October 31, 2019

Atty. Sheina Angela D. Aquino
Securities and Exchange Commission Philippines
Via email: sadaquino@sec.gov.ph

Re: Draft Code of Corporate Governance for Public Companies and Registered Issuers

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the Draft Code of Corporate Governance for Public Companies and Registered Issuers (the "Draft Code"). The Draft Code seeks to update and enhance the existing Code of Corporate Governance for Publicly-Listed Companies, which went in effect on May 31, 2017.

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,300 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.

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From its offices in North America, Europe, and Australia, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US$35 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

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The responses provided below are not meant to be exhaustive. Instead, they are designed to address what Glass Lewis sees particularly relevant issues raised in the Draft Code. Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

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Enclosure

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Draft Code of Corporate Governance for Public Companies and Registered Issuers

NAME: Jeffrey Jackson

COMPANY: CGI Glass Lewis Pty. Ltd.

PROVISIONS ON THE DRAFT CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES AND REGISTERED ISSUERS	COMMENTS	PROPOSED REVISION(S)	ESTIMATED COST IMPLICATIONS TO COMPLY WITH THE CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES AND REGISTERED ISSUERS
Introduction, Paragraph 2	Glass Lewis respects that capital markets in Southeast Asia may prefer to use a "comply or explain" approach to corporate governance compliance. However, Glass Lewis encourages the Philippines to ensure that companies explain what would be better than simply non-compliance.	The Philippines should look to Malaysia's approach to comply or explain, which is to "apply or explain an alternative."[1] This approach would serve to strengthen corporate governance practices as companies and issuers would not simply be able to provide any reason they may want for non-compliance. Rather, deviations from code compliance would be met with a higher standard for companies and registered issuers to explain what alternative would be best in lieu of meeting code recommendations and practices. Further, the Code should mandate the annual corporate governance report, which provides explanations for code compliance, be integrated into the annual report and/or definitive	The cost should be minimal for companies and issuers to provide an explanation for alternative practices where they are compliant with code practices.

[1] Securities Commission Malaysia. *Malaysian Code on Corporate Governance*. Kuala Lumpur. April 2017. Pages 3, 8 and 9.

		information statement and be released at the same time as annual reports and/or the definitive information statement ahead of general meetings to allow shareholders the ability to fully review corporate governance practices and code compliance.	
Recommendations 1.4 and 2.5	Glass Lewis supports initiatives to increase board diversity, which is not limited to gender.	In strengthening diversity, we encourage the recommendation and explanation to be expanded to include aspirational targets for what may include gender diversity. While we believe that boards should have at least one female director, Malaysia mandates that its largest companies have a 30%-female board[2], while other markets are mandating the inclusion of women on boards. These markets include India and Pakistan, which require one independent woman on boards for the top 500 companies in India[3], while the remainder of listed Indian companies[4] and Pakistani companies[5] must have at least one woman on their boards. Furthermore, we	The cost should not be onerous as companies are already collecting director biographies, even if they don't provide the core skill sets of existing directors and how they align with a company's business or objectives.

[2] Practice 4.4. *Malaysian Code on Corporate Governance*. Page 24.
[3] Securities and Exchange Board of India. *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015*. The regulations, which were amended in 2019, currently require the top 500 listed companies by market capitalization to have one independent woman on their board. That requirement will expand to the top 1,000 listed companies by market capitalization from April 2020.
[4] The Companies Act, 2013. Section 149(1).
[5] Companies Act, 2017. Section 154. Chapter II, Part 7, of the Code of Corporate Governance Regulations further notes that it is mandatory for boards to have at least one female director.

		encourage the inclusion of a matrix relating to the skills of directors, which is currently used in India[6], Thailand[7], and developing in Malaysia[8] for companies to communicate the diversity of skills of directors. A board skills matrix should be included in the director biography section of annual reports and information statements for shareholders to gain a broader perspective and the skills the directors bring to the board. Likewise, the disclosure of diversity policies and a skills matrix may illuminate a company's nomination policies for board members.	
Recommendation 2.6	Glass Lewis believes that rules relating to related party transactions should be more defined and reside in the realm of mandatory practices, particularly for establishing thresholds on materiality levels and for interested parties	As proposed, companies would have complete discretion to determine the materiality of related party transactions so long as the threshold is based on "a level where omission or misstatement…could pose a significant risk to the company and influence its economic decision." For determining materiality thresholds, a standard market-wide approach to determining such thresholds. For instance, both Singapore[9] and Malaysia[10] use thresholds	Minimal cost as proposals to seek shareholder approval of related party transactions can be included in the proposals at an annual general meeting.

