

27 July 2015

Via electronic submission: www.esma.europa.eu

European Securities and Markets Authority

103 Rue de Grenelle
75007 Paris
France

Glass Lewis Response to ESMA Call for Evidence – Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis

AUTHORIZED FOR PUBLIC DISTRIBUTION / POSTING TO ESMA WEBSITE

Dear Sir / Madam:

Glass Lewis, the leading independent provider of global governance services, appreciates the opportunity to respond to the *Call for Evidence: Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis*.

Introduction

Over the past five years, Glass Lewis has actively engaged with regulators, investors, issuers and other market stakeholders regarding the role of proxy advisors. (Our responses to all related consultations can be found in the Regulatory Matters section of our website.)

The European Securities and Markets Authority (ESMA) was the first regulator to publish conclusions and recommendations for the proxy advisory industry based on the results of its 2012 consultation. 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.” Furthermore, ESMA said the introduction of binding measures was not justified and instead said the “appropriate approach” was to encourage the proxy advisory industry to develop its own code of conduct, to be applied on a comply-or-explain basis. ESMA

identified areas relating to transparency and disclosure, where they said 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.”

The Canadian Securities Administrators (CSA), when they issued the *Proposed National Policy 25-201: Guidance for Proxy Advisory Firms*, published 24 April 2014, said they had reached the same conclusions as ESMA. According to the CSA, “a policy-based approach providing guidance on recommended practices and disclosure for proxy advisory firms represents a sufficient and meaningful response to address the different perspectives of the respective market participant groups while recognizing the private contractual relationship between proxy advisory firms and their client.”

Following publication of the ESMA Final Report, six shareholder voting research and analysis firms – including Glass Lewis – formed the Best Practice Principles Group (BPPG) to develop a set of Principles that would 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.

Following a global consultation regarding the proposed Principles, the final Principles were officially launched in March 2014. Since then, Glass Lewis and the other charter signatories to the Principles have each published their Statements of Compliance, featuring detailed information on how the organizations comply with the Principles and all the related Guidance. Signatories that choose not to comply with one of the Principles, or not to follow the related Guidance, are expected to deliver meaningful, relevant and detailed explanations that enable the reader to understand their approach.

In February 2015, the BPPG announced the launch of formal mechanisms for collecting feedback and monitoring the implementation of the Principles. To date, the BPPG has not received any feedback via these formal mechanisms about the efficacy of the Principles.

Regarding the Call for Evidence

The stated purpose of the Call for Evidence is to 1) assess the actual practice of the signatories to the Principles “to determine the extent to which the conduct the industry has changed following the publication of the Principles”; and 2) “to assess to which new trends or changes in proxy advisors’ approaches have developed” since the Principles were published.

In addition to answering the General Questions (Section 3) and Questions for Proxy Advisors that are signatories to the Principles (Section 4.2.1), Glass Lewis would like to take this opportunity to address two additional questions:

1) *In what ways, if any, have the Principles and proxy advisor compliance with the Principles impacted how proxy advisors conduct business, including how they engage with clients, issuers and other stakeholders and develop their policies and research/analysis?*

While Glass Lewis had always been very transparent with its clients in all areas covered by the Principles, until the first consultation on the proxy advisory industry, issued by the United State Securities and Exchange Commission (SEC) in 2010, Glass Lewis was rightly described as a "black box" by other stakeholders given the relatively limited information we disclosed publicly regarding our research approach. The process of considering and responding to the recommendations of regulators has led to a harmonization of our engagement policies and methodologies across all markets together with the creation of a dedicated engagement team; the creation of an Issuer Portal, featuring free access to research policies and methodologies, a facility for requesting a meeting with Glass Lewis or notifying us of purported errors or omissions in our reports, among other resources; the decision to develop a free data-only version of our reports for all companies, regardless of size, which we began to roll out in 2015; and formalizing our participation in engagement meetings with issuer organizations, where we discuss issues relating to our research policies, methodologies and approach.

2) *Have proxy advisors experienced any problems or impediments to implementing the Principles?*

Glass Lewis has not experienced any impediments to complying with the Principles. We have complied thoroughly with ESMA's recommendations.

Response to ongoing criticism of proxy advisors

Despite three major regulatory consultations on the proxy advisory industry over the past five years and the launch of the Principles – resulting in substantially greater transparency regarding the business practices of the world's major providers of governance research and analysis – criticism of the proxy advisory industry by issuers and their representatives continues.

