



Oversight of the Proxy Advisory Industry

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Committee on Financial Services
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Chairman Huizenga, Ranking Member Green, and Members of the Subcommittee:

Glass Lewis appreciates the opportunity to testify to the Subcommittee on Oversight and Investigations of the House Financial Services Committee as part of today's hearing on Oversight of the Proxy Advisory Industry. As a leading proxy advisor, Glass Lewis is deeply committed to serving its institutional shareholder clients by, among other things, helping them to vote their proxies. Proxy voting is a critical component of the corporate governance system and we are proud of the long-standing work we continue to do to help our clients fulfill this responsibility in a manner that benefits and safeguards their beneficiaries' investments.

About Glass Lewis

Founded in 2003, Glass Lewis provides proxy research and/or vote management services to more than 1,300 institutional investor clients -- primarily public pension funds, mutual funds and other institutions that invest on behalf of individual investors and have a fiduciary duty to act, including through proxy voting, in the best interests of their beneficiaries. While, for the most part, investor clients use Glass Lewis research to help them make proxy voting decisions, these institutions also use Glass Lewis research when engaging with companies before and after shareholder meetings. Further, through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis provides investor clients with the means to receive, reconcile, and vote ballots according to custom voting guidelines and record-keep, audit, report, and disclose their proxy votes.

The Role of a Proxy Advisor

Proxy advisors play an important support role, providing resources and technical, subject-matter expertise to help institutional investors meet their fiduciary responsibility to vote securities on behalf of their participants and beneficiaries in a cost-effective way. As the Securities and Exchange Commission ("SEC") has explained, "Contracting with proxy advisory firms . . . can reduce burdens for investment advisers (and potentially reduce costs for their clients) as compared to conducting them in-house."¹

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

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

¹ U.S. Securities and Exchange Commission, Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5325 at 5 (Aug. 21, 2019) ("SEC August 2019 Guidance").



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

Proxy advisors are a market-based solution to address many of these practical cost issues. Proxy advisors effectively serve as collective research providers for large numbers of institutional investors, providing these investors an affordable alternative to the high costs of individually performing the requisite analysis for literally hundreds of thousands of ballot proposals at thousands of shareholder meetings each proxy season.²

Glass Lewis' Benchmark Policy

Glass Lewis' role as a proxy advisor is to assist its institutional clients, who typically either own or manage shares with voting rights, in implementing their chosen proxy voting policy. Our 1,300+ clients have a broad range of views on proxy voting issues,³ as well as different investment strategies and time horizons. Accordingly, our investor clients will select a policy that reflects their investment approach and views and, once they have done so, Glass Lewis applies the selected policy to the facts presented in each company's proxy statement and provides tailored vote recommendations on each proposal based on that policy. It is then up to the client to decide how to vote its shares. Put simply, Glass Lewis does not determine its clients' proxy voting policies or their votes.

The Glass Lewis Benchmark Policy is one voting option our clients can choose.⁴ It generally reflects the current, predominant views of our institutional investor clients on corporate governance best practices. The Benchmark Policy, like other Glass Lewis voting policies, is formulated via a bottom-up approach that involves extensive discussions with a wide range of market participants, including institutional investor clients, public companies, public company organizations, academics, and subject matter experts, among others.

Benchmark Policy recommendations frequently align with management recommendations. Glass Lewis' Benchmark Policy supported 96% of all management proposals at S&P 500 companies last year. For all

² Letter of Ken Bertsch, Executive Director, Council of Institutional Investors and 60 institutional investors to Former SEC Chairman Jay Clayton, at 2 (Oct. 15, 2019), available at <https://corpgov.law.harvard.edu/2019/10/24/cii-letter-to-the-sec-proxy-advisor-regulation/>.

³ As the SEC has long recognized, "Of course, much commentary concerning corporate performance, management capability or directorial qualifications or the desirability of a particular initiative subject to a shareholder vote is by its nature judgmental. As to such opinions, there typically is not a 'correct' viewpoint." U.S. Securities and Exchange Commission, Regulation of Communication among Shareholders, Release No. 34-31326 (Oct. 22, 1992), 57 Fed. Reg. 48,276 at 48,278 (internal quotations omitted).

