lewis believes that nominating and governance committees should consider diversity when making director nominations within the context of each specific company and its industry. Glass Lewis believes that shareholders are best served when boards make an effort to ensure a constituency that is not only reasonably diverse on the basis of age, race, gender and ethnicity, but also on the basis of geographic knowledge, industry experience, technology-related experience, board tenure, and culture.

Gender diversity (Paragraph 130)

This new paragraph targets promotion of gender diversity at the public policy and regulatory/legislative level which, if structured appropriately, can increase gender diversity on boards and senior management. Glass Lewis does not take a view on compulsory targets or quotas, though Glass Lewis notes that quotas could have unintended consequences such as companies delisting to avoid compliance or increasing leverage or acquisitions.[8]

By contrast, business-led efforts to improve gender diversity on boards have had success in recent years. For example, following the establishment of the 30% Club in the United Kingdom in 2010, the percentage of women board members of FTSE-100 companies increased from 12.6% to 23%.[9] Similarly, coinciding with the Australian Institute of Company Directors' various initiatives to improve gender diversity on the boards of ASX listed companies, the total percentage of women on S&P/ASX 200 boards has increased from 8.3% in 2010 to 19.2% in 2014.[10]

Glass Lewis believes well-crafted regulatory and/or legislative disclosure requirements to promote diversity on boards and in senior management can enhance shareholder understanding of companies'

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[8] See http://qje.oxfordjournals.org/content/127/1/137.short.
[9] See http://www.30percentclub.org. The 30% Club "*is a group of business leaders committed to achieving better gender balance at all levels of organisations, because we believe this will make businesses and boards more effective. We are taking voluntary steps towards the goal of 30% women on boards by 2015 and believe strongly that business-led change is the right way forward.*"
[10] See http://www.companydirectors.com.au/Director-Resource-Centre/Publications/The-Boardroom-Report/Back-Volumes/Volume-12-2014/Volume-12-Issue-5/Helping-in-the-push-towards-greater-gender-diversity. See also http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics.

approach on this issue. Glass Lewis is of the view that companies should incorporate policies and procedures for board diversity and related disclosures in their annual reports or in any other prominent public disclosure. If a company has not yet formalised its diversity policy, or elements thereof, Glass Lewis expects a company to provide a cogent explanation on an "comply or explain" basis. Ultimately, additional meaningful disclosure can serve to shed light on leaders and laggards, and help investors identify targets for engagement in this regard.

Whilst Glass Lewis generally supports efforts to improve gender diversity on boards and in senior management, Glass Lewis also points to the commentary on Paragraph 129 above to highlight Glass Lewis' belief that companies should take a broader view of diversity than just gender.

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Glass Lewis welcomes this opportunity to comment on the Draft Principles and is available to answer any questions the OECD may have regarding the comments provided above.

Respectfully submitted,

/s/

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/s/

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