Some critics are not satisfied with the policy-based approach endorsed by regulators and instead want quasi-binding or binding regulation that would, for example, require us to provide our full reports to the companies we analyze prior to publication to clients or prohibit us from holding companies to a higher standard than what is allowed under local-market regulations or compel us to make our research – our intellectual property – available for free.

Glass Lewis has been responsive to the conclusions and recommendations of all regulatory consultations.

We are:

- Identifying, disclosing and managing conflicts of interest;
- Fostering transparency to ensure the accuracy and reliability of advice;
- Disclosing voting policies and methodologies;
- Considering local market conditions; and,
- Providing information on engagement with issuers.

We feel the Principles have provided a lot of benefit to the market in terms of transparency; conflicts disclosure and management; and higher quality engagement with all stakeholders.

We, therefore, do not believe there is a need for ESMA or other regulators to take any action toward formal regulation of proxy advisors. Indeed, we believe

regulations would inhibit our ability to continue to serve the best interests of our investor clients, ultimately harming investors as they exercise their rights as shareholders.

3 General Questions

Q1: What is the nature of your involvement in the proxy advisory industry (proxy advisor, investor, issuer, proxy solicitor etc.)? To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in and your interaction with the industry.

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 investor 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 to help them prepare for engagement 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. Other governance services provided by Glass Lewis include: Right Claim class-action filing and recovery services for institutional investors; Share Recall Services, which help investors identify companies for which they will recall shares in order to vote at a meeting; and Threshold Management System, an online service that allows clients to monitor their positions against regulatory and issuer ownership declaration thresholds.

In 2014, Glass Lewis acquired Meetyl, which offers a web-based platform that enables institutional investors and companies globally to directly engage with each other in order to schedule individual meetings and non-deal road shows.

From offices in North America (San Francisco, New York, Washington, D.C.), Europe (Limerick, Ireland; Karlsruhe, Germany; Basel, Switzerland) and Australia (Sydney), Glass Lewis' 360+-person team provides research and voting services to institutional investors globally that collectively manage more than US \$20 trillion.

Issuers, shareholder proponents and their respective advisors – including law firms, proxy solicitors and compensation consultants – can purchase Glass Lewis Proxy Paper research reports directly from Glass Lewis or via Glass Lewis’ partner, Equilar. Glass Lewis reports are available to these stakeholders upon publication to Glass Lewis institutional investor clients.

Glass Lewis is a private 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.

Q2: Have you previously had concerns with the functioning of any areas of the proxy advisory industry? If yes, please specify.

No.

Q3: Did you become aware of the BPP at the time of their publication, i.e. March 2014? If yes, how did you become aware of the BPP? If no, when did you become aware of the BPP and how?

Glass Lewis is a founding member of the group responsible for drafting the Best Practice Principles for Providers of Governance Research & Analysis (“BPPG”). Glass Lewis applies these Principles on a global basis, in relation to all relevant activities. Our Statement of Compliance with the Principles can be found at <http://www.glasslewis.com/about-glass-lewis/principles/>.

Q4: What is your view on the width and clarity of the scope of entities covered by the BPP (i.e. do you consider that the BPP cover the European proxy advisory market appropriately)? Please explain.

All third-party providers of research and analysis for use in executing governance initiatives, such as the development of proxy voting recommendations – including research, analysis and recommendations developed by industry associations,

non-profits, engagement services providers, etc. – should be covered by the BPP. No credible reasons have been presented for why the Principles should apply only to independent, commercial businesses that focus primarily on proxy voting research. Indeed, the areas of concern which underpin the Principles – including quality and accuracy of research; transparency of research policies and methodologies; conflicts of interest; and disclosure of policies and activities regarding communication with issuers, investors and the media – are relevant to a variety of organizations. Limiting the scope of the Principles is having the unintended and detrimental consequence of inhibiting competition.

Q5: In your view, are the BPP drafted in a way so that they address the following areas identified in ESMA's 2013 Final Report? Please provide examples to support your response.

- a. Identifying, disclosing and managing conflicts of interest.***
- b. Fostering transparency to ensure the accuracy and reliability of the advice.***
- c. Disclosing general voting policies and methodologies;***
- d. Considering local market conditions;***
- e. Providing information on engagement with issuers.***

The Principles were developed to address concerns regarding the business models, research policies and methodologies, and engagement and communications practices of shareholder voting research and analysis providers. However, not all concerns applied to all providers and, as such, have not resulted in significant changes to how they operate. For example, Glass Lewis has always had a policy of comprehensive, explicit and proactive disclosure of all the conflicts listed in the BPP, i.e. those related to its ownership structure, employees' activities, and potential investor-client and issuer-client influence. Glass Lewis always has considered local market conditions when developing policies and specific-issue guidelines and when formulating analysis. This information is clearly and consistently included in our individual reports and in all documentation related to policies. (For several years, Glass Lewis policies have been publicly available via our website and/or upon request.)