⁴ Glass Lewis' current benchmark voting guidelines for the meetings of U.S. companies are contained in our "2023 Policy Guidelines - United States," which addresses common management proposals at U.S. companies, and our "2023 Policy Guidelines — Environmental, Social & Governance Initiatives," which addresses common shareholder proposals at both U.S. and non-U.S. companies. We make both documents available on our website at <https://www.glasslewis.com/voting-policies-current/>. For simplicity, we collectively refer to the documents as our "Benchmark Policy" in this testimony.



U.S. companies, Glass Lewis' Benchmark Policy supported over 85% of management agenda items relating to director elections and executive compensation last year.

Alignment of Glass Lewis Benchmark Policy and Management Recommendations on Common Management Proposals

Proposal Type	2020	2021	2022
U.S. Directors	90%	89.5%	86.2%
U.S. Say on Pay Proposals	84.3%	85.7%	84.7%
U.S. Equity Plan Proposals	77.9%	76.4%	85.7%

Sources: Glass Lewis' 2022 U.S. and Shareholder Proposal Proxy Season Reviews

Our Benchmark Policy considers environmental and social issues as they relate to mitigating risk and promoting the long-term economic interest of shareholders. We seek to help our clients understand the basis of the issue and evaluate, on a case-by-case basis, whether the proposal would help promote or protect shareholder value at the company in question. As the Benchmark Policy clearly explains –

Glass Lewis evaluates all environmental and social issues through the lens of long-term shareholder value. We believe that companies should be considering **material** environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated. (emphases added).

Our Benchmark Policy's focus on long-term shareholder value is also evidenced in practice. Under our Benchmark Policy, we routinely recommend against shareholder proposals on environmental and social issues that — however worthwhile as an environmental or social goal — have not demonstrated a nexus to shareholder value.

In general, we look for this nexus by evaluating whether the specific issue is material to the company in question. As our Benchmark Policy explains:

Glass Lewis evaluates shareholder resolutions regarding environmental and social issues in the context of the **financial materiality of the issue to the company's operations.** We believe that all companies face risks associated with environmental and social issues. However, we recognize that these risks manifest themselves differently at each company as a result of a company's operations, workforce, structure, and geography, among other factors. Accordingly, we place a significant emphasis on the financial implications of a company adopting, or not adopting, any proposed shareholder resolution. To assist us in determining financial materiality, Glass Lewis will also consider the standards developed by the Sustainability Accounting Standards Board (SASB). (emphasis added)

As noted in our Benchmark Policy, the SASB framework plays a key role in this analysis. That framework was developed based on a rigorous and transparent process that included evidence-based research, as well as broad and balanced participation from companies, investors, and subject matter experts, including some 79 industry working groups. By following this deliberative process and using industry experts, the SASB framework has achieved widespread acceptance in the United States, including being used by thousands of public companies in their operations or sustainability reporting since 2021.



Shareholder Proposals

In recent months, much attention has been focused on shareholder proposals and, in particular, shareholder proposals on environmental and social topics.

Shareholder proposals represent approximately 1.3% of the approximately 35,000 agenda items that come to a vote each year at U.S. shareholder meetings.⁵ A subset of these shareholder proposals raise environmental or social issues. Historically, the largest categories of shareholder proposals in the United States – where the majority of all shareholder proposals are submitted and voted -- have related to governance and compensation, such as proposals to appoint an independent board chair or allowing shareholders to call a special meeting. Virtually all shareholder proposals in the United States are “precatory,” meaning they are not binding on companies’ boards and management even if supported by a majority of a company’s shareholders.

Glass Lewis does not file shareholder proposals, nor does it determine which shareholder proposals must be included on companies’ ballots for shareholder vote. Under applicable SEC rules, companies can exclude proposals, among other reasons, if they relate to their “ordinary business” operations. If the proposal presents a “significant social policy issue,” however, the proposal may be excepted from this inclusion (i.e., have to be included in the company’s proxy statement). In November 2021, the SEC published a Staff Legal Bulletin that effectively narrowed the bases on which a company can exclude a shareholder proposal from its proxy statement as “ordinary business,” as well as the economic relevance exclusion. In the wake of these changes, approximately 30% more shareholder proposals went to a vote in the 2022 proxy season than in the previous year, including over 100 more environmental and social proposals. While the 2023 proxy season is just nearing its conclusion, it appears that we will see an additional 12% increase in shareholder proposals this year.