[6] *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015.* As amended from 2019, companies are to provide a chart or matrix of the skills/competencies of boards, while in 2019, the core skills/expertise/competencies were to be identified, although from April 2020, the skills/expertise/competencies must be matched to individual directors.

[7] Securities and Exchange Commission Thailand. *Corporate Governance Code for Listed Companies 2017*. Guidelines 3.1.1 and 3.3.2. The skills matrix serves to ensure that boards of consist of directors with appropriate qualifications, knowledge, skills, experience, character traits, along with gender and age to achieve the objectives of the company and be used by the nomination committee as part of the director nomination process.

[8] Bursa Malaysia Securities Berhad. *Corporate Governance Guide, 3rd Edition*. Pull-out I, page 92.

[9] Singapore Exchange Limited. *SGX-ST Listing Manual*. Chapter 9, Part III, Rule 906. Issuers must seek shareholder approval for interested person transactions if the transactions exceed 5% of a group's latest audited net tangible assets; or 5% of a group's latest audited net tangible assets when

	voting on such transactions.	to determine if shareholder approval of such transactions is necessary. The use of market-wide thresholds would reduce the otherwise arbitrary and potentially conflicted approach to determining materiality that would otherwise be allowed to persist. Further, it should be mandatory practice that interested persons not vote on transactions as the draft code leaves significant leeway for directors to vote in the transactions. As many companies are controlled, conflicted directors could vote to approve transactions from which they may benefit, while merely explaining that abstaining isn't necessary as part of the "comply or explain" regime. In this regard, the Philippines should look to India as a guide where interested parties may not vote on related party transactions.[11]	
Recommendation 3.2	Glass Lewis believes that all companies and registered issuers should have an audit	The draft code merely recommends that companies should have an audit committee, and that it have at least three non-executive directors, with the committee being	Minimal cost.

aggregated with other transactions entered with the same interested person during the same year. However, transactions below S$100,000 are not subject to shareholder approval.

[10] Bursa Malaysia Securities Berhad. *Main Market Listing Requirements*. Chapter 10, Part E, Paragraph 10.09(2). Shareholder approval of related party transactions as part of a general mandate is required if the value of the transactions is RM 1 million or more; or the percentage ratio of the transactions is 1% or more consolidated gross revenue. Similarly, under Paragraph 10.08, shareholder approval of related party transactions is required where the value exceeds 5% of gross consolidated revenue.

[11] *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015*. Regulation 23(4). India also uses thresholds to determine materiality whereby shareholder approval of related party transactions is required under Regulations 23(1) and (1A) if the value exceeds 10% of the annual consolidated turnover, while from July 2019, or 5% of the annual consolidated turnover in the case of the payment of royalties.

	committee, which we believe should be comprise solely independent members in order to maintain independence in oversight of financial oversight.	majority independent, including the chair. Glass Lewis believes that audit committees should be mandated, which follows practice in Thailand[12], Malaysia[13], Singapore[14], with our preference being that the committee is solely independent, while given the realities of the market, the committee should comprise solely non-executive directors with at least a majority of the committee being independent, including the committee chair. Lastly, no non-directors should be on this committee given the lack of accountability afforded to non-director members as shareholders do not vote on their status as a committee member.	
Recommendation 3.3	Glass Lewis does not support the proposed changes to the practices relating to the Corporate Governance Committee, which may also relate to Nomination and Remuneration Committees, where companies have separate	The existing code states that the Corporate Governance Committee (or Nomination and Remuneration Committees) "should comprise at least three members, all of whom should be independent directors, including the chairman." The proposed change is a step backward in terms of committee independence as the draft code only seeks for the Corporate Governance (or Nomination and Remuneration Committees) to be majority	Minimal cost as companies should have 100% independent committees already.

[12] *Corporate Governance Code for Listed Companies 2017*, Guideline 6.2.1. Audit committees should comprise a minimum of three members, all being independent.