For Glass Lewis, the development and implementation of the Principles encouraged us to formalize our engagement policies and procedures across the

entire company. In 2014, Glass Lewis established a team dedicated to developing and maintaining these policies; training those involved in engagement; ensuring any notifications of potential errors or omissions in Glass Lewis analysis are appropriately collected and addressed; and working with issuer organizations in global markets on the development of Glass Lewis' free Issuer Data Report ("IDR"). The long-term goal of the IDR program is to provide all issuers free access to a data-only version of their Glass Lewis report for their review prior to the completion of the analysis.

Q6: What is your overall assessment of the quality of the signatory statements? Please provide examples referring to the areas identified under Q5.

Glass Lewis does not think it is appropriate for industry members to evaluate and comment on other industry members.

Q7: In your view, are there proxy advisors which possibly fall within the scope of the BPP and have not signed the BPP? If yes, please: a) identify such entities; b) explain why you consider them to be within the scope of the BPP; and c) indicate the size and the coverage of their operations within the European market.

In addition to the commercial firms that are commonly referred to as "proxy advisors," a number of industry organizations and engagement services providers offer research and voting services that are used directly by investor clients or members in the formulation of their voting decisions. These services may be offered for "free" for firms that are paying members of an organization or as part of a comprehensive engagement services offering for investors. It is Glass Lewis' view that relevant portions of the Principles should apply to any research products or services developed by these organizations, if these products or services are commonly used by the organizations' clients or members to help them develop their proxy voting decisions.

Q8: How would you describe the impact which the BPP have had on the proxy advisory industry in practice? Please provide examples to support your response.

The greater public transparency provided by signatories Statements of Compliance to the Principles facilitates easier, better and more direct understanding and comparison of the service providers – especially among members of the issuer community. The Principles and our compliance with them are now a common subject of discussion during our engagements with issuers and the organizations that represent them. Furthermore, the multi-stakeholder dialogue around the issues raised in the consultations and covered in the Principles has also led to a more accurate understanding by issuers of how investors use the services of shareholder voting research and analysis providers.

Q9: Have you observed any changes in signatories' practices in the areas mentioned under Q5 since the publication of the BPP in March 2014 and specifically during the 2015 proxy season? Please provide examples to support your view and specify whether these changes addressed the concerns you mentioned in response to Q2, if any.

Please refer to the answer to Q5.

Q10: To what extent do you consider the conduct of BPP non-signatories in relation to the areas identified under Q5 to be different from that of BPP signatories? Please provide examples to support your view.

The issue is not the differences but the areas where some organizations and firms have substantial similarities, in terms of services offered and how those services are used by investors. (See the answer to Q7.)

Q11: Do you consider other measures than the BPP necessary to increase understanding of and confidence in the proxy advisory industry? If yes, please explain why and specify the measures which would in your opinion be suitable.

No.

Q12: Do you have any other general comments that ESMA should take into account for the purposes of its review?

Please refer to our introductory remarks.

Section 4 - Questions for Proxy Advisors

Q13: Where are your company's headquarters?

Glass, Lewis & Co. LLC (Glass Lewis) is headquartered in San Francisco, California. Glass Lewis Europe, a subsidiary of Glass Lewis, is headquartered in Limerick, Ireland. IVOX Glass Lewis, acquired in July 2015, is a subsidiary of Glass Lewis Europe and is based in Karlsruhe, Germany. CGI Glass Lewis, acquired in 2006, is a subsidiary of Glass Lewis and is based in Sydney, Australia.

Q14: Does your proxy advisory business cover the global market or are you specialised in particular countries, regions and/or markets?

Glass Lewis is a global governance research and analysis provider. Between 1 July 2014 and 30 June 2015, Glass Lewis wrote research on over 22,000 meetings for companies domiciled in 100 countries, requiring fluency in 25 different languages.

Q15: For each European country in which you conduct your proxy advisory business, what is the percentage of listed companies that you cover?

This is confidential information that Glass Lewis, a private company, does not disclose publicly. Information has been provided to ESMA on a confidential basis.