As discussed above, Glass Lewis’ Benchmark Policy evaluates such environmental and social shareholder proposals on a case-by-case basis. This approach is reflected in the rate at which that policy recommends in favor of them.

Alignment of Glass Lewis Benchmark Policy and Management Recommendations on Environmental and Social Shareholder Proposals

Proposal Type	2020	2021	2022
Environmental Shareholder Proposals	48%	40%	40%
Social Shareholder Proposals	50%	50%	47%

Sources: Glass Lewis’ 2022 U.S. and Shareholder Proposal Proxy Season Reviews

Moreover, in our experience, our clients will focus more individual attention on — and more frequently depart from our provided recommendation on — shareholder proposals than other, more routine voting matters. Since there are relatively few such votes, compared to management proposals, and

⁵ Morningstar Proxy-Voting Insights: 2022 in Review (“Morningstar tracks all resolutions across all ballots that come to a vote at U.S. companies—an average of 35,000 items a year over the last three proxy years, reaching a high of 37,000 items in 2022. Around 1.3% of these are shareholder proposals.”).



these issues often require significant judgment, it is not uncommon for our clients to evaluate these issues differently than Glass Lewis, even if they vote under a custom or thematic policy.⁶

Other Glass Lewis Voting Policies

While the Benchmark Policy reflects the current, predominant views of our institutional investor clients on corporate governance best practices, we recognize that our clients have differing needs and views. For that reason, Glass Lewis offers its clients a menu of voting options, from a Climate Policy for investors focused on mitigating risks associated with climate change to a Catholic Policy that reflects the unique fiduciary responsibility of Catholic institutions and that is informed by the voting guidelines of the Conference of Catholic Bishops.⁷

In particular, we are proud to have recently introduced an updated and enhanced version of our Corporate Governance Focused policy.⁸ The Corporate Governance Focused policy was designed for, and with input from, our clients that want recommendations that focus on the most commonly accepted components of corporate governance without taking strong positions on other issues, such as environmental and social considerations.

Apart from these policy choices, a significant majority of our clients have elected to simply not follow any Glass Lewis policy and instead have their own custom voting policy. By using a custom voting policy, our clients can ensure proxy votes are executed according to their unique needs and views on corporate governance issues.

What this means, in practice, is that Glass Lewis clients, with the aid of Glass Lewis' research and vote execution services, can and routinely do vote differently than our Benchmark Policy. For example, a shareholder proposal asking a company to adopt an emissions reduction target is far more likely to be supported under our Climate Policy than our Corporate Governance Focused policy. Our role is to provide objective research and other tools to help our clients vote as they see fit.

⁶ Compare SEC August 2019 Guidance ("Where the investment adviser utilizes the proxy advisory firm for either voting recommendations or voting execution (or both), with respect to matters where the investment adviser's voting policies and procedures do not address how it should vote on a particular matter, or where the matter is highly contested or controversial, it could consider whether a higher degree of analysis may be necessary or appropriate to assess whether any votes it casts on behalf of its client are cast in the client's best interest.") (footnote omitted).

⁷ See Glass Lewis, Proxy Voting Policy Options, available at <https://www.glasslewis.com/proxy-voting-policy-options/>.

⁸ Id. Glass Lewis seeks to continually refine and improve its voting policies and formally updates them at least once a year. We will, of course, continue to do so as practices, laws, and other circumstances change. In addition to being made available to all Glass Lewis voting clients, we are pleased that some of our asset manager clients have made our Corporate Governance Focused policy available to their clients as part of their efforts to pass through more voting decisions to their end clients. See, for example, BlackRock, "Empowering Investors Through BlackRock Voting Choice," available at <https://www.blackrock.com/corporate/about-us/investment-stewardship/blackrock-voting-choice>.



Comments on Selected Issues in the ESG Working Group's Preliminary Report

We address certain issues in the ESG Working Group's Preliminary Report below.

