

Glass Lewis CEO Responds to Proposed Legislation Governing Proxy Advisors

June 1, 2016 | Client Update | 3-minute read

The [prepared statement](#) on the Proxy Advisory Firm Reform Act by the CEO of Glass Lewis, KT Rabin, before the Subcommittee on Capital Markets and Government Sponsored Enterprises, explains why it refuses to share drafts with issuers or talk to companies during the solicitation period, unlike its biggest competitor, and debates the level of influence the firm has on voting outcomes. We previously summarized the bill [here](#).

Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board and Alberta Investment Management Corp. and has over 350 employees located in San Francisco; New York; Limerick, Ireland; Sydney, Australia; and Karlsruhe, Germany. The firm provides proxy voting analysis and voting recommendations on more than 18,000 companies and 200,000 voting items every year.

Glass Lewis strongly disagrees with the aspect of the legislation that would allow issuers to access their proxy voting recommendations in draft form and to comment on them before publication, and provide a mechanism to resolve issuer complaints before the reports are distributed. Glass Lewis argues that this would infringe on its ability to independently analyze the issues and make unbiased voting recommendations. By analogy, Glass Lewis points out that regulation governing research analysts is designed to insulate them from investment banking pressures, including prohibiting prepublication review.

Rabin goes so far as to state that any law that requires it to include issuer input into its voting reports "raises serious Constitutional issues relating to freedom of speech under the First Amendment." In addition, the firm believes that these discussions with issuers would further exacerbate the "lingering misconception" that companies should be more concerned with what proxy advisory firms rather than their shareholders think, and also continue the perception that proxy advisors somehow set standards on governance and compensation practices.

Glass Lewis complains that talking to issuers during an already tight time frame will inevitably result in delays in issuing those reports, and that would be detrimental to its business. Providing draft reports to issuers would also force them to give away for free what Rabin characterizes as "valuable intellectual property," and that would be "unprecedented" in the area of financial research and again pose a risk to its business.

Currently, Glass Lewis will correct a report if material errors are found, but for the last 12 months ending on April 30, 2016, errors that resulted in a change to the Glass Lewis recommendation represented one-tenth of 1% of the items up for vote at U.S. companies it analyzed. More often, Glass Lewis believes that what a company may perceive to be an error is instead a difference of opinion. Outside the proxy solicitation period, in 2015, Glass Lewis analysts participated in nearly 1,000 company engagements.

Glass Lewis also disputes the concerns surrounding overreliance on the recommendations of proxy advisory firms, pointing out that while it recommended against between 13% and 17% of say-on-pay votes since 2010, only about 2% of those proposals fail each year. More institutional investors are leaning toward customized voting decisions.

Another example the CEO gives relates to proposals on political contributions. In the last 12 months ending April 30, 9.6% of shares voted by clients that generally follow the Glass Lewis policy elected to override the Glass Lewis recommendations, and nearly 50% of shares of clients voting according to custom policies on this issue overrode their custom recommendations or opted to vote on this issue on a case-by-case basis.

In the case of proposals calling for the separation of CEO and chairman positions at U.S. companies, 14.9% of shares voted by clients that generally follow the Glass Lewis policy elected to override the Glass Lewis recommendation. 21% of

shares of clients that vote according to a custom policy on this issue overrode their custom recommendations or opted to review and vote on a case-by-case basis.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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