Q16: For each of the countries you have listed under Q15, can you provide the number of listed companies you had a dialogue with during or in relation to the 2015 proxy season?

Glass Lewis recognizes that discussions at the appropriate time with issuer representatives can foster mutual understanding and encourage meaningful public disclosure by subject companies.

While Glass Lewis' research and recommendations are based solely on publicly available information, outside of the solicitation period and proxy season black-out periods, Glass Lewis' analysts are open to meeting with any company to

provide, in particular, clarifications on our guidelines and perspective on governance topics, as well as to learn about the specific aspects of a company.

Furthermore, when our analysts require clarification on a particular issue, they reach out to companies even during the solicitation period. Glass Lewis also frequently hosts "Proxy Talk" conference calls to discuss a meeting, proposal or issue in depth. Glass Lewis' clients are able to listen and ask question with representatives from the Glass Lewis' research team acting as moderator. Please note that Glass Lewis' engagement policy is available at:
<http://glasslewis.com/for-issuer/glass-lewis-corporate-engagement-policy>.

The following table summarizes one-on-one meetings held during the period 1 July 2014 through 30 June 2015 by representatives of Glass Lewis with issuers across Europe. It should be noted that Glass Lewis also interacts with issuer industry bodies, such as the AFEP in France, Assonime in Italy, as well as ICSA, GC100 and the IR Society in the United Kingdom.

Meetings with these organizations and their members, as well as our presence at numerous corporate governance events create numerous, regular opportunities for us to conduct group engagements across Europe each year. Engagement through all these avenues forms a significant part of our policy review processes, and is thus a valuable part of our research processes.

Country	Meetings Held*
Belgium	1
Finland	0
France	22
Germany	4
Ireland	1
Italy	15
Netherlands	1
Norway	2
Portugal	0
Spain	14
Switzerland	26
United Kingdom	16

* These numbers reflect only the one-on-one engagements and do not reflect the group engagements.

Q17: Are you providing proxy advisory services only or do you also offer other services? If you offer other services, please briefly describe the role proxy advisory services play relative to the share of total business.

Glass Lewis is an independent governance services firm, offering data, proxy voting research, analysis, recommendations and custom services to institutional investors and other institutional participants in the capital markets. Through our proprietary, Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to their custom voting guidelines and record-keep, audit, report and disclose their proxy votes. In addition to research and vote management services, Glass Lewis offers these additional governance services for institutional investors: Right Claim, class action filing and recovery services; Share Recall, a data and analytics service that helps clients identify meetings for which they want to recall shares on loan; and Threshold Management System, an online service that allows clients to monitor their positions against regulatory and issuer ownership declaration thresholds.

In addition to its governance services business, Glass Lewis has two wholly-owned subsidiaries – Meetyl and Washington Analysis – that do not provide governance or proxy voting-related services. Meetyl is a global online platform that facilitates direct corporate access / engagement between investors and issuers to enable them to schedule individual meetings and non-deal roadshows. Washington Analysis is a leading independent provider of research for investors regarding political, legislative and regulatory changes in the United States and the significance of those changes to certain industries and companies.

Glass Lewis' services for institutional investors and other institutional participants in the capital markets contribute over 90 percent of Glass Lewis' revenue. While Glass Lewis sells its research directly to corporate issuers upon publication of its reports for its institutional clients, neither Glass Lewis nor any of its subsidiaries consults for public companies, nor does it advise shareholders on how to gain support for initiatives, such as shareholder proposals or proxy contests.

Q18: For each European country in which you conduct business, what was your turnover in 2014? Please fill in the table below.

This is confidential information that Glass Lewis, a private company, does not disclose publicly. Information has been provided to ESMA on a confidential basis.

Q19: What is your total number of clients investing in European listed companies and their approximate total assets invested in such companies?

Glass Lewis, including its subsidiaries, does not distinguish its research process based on the number of clients invested in a company or the total value of one or more clients' holdings. Therefore, Glass Lewis has not attempted to determine the number of clients investing in European companies nor tried to calculate the total assets clients have invested in European companies.

Based on requests for research reports and client ballots received, Glass Lewis can estimate that approximately 60% of its more than 1,000 institutional investor clients hold shares in European listed companies. However, for several reasons, Glass Lewis cannot determine with certainty the total number of clients that own European shares:

- Some clients that receive research only (and not voting services) from Glass Lewis do not provide Glass Lewis with their holdings, so Glass Lewis does not know what companies they own. Since it is unlikely clients would download a report for every company in their portfolio, it is not possible to comprehensively determine research clients' European holdings.
- Because many clients outside North America – both research and voting – use Glass Lewis to help them vote at the meetings of select holdings or use Glass Lewis for voting in select markets only (while allowing their asset manager(s) to vote in other markets), Glass Lewis is not able to calculate with precision clients' European holdings.
- In some markets or at some meetings, clients may elect to not vote because of requirements that inhibit liquidity or are deemed prohibitively expensive, outweighing the value of voting.