SEC Proxy Advice Rulemaking

The SEC was amply justified in amending its 2020 proxy advice rules. In 2019, the SEC proposed an unprecedented scheme that interposed company management between investors and their proxy advisors by requiring that proxy advice be made available for advance review by companies before being provided to any shareholder that sought and contracted to receive that advice. As discussed further below, the Commission had to abandon its primary justification for these rules when it became apparent in the comment period that there was no evidence to support it. Nor did the SEC ever identify a market failure or other good reason for the government to intervene in how institutional investors obtain proxy advice. Investors, the supposed beneficiaries of the rules, overwhelmingly told the Commission they did not want them and expressed concern that the rules would threaten the cost, timeliness, and independence of proxy advice. As SEC Commissioner Lee put it at the time, the 2020 rules were “unwarranted, unwanted, and unworkable.”⁹

Notwithstanding this, the Preliminary Report seeks to revive the failed idea at the heart of the SEC's rulemaking, recommending that “proxy advisory firms should be mandated to share draft reports with issuers before they are disseminated. This vital step allows companies to thoroughly review the reports, identify any inaccuracies, and provide necessary corrections.” In support of this, the Preliminary Report reverts to the vague claim that “[t]here are concerns about the detrimental impact of inaccurate information and incomplete analyses provided by proxy advisory firms.”

This issue was thoroughly explored as part of the SEC's 2019-2020 rulemaking. In that proceeding, companies and their advocacy groups expressed “concerns” about errors in proxy advice and the proposed pre-review regime was intended to “promote accuracy” in proxy advice.¹⁰ The comment process in that rulemaking, however, revealed that these “concerns” were anecdotes and generalized allegations based on surveys; there simply was no evidence of a significant error rate in proxy advice. The SEC's own Investor Advisory Committee demonstrated that a chart used by the SEC in its proposal reflected that issuers only **claimed** proxy advice errors 0.3% of the time and “**none** of those [were] shown to be material or to have affected the outcome of the related vote.”¹¹ Even with respect to this small number of claimed errors, an analysis by the Council of Institutional Investors revealed that “most

⁹ Statement of the Honorable Allison Herren Lee at SEC Open Meeting (July 22, 2020) (“Lee Open Meeting Statement”), available at <https://www.sec.gov/news/public-statement/lee-open-meeting-2020-07-22>.

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

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



of the claimed ‘errors’ actually [were] disagreements on analysis and methodologies, and that some other alleged proxy advisory firm errors derive from errors in the company proxy statements.”¹²

Tellingly, the SEC disavowed its claim of proxy advisor inaccuracy as the basis for its final rules, merely asserting that its aim was to “improve the overall mix of information available to investors.” In the words of an SEC Commissioner who dissented from the final rules, proxy advisor inaccuracy “failed as a justification for the proposal because there simply was not evidence of any significant error rate in proxy voting advice.”¹³

Even if there were some basis for government intervention into how institutional investors obtain proxy advice, mandating company advance review of proxy advice would threaten two of the most important attributes of that advice – its timeliness and objectivity.

Here, too, the SEC’s 2020 rulemaking is instructive. Institutional investors told the SEC its proposed regime threatened to disrupt their internal proxy voting processes, as well as potentially imposing significantly increased and unnecessary costs. There just is not enough time in the highly compressed proxy voting timetable to allow a mandatory pre-review period for companies without meaningfully cutting into the already tight period that institutional investors have today to consider proxy advice, internally deliberate,¹⁴ engage with companies if needed, and make informed voting decisions. The logistical challenges and costs of administering such a complicated and confidential review process for thousands of companies would be exacerbated by the intense seasonality of the proxy advice business. Mandatory issuer review and feedback has simply not been shown to be workable.

Mandatory company advance review would also threaten the independence of proxy advice. Company management already file lengthy proxy statements and can make supplemental proxy filings to make their case to shareholders on ballot items. Many institutional investors retain a proxy advisor for a separate, expert, objective perspective on these voting matters. From that investor’s perspective, if the

¹² Letter of Ken Bertsch, Executive Director, Council of Institutional Investors to Chairman Jay Clayton, at 2 (Oct. 24, 2019), available at https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191024%20SEC%20comment%20letter%20proxy%20advisor%20accuracy.pdf. Nor did the SEC ever provide any reasoned explanation for why the government would need to intervene in how investors obtain proxy voting advice. As a group of institutional investors pointed out to the SEC, “[p]roxy advisors’ business model depends on factual accuracy and their incentives are thus aligned with issuers and institutional investors alike.” Letter of Ken Bertsch, Executive Director, Council of Institutional Investors, et al. to Chairman Jay Clayton, at 2 (Oct. 15, 2019), available at <https://corpgov.law.harvard.edu/2019/10/24/cii-letter-to-the-sec-proxy-advisor-regulation/>. Proxy advisors’ clients want accurate advice and proxy advisors compete to provide it.