[13] *Main Market Listing Requirements*. Chapter 15, Paragraph 15.09. Companies must appoint an audit committee with a minimum of three members, majority independent directors.

[14] *SGX-ST Listing Manual.* Rule 210(5)(e) of the SGX Listing Rules (Mainboard) and Rule 406(3)(e) of the SGX Listing Rules (Catalist), companies are required to establish one or more committees to perform the functions of an audit committee, a nominating committee and a remuneration committee. Provision 10.2 stipulates that audit committees comprise at least three directors, all of whom are non-executive directors, the majority, including the chairman, are independent. Monetary Authority of Singapore. *Code of Corporate Governance*. Singapore. August 2018.

	companies instead of a unified corporate governance committee.	independent. Also, we believe the Corporate Governance or separate Nomination and Remuneration Committees should be mandated for all companies instead of being subject to "comply or explain." Lastly, as a corporate governance or remuneration committee may deal with executive remuneration, we believe that no executive or employee should serve on such committee to ensure proper oversight in determining remuneration policies and practices.	
Recommendation 3.4	Glass Lewis supports the establishment of Board Risk Oversight Committees; however, we believe there should be clearer guidance as to when a risk committee may be needed.	Under the existing code, there is a stipulation the conglomerates should establish this committee. The draft code instead only recommends this committee for "issuers of debt securities and for companies with a high risk profile." We believe the Code should be more specific as to the companies which should have a board risk oversight committee as the lack clear direction may lead to inconsistent adoption. It may be worthwhile to specify companies in specific industries have risk committees, or the top companies in a market be mandated to have a risk committee, as in the case of Malaysia[15] and India.[16]	The cost of not having a strong risk oversight committee might be higher for companies, especially if serious lapses occur leading to company losses.
Recommendation 4.2	Glass Lewis supports initiatives to ensure directors are committing the time needed to	Although the recommendation is aimed at setting non-executive director commitments at a maximum of 5 publicly-listed companies, the recommendation should	Minimal cost in relation to non-executive directors as the current code provides

[15] Practice 9.3. *Malaysian Code on Corporate Governance*. Page 40. Large Companies are encouraged under "Step-up" practices to formulate a risk management committee, which comprise a majority of independent directors.
[16] *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015*. Regulation 21(5) requires the top 500 companies by market capitalization to formulate a risk management committee.

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	be play an active and informed role as a director.	be expanded to executive directors with a cap on the number of directorships being two or three boards. In this case, as executive directors are reasonably expected by their employers and shareholders to give 24 hours a day priority to their executive roles, where executive directors are serving on multiple boards, this may preclude such directors from devoting the required attention, priority and time to other boards where they may serve. Further, directors should retain some spare capacity in case a crisis or other event occurs that escalates the demand for their role as a director on the boards where they might not be an executive. An excessive number of directorships, in conjunction with their executive duties, executive directors from dedicating the time necessary to fulfill the responsibilities required of directors.	for a cap on five boards. For executive directors, this could lead to the broadening of the number executive directors, which could be beneficial should companies seek to diversify boards.
Recommendation 5.2	Glass Lewis believes boards should be sufficiently independent to ensure there is proper oversight of management and of non-independent directors. As proposed, the recommendation may not go far enough to ensure that boards are	The draft code takes a step backward from the existing code whereby the existing independence threshold is at least three independent directors, instead of two, or such number as to constitute at least one-third of the members of the board, whichever is higher. In reviewing the draft code, the setting of board independence should not be subject to a "comply or explain" justification, but should be a base independence level with higher board independence levels, such as 50% or majority	The cost of reducing board independence may lead to higher costs to companies as investors may choose to not invest in companies with low independence.

	sufficiently independent.	independent, when the board chair is not independent, as practiced by regional peers including Malaysia[17], Singapore[18], Thailand[19] and India[20]. Also, by having at least three independent directors, the board's committees could be 100% independent, assuming the committee size is set at three directors.	
Recommendation 5.3	Glass Lewis views the attributes of an independent director to include sufficient lookback periods to ensure past relationships do not jeopardize a director's independence in thought and action.	The draft code takes a step backward from the existing code by reducing the lookback period for previous employment and material relationships from three years to two years. For independent directors who were previously an employee of a company or its subsidiaries or holding company, we believe that a five-year lookback period should be adopted over a two-year lookback. The lengthened period is preferable to ensure a proper separation from the cessation of employment to	Minimal cost as the lookback period is currently three years. To reduce the lookback period may cost more to companies in reduced trust of a board's decisions on the independence of their directors.