Given the above opacity into some clients' ownership of European equities, Glass Lewis is not able to calculate the total assets invested by clients in European companies. Even for voting clients for whom Glass Lewis has access to ballot information, including the number of shares they are voting, Glass Lewis does not calculate the value of client assets, either on an individual client basis or in the aggregate.

Q20: Please estimate the percentage of clients using your proxy advisory services which request a custom policy. Have you noticed any trend in the services requested in recent years? Please differentiate across classes of investors (e.g. investment funds, pension funds, insurance companies etc.).

Among Glass Lewis clients, 85 percent of clients are not strictly following the Glass Lewis policy. A quarter of these clients, typically among the largest investors in the world that also contract with Glass Lewis for vote management services, are custom policy clients. The rest elect to vote according to tailored policies, such as ESG, faith-based and Taft-Hartley (pro-labor) guidelines, among others, or use Glass Lewis for research only. In our experience, research-only clients are among those with the most complex vote decision-making processes, involving a number of inputs and research from multiple providers.

The other 15 percent of clients have elected to follow the recommendations developed by Glass Lewis based on the Glass Lewis house policy. (These clients adopt Glass Lewis' guidelines after a thorough analysis of our methodologies. They review these policies at least annually and always retain the ability to override Glass Lewis' recommendations up to the vote cutoff time, a right they frequently exercise.)

Q21: Please indicate your number of employees during the 2015 proxy season and the percentage of seasonal employees.

Glass Lewis employs 360+ people globally. The majority of Glass Lewis employees are dedicated to research, research operations and/or custom policy implementation. Glass Lewis' permanent analysts are supported by temporary qualified research associates, who are primarily responsible for gathering relevant information for Glass Lewis' research reports, setting up the framework

of the reports and, in some cases, providing initial drafts of the reports based on Glass Lewis' guidelines.

Publishing rights are limited to senior research staff only. Every research report is edited by a minimum of two senior analysts before it is published. Depending on the size of the company, prior years' voting results, business concerns and/or issues up for vote, a minimum of two editors will review each report before it is published. People involved in editing Glass Lewis research on European companies include Glass Lewis' Chief Policy Officer, Robert McCormick, Esq.; Associate VP of EMEA Policy, Carla Topino, Esq.; IVOX-Glass Lewis General Manager, Alexander Juschus, PhD.; Managing Director of M&A and Quantitative Research, Warren Chen; and VP of Proxy Research, David Eaton. Two-thirds of the total research staff dedicated to the analysis of European companies (including permanent and temporary) were qualified to master's degree or above (dominance in Law, Economics and Business) and several have previous relevant experience in academic or European institutions.

Glass Lewis is a private company, and, as such, does not publicly disclose confidential information about its business. More specific information regarding Glass Lewis' employee structure is available to institutional investor clients and has been provided to ESMA on a confidential basis.

4.2.3 Questions for signatories to the BPP

Q24: What made you decide to become a signatory to the BPP?

Glass Lewis stands for what the Principles are designed to promote: Quality, accuracy, transparency, engagement and independence in the interest of shareholders. We believe that any firm that is involved in developing research or analysis for use by investors in making their proxy voting decisions should be a signatory to these Principles.

Q25: Has your practice in the areas mentioned under Q23 changed since you signed the BPP? If yes, how did it change?

See Introduction and our answer to Q5.

Q26: Have you taken any other practical initiatives in direct response to, or general reflecting, the introduction of the BPP which are still in the process of being implemented?

As mentioned in the answer to Q5, Glass Lewis has launched a program to provide all issuers with a data-only version of their Glass Lewis report for free. To date, we have launched this initiative in North America, France and the UK. Doing this on a global basis will require significant IT, research and engagement team resources. Glass Lewis is committed to completing this project. We expect to add more markets and more companies to the pipeline each year. As of yet, given that the requirements for doing this differ from market, it is not possible to estimate the time it will take to complete the project.

Respectfully submitted,



Katherine H. Rabin
CEO
P: +1 415 678.4224
E: krabin@glasslewis.com