¹³ Lee Open Meeting Statement; see also id. (“we still have not produced any objective evidence of a problem with proxy advisory firms’ voting recommendations. No lawsuits, no enforcement cases, no exam findings, and no objective evidence of material error—in nature or number. Nothing.”); see also Annual Report for 2020 of the SEC Investor Advocate, at 5 (reviewing the claims of “select market participants that proxy voting advice historically had not been transparent, accurate, and complete” and noting that “these claims remain unsupported by empirical evidence”), available at <https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2020.pdf>.

¹⁴ Many institutional investors maintain proxy committees or internal practices under which investment managers or more senior personnel are consulted on certain proxy votes.



company's management gets an opportunity to try to influence that advice before they even see it, the previously objective advice they paid for would now be potentially conflicted. As a prominent U.S. institutional investor put it: "While proxy advisory firms should, and do, have procedures in place to mitigate any potential conflicts of interest, I can conceive of no conflict of interest more insidious than the one created by a Proposal that would grant a company that is the subject of proxy voting advice the right to review and provide feedback on that advice."¹⁵

In fact, for this very reason, advance company review of research reports is forbidden in an analogous context. FINRA conflict of interest rules for research analysts "**prohibit** prepublication review of a research report by a subject company for purposes other than verification of facts."¹⁶ As a senior SEC official explained at the time this rule was approved by the SEC, this "provision helps protect research analysts from influences that could impair their objectivity and independence."¹⁷

For these reasons and others, the SEC had ample reason to revise these rules in 2022 to remove some of their most problematic elements. In doing so, the SEC also noted that proxy advisors' evolving practices and other regulatory protections already met the rules' objectives. For example, Glass Lewis' Issuer Data Report ("IDR") program allows companies in covered jurisdictions, including the United States, to review the key data Glass Lewis intends to use before its report is prepared. Glass Lewis also maintains error correction processes, through which companies can raise a claimed error in Glass Lewis research at any point in time.¹⁸ As the SEC noted, Glass Lewis' Report Feedback Statement ("RFS") program allows companies, as well as shareholder proponents, dissident shareholders, and parties to an M&A transaction, that purchase our research reports to opt to have an unedited statement responding to Glass Lewis' research transmitted to Glass Lewis clients, along with Glass Lewis' research report, through our client and voting platforms.¹⁹ Proxy advisors already have the right incentives to engage with companies in an appropriate manner and provide potentially useful information to their clients.

As the SEC also noted, Glass Lewis and other leading proxy advisors have committed to adhering to the internationally endorsed Best Practice Principles for Providers of Shareholder Voting Research and Analysis ("Best Practice Principles" or "BPP"). The BPP address, among other things, maintaining a high level of service quality, disclosure of policies that address potential or actual conflicts of interest, and appropriate communication and engagement with companies and other stakeholders. Glass Lewis applies the Best Practice Principles, without exception, and annually reports on its compliance with them through a detailed, publicly available report. To ensure rigor in this process, the Best Practice Principles Group has formed an Oversight Committee ("OC"). The OC has investor, issuer, and academic

¹⁵ Comments of Scott M. Stringer, Comptroller, City of New York, at 3 (Nov. 20, 2019), available at <https://www.sec.gov/comments/s7-22-19/s72219-6451863-198927.pdf>.

¹⁶ FINRA Rule 2241(b)(2)(N) (emphasis added), available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2241>.

¹⁷ Speech of Lori Richards, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange, "Analysts Conflicts of Interest: Taking Steps to Remove Bias," (May 8, 2002) (emphasis added), available at <https://www.sec.gov/news/speech/spch559.htm>.

¹⁸ For more information on Glass Lewis' error correction processes, see <https://www.glasslewis.com/report-error/>.