[17] *Main Market Listing Requirements*. Chapter 15, Paragraph 15.02. Boards should have at least 2 directors or 1/3 of the board of a listed issuer, whichever is higher, are independent. If the number of directors of the listed issuer is not 3 or a multiple of 3, then the number nearest 1/3 must be used. Practice 4.1 of the *Malaysian Code on Corporate Governance* goes further whereby at least half of the board comprises independent directors, while for Large Companies, the board should comprise a majority of independent directors.
[18] Per Practice 2.2 of the *Code of Corporate Governance*, Singaporean companies should have a majority independent board when the board chair is not independent, while the board may be 33% independent when the board chair is independent.
[19] The Stock Exchange of Thailand mandates in its Rules Summary that at least 33% of directors be independent. Yet, per the Guideline 3.2.4 of the *Corporate Governance Code for Listed Companies 2017*, where the chairman is not independent, the board should comprise a majority of independent directors.
[20] Per Regulation 17(1)(b) of the *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015*, board independence is based on the board chair. If the chair is independent or a non-independent non-executive director, then board independence may be 33% independent. If the board chair is an executive director or a non-independent non-executive director who is a member of or affiliated with a company's promoter group, then board independence must be at least 50% independent.

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		becoming an independent director. Further, the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. Lastly, the Philippines ought to consider increasing lookback periods to at least three years, which Malaysia is also considering.	
Recommendation 6.1	Glass Lewis believes periodic assessments of boards should include external entities to ensure the objectivity of such reviews.	The draft code has removed from the recommendation to include an external facilitator to participate in the self-assessment of the board. By excluding an external facilitator, the objectivity of a board's self-assessment could be compromised if the review is substantially influenced by non-independent non-executive directors, as well as executive directors. The assessment of the board should also be included in the annual corporate governance report and/or annual reports and information statements that are released prior to annual general meetings.	Minimal cost as companies may already be using external facilitators from time to time.
Recommendations 8.3 and 8.4	Glass Lewis supports additional disclosure which provides greater clarity on a company's corporate governance practices.	When a company is working on its Manual on Corporate Governance ("MCG") and Annual Corporate Governance Report ("ACGR"), we believe the MCG and ACGR should be updated on an annual basis and be included with the documentation that is released by companies ahead of annual general meetings ("AGMs"). As AGMs are the primary time when shareholders can evaluate the corporate governance practices of companies and boards, by releasing the MCG and ACGR on an annual basis, shareholders would have a deeper understanding on a variety of corporate governance practices.	Minimal cost as the disclosure should already be prepared, while the disclosure timeframe could be moved up in line with release of other required documentation.

Principle 10	Glass Lewis believes that reporting relating to environmental, economic, social and governance ("EESG") issues should be readily available to shareholders and stakeholders.	The Principle, along with the accompanying recommendation and explanation in the draft code has removed references to the possible standards/frameworks for how companies may disclose their EESG policies. While the way a company may disclose its EESG policies and progress in meeting those goals, the Principle should have companies and registered issuers indicate which standards/frameworks they are using in their EESG reporting as there may be differences between the G4 Framework by the Global Reporting Initiative, to the Integrated Reporting Framework by the International Integrated Reporting Council. Most importantly, the disclosure relating to EESG matters should be included in the documentation such as the annual report and/or information statements ahead of an annual general meeting.	Minimal cost as the disclosure should already be prepared, while the disclosure timeframe could be moved up in line with release of other required documentation.
Recommendation 13.2	Glass Lewis believes that general meeting documentation should be available with enough time for shareholders to evaluate all meeting materials to make informed decisions about meeting agenda items.	The draft code, unlike the existing code, does not reference the timeframe in which companies and registered issuers should release their meeting documentation. The existing code utilizes a timeframe of 28 days prior to general meetings for the release of meeting notices and the relevant information for those meetings. The draft code is silent on the timeline of the disclosure of meeting materials, although based on the Revised Corporation Code of the Philippines, Section 49 indicates that a 21-day notice period is required.	Minimal cost as companies are already encouraged to practice a 28-day disclosure period.