¹⁹ For more information on the RFS, see <https://www.glasslewis.com/report-feedback-statement/>.



representatives and conducts an independent, annual review process for Best Practice Principles signatories' annual compliance statements and reports its findings.²⁰

Finally, the Preliminary Report suggests that the SEC's 2022 rulemaking was rushed and lacked "serious evidence of new or changed circumstances to justify its actions." These contentions lack merit and, in fact, have been raised and dismissed in ongoing legal challenges to those rules. To date, federal district courts in Texas and Tennessee have upheld the SEC's 2022 amendments as consistent with the Administrative Procedure Act.²¹

Transparency

The Preliminary Report asserts that "[p]roxy advisors operate without sufficient disclosure" and that "[o]ne critical reform is the requirement for proxy advisors to publish an annual report that provides a comprehensive overview of their activities." As noted above, Glass Lewis and other signatories to the Best Practice Principles already file extensive and detailed annual reports, which are publicly available. Glass Lewis also publishes a range of other reports on its research and voting recommendations, as well as making its detailed voting policies available on its website.

Engagement

The Preliminary Report also suggests that "proxy advisors should be required to engage in open and constructive communication with issuers, allowing the opportunity to respond to and rectify any inaccuracies in the advisory reports." As noted above, Glass Lewis has policies and procedures in place for public companies and others who believe there is an error or omission in Glass Lewis research to flag the issue for Glass Lewis' review at any time. Glass Lewis responds to claimed errors or omissions as promptly as possible, often within 24 to 48 hours. If a research report is revised, Glass Lewis will explain the nature of all revisions, including changes to recommendations, as a note in the report and will notify clients via email of all material changes to the revised report.

Glass Lewis has also established policies and procedures to engage with companies and others affected by its work.²² In 2022, Glass Lewis conducted approximately 1,300 engagement meetings and calls with public companies, dissident shareholders, and shareholder proponents globally. Companies in these meetings can, and often do, provide feedback on our policies, as well as discussing their governance practices and perspectives on relevant corporate governance issues. Moreover, as noted above, Glass Lewis' innovative Report Feedback Statement allows companies to disseminate their views directly to Glass Lewis clients when they are making their voting decision.

²⁰ The OC's 2022 Annual Report is available at <https://bppgrp.info/wp-content/uploads/2022/09/2022-AR-Independent-Oversight-Committee-for-The-BPP-Group.pdf>.

²¹ Decision in *National Association of Manufacturers v. SEC*, No. 7:21-cv-183 (W.D. Tex. Dec. 4, 2022); Decision in *Chamber of Commerce v. SEC*, No. 3:22-cv-00561 (M.D. Tenn. Apr. 24, 2023). The trade association plaintiffs in these cases have appealed the decisions.

²² Glass Lewis' engagement policy, along with additional information on how to engage with Glass Lewis, is available at <https://www.glasslewis.com/public-company-overview/>.



Excessive Influence

The Preliminary Report suggests in several places that proxy advisors have excessive influence and raises concerns about shareholders “robo-voting,” or automatically voting in line with their proxy advisor.

Concerns about the “excessive” influence of proxy advisors are belied by actual vote results. While Glass Lewis recommended against just over 15% of advisory say-on-pay votes at U.S. companies last proxy season, only 3% of those companies had failed say-on-pay votes. Academic research and other studies looking at institutional investors’ practices and voting patterns have similarly disproved these claims. For example, the U.K.’s Financial Reporting Council recently commissioned independent research “to better understand the influence and impact of proxy voting advisors and ESG rating agencies.” The study explicitly sought to “test the validity of the accusation that many investors will automatically follow the voting recommendations of their chosen proxy advisor.” That study concluded:

While almost all investors use the services of proxy advisors, **an increasing number of them ask for voting research to be based on the investor’s own in-house voting policies (known as customised policies)** rather than the advisor’s standard policies (known as benchmark policies) – 75% of those investors that responded to the survey stated that they do so.

Due to limited resources, most investors will issue voting instructions based on recommendations from proxy advisors without manual intervention where the resolution is uncontroversial. **All investor interviewees said that they always review recommendations to vote against management and other resolutions that met certain criteria.** For example, all companies above a certain size or in which they own more than a certain percentage of the shares, or with which they have previously engaged about governance concerns.

While there is some evidence of correlation between negative voting recommendations and voting outcomes in FTSE 350 companies, it appears to be **less extensive than is sometimes asserted.** (emphases added)²³

To be sure, proxy advisors have some influence on how their clients vote. After all, institutional investors would not hire a proxy advisor unless they thought their proxy advice was useful and/or worth following in at least some instances. Claims that this influence is “excessive” or that investors simply “robovote” however, are not borne out by the facts.²⁴

²³ UK Financial Reporting Council Analytical Report, “The influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE350 companies and investor voting” (June 15, 2023), available at <https://www.frc.org.uk/getattachment/bdf7032b-ece1-436b-8429-fbe4ad704efc/Influence-of-proxy-advisors-and-ESG-rating-agencies-on-the-actions-and-reporting-of-FTSE-350-companies-and-investor-voting.pdf>; see also id. (“our analysis of voting patterns and interviews with investors suggests that the nature and extent of [proxy advisor] influence may be more nuanced and less clear cut than is believed to be the case by many companies, stakeholders and other commentators”).

²⁴ Claims of excessive proxy advisor influence often rely on the simple fact that proxy advisor clients vote the same way as a proxy advisor recommends on many voting items. But these claims often confuse correlation with causation. Many ballot items are uncontroversial; for the S&P 500, Glass Lewis’ Benchmark Policy supported 96% of all management proposals last year. It should not be surprising that proxy advisor clients often vote in line with recommendations on uncontroversial matters.



Conflicts

Finally, the Preliminary Report raises concerns about “potential biases and conflicts of interest that may influence [proxy advisors’] decision-making process.”

Glass Lewis understands and takes seriously the potential for conflicts of interest to affect the independence and integrity of its research and analysis. Accordingly, Glass Lewis has long had a thorough and publicly available conflict of interest policy.²⁵ Under that policy, we prominently disclose potential conflicts on the first page of our research reports.

As a signatory to the Best Practice Principles for Shareholder Voting Research Providers, Glass Lewis provides detailed and robust annual disclosures on its conflicts policies and procedures. We were pleased that the Oversight Committee, in its last annual report, recognized our practices and reporting as best in class on a number of topics related to conflicts management.

Proxy advisor conflicts disclosure is also regulated by the SEC. The SEC’s proxy advice rules, both before and after they were amended in 2022, effectively require disclosure of material conflicts.²⁶ The SEC has also promulgated detailed expectations for how investment advisers should evaluate their proxy advisor’s conflicts policies and procedures on an ongoing basis.²⁷ Our clients take potential conflicts seriously and have expressed their satisfaction with the current level of proxy advisor conflict disclosure.²⁸

²⁵ See “Glass Lewis’ Policies and Procedures for Managing and Disclosing Conflicts of Interest,” (Updated May 2023), available at <https://www.glasslewis.com/wp-content/uploads/2023/05/GL-Policies-and-Procedures-for-Managing-and-Disclosing-Conflicts-of-Interest-May-2023.pdf>.

²⁶ 17 C.F.R. 240.14a-2(b)(9)(i) (exempting proxy advisors from filing requirements if “the proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of: (i) Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and (ii) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.”).

²⁷ SEC August 2019 Guidance at 18-20, 22-23.

²⁸ Lee Open Meeting Statement (“Clients of proxy advisory firms have consistently stated that they support conflicts disclosure generally, but they maintain that the current disclosure is adequate”); Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, at 5 (Dec. 31, 2018) (“Some commentators point to conflicts of interest as grounds for regulation of proxy advisory firms. However, . . . proxy advisory firms currently disclose their conflicts of interest transparently in a manner sufficient for investment advisers to review and evaluate them.”), available at <https://www.sec.gov/comments/4-725/4725-4840960-177135.pdf>; see also Comments of Simon Frechet, Chair, Pension Investment Association of Canada, to the US SEC (Jan. 23, 2020) (“we agree that it is beneficial to receive disclosure of relationships, transactions, or other interests that might result in a conflict between the interests of a proxy advisor and those of shareholders. However, we have found the disclosures already provided to be adequate and have not encountered significant conflict of interest problems with proxy advisors, so do not believe that specific rulemaking is necessary to address disclosures of conflicts by proxy advisors.”), available at <https://www.sec.gov/comments/s7-22-19/s72219-6687749-205913.pdf>.