



January 20, 2011

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

RE: RIN: 1210-AB32  
Definition of the Term Fiduciary

Dear Sir/Madam:

Thank you for the opportunity to comment on the proposed rule changes to the definition of fiduciary under the Employee Retirement Income Security Act (ERISA) for entities providing investment advice to employee benefit plans or plan participants.

We believe the integrity and impartiality of the advice provided to pension plans should be reinforced and commend the work of the Department of Labor (DOL) in reevaluating the nature of entities providing investment advice to pension plans. The investment advice retirement plans receive should be made solely with the best interests of the plan and plan participants in mind. We recognize that regulations should be reviewed periodically for continued relevance and applicability and agree that now is an appropriate time to revisit the definition of "fiduciary" with regard to retirement plans governed by ERISA. We believe the DOL's reexamination of the role of service providers, and their status as fiduciaries, is timely given the continued shift in retirement plans from defined benefit plans to defined contribution plans. Further, we believe both the plans and their participants will benefit from such reevaluation.

Glass Lewis is an independent governance services firm, which provides proxy research, analysis, voting recommendations and other services to institutional investors around the world. While, for the most part, our clients use our research to help form their proxy voting decisions, they also use our research when engaging with companies before and after shareholder meetings. Through our Web-based vote management system, ViewPoint, we also provide investor clients with the means to receive, reconcile and vote ballots according to their own voting guidelines and record-keep, audit, report and disclose their proxy votes.



Glass Lewis produces research reports on public companies to assist our clients, e.g., public pension plans and investment managers, in fulfilling their fiduciary duty to vote proxies. Our recommendations are based solely on our own proxy voting policies and we provide only a single report for each company meeting. We do not tailor our recommendations or research to any client, client type or group of clients.

As the second largest proxy research firm in the world, we are happy to share our perspective on the revision to the definition of fiduciary, specifically as it relates to proxy advisors. We believe proxy advisory firms play an important support role, helping institutional investors meet their fiduciary responsibility to vote thousands of securities.

Glass Lewis is submitting this comment as an interested industry advisor, not on behalf of any or all of its clients. We have confined our comments to specific topics raised by the proposal, where we felt our input would be most relevant.

We do not believe it is appropriate to include un-conflicted proxy research advisors like Glass Lewis in the revised definition of fiduciary, as described in the provided example of fiduciaries. There are certain indicia common to fiduciaries, such as providing investment advice with concomitant investment, management and voting authority, control and responsibility; however, none pertain to Glass Lewis.

Nor do we do believe providing research, analysis and voting recommendations rises to the level of either (i) providing investment advice to pension plans or (ii) having discretionary authority over management of such plans or securities held therein, both standards used for determining fiduciary status under ERISA by DOL. Many of the requirements for fiduciaries are not pertinent to proxy advisors and therefore neither the exercise of complying with fiduciary obligations nor the status of being a fiduciary itself would have great utility to institutional investors, including pension plans. We do not believe Glass Lewis falls within the proposed definition of fiduciary as contemplated by Congress when it enacted ERISA. Further, in our view, research reports that discuss the issues presented for shareholder vote in proxy statements, and accompanying voting recommendations, generally would not meet the elements of “investment advice” spelled out in Section 202(a)(11) of the Investment Advisers Act of 1940.

As the proposal notes, it is designed to identify fiduciaries based on evaluations of “their degree of authority, control, responsibility or influence and the expectations of the parties involved.” We believe, based on an evaluation of these factors, examined in more detail below, Glass Lewis should not be considered a fiduciary.



## Authority, Control and Responsibility

As a proxy research advisor, we do make proxy voting recommendations. However, since we are not beneficial owners, we do not have the authority or responsibility to make voting decisions. The power and responsibility to instruct votes resides with our institutional investor clients.

To be sure, some clients rely on our expertise to reach their vote decisions on proxy proposals. However, while these clients may design a voting policy closely aligned with the Glass Lewis recommendation on one or more types of proposals, as fiduciaries they select and periodically review this approach only after close scrutiny of our guidelines and examples of specific recommendations, with the recognition that our recommendations on those issues tend to be very similar to the client's policy. Similarly, when clients follow our recommendations on specific issues, generally because the client and Glass Lewis share the same philosophy on that issue (e.g., to disfavor anti-takeover provisions), they do so only following a close review of our policy guidelines by the client's proxy committee, board of trustees and/or other relevant internal oversight personnel.

Of course, every client – at all times – retains the authority to change any vote we recommend for them based on our analysis of the proposal vis a vis their proxy voting directions. Indeed, our voting system provides all voting clients, regardless of whether they adopt our recommendation as their approach, with the ability to review and change votes, which they do routinely.

While institutional investors may use our research and recommendations in their decision-making processes, we are neither an investment research firm nor do we have the authority to make voting decisions on our clients' behalf. Glass Lewis does not recommend that clients buy, sell or hold securities in connection with its voting recommendations or analyses of proxy issues (or otherwise). And, most importantly, none of the information contained in Glass Lewis' research reports is personal or is tailored to the investment strategy of any specific client or group of clients.

Our authority is limited to transmitting our clients' voting instructions under narrow powers of attorney executed by our clients for the sole, express purpose of instructing our clients' custodians (or the voting service engaged by the custodians) to accept our clients' voting instructions from Glass Lewis, rather than directly from the client. Glass Lewis' clients always retain the ultimate authority and responsibility to vote their shares.

While some clients tend to follow our recommendations in some cases, they always retain ultimate authority to make the voting decision. Further, we do not have authority to make



any management decisions with respect to retirement plans, including with respect to their asset allocation, investment choices or investment elections.

We provide our institutional investor clients with the means to vote their shares through our Internet-based voting platform, Viewpoint, in accordance with their investment philosophy and designated voting policy. Indeed, the majority of Glass Lewis' clients, based on both a pure numerical basis as well as on assets under management, have elected to vote according to one or more of their selected voting policies. Clients utilize data gathered by Glass Lewis for reaching their vote decisions; in most cases, they supplement what we provide with their own research and that of other research and data providers.

We are not the beneficial holder of clients' securities and therefore are not subject to any ownership obligations, such as regulatory filings, appurtenant to control of voting rights. We exert no control over plan assets and do not administer plans. Nor do we make any decisions relating to plan assets or act in any way like plan trustees.

We make no evaluation of the value of any securities and even in the context of a merger evaluation, we only make a recommendation on whether to accept or reject the terms of the deal based on market reaction and the fairness of the process, not what the value should be.

Our influence is limited to providing data, analysis and recommendations to our clients who are then empowered with that information to cast informed proxy votes. We do not exhibit any indications of control generally associated with being a fiduciary or as defined by the proposed rule.

#### Client expectations

Clients hire us to help them interpret proxy matters and to provide a means for them to submit their votes based on their instructions. Our clients, for the most part public pensions and investment managers, hire us to provide data, research, analysis and voting recommendations as well as, for some clients, the means to vote their shares held in defined benefit plans, mutual funds and other investment vehicles. All clients receive the same Glass Lewis research report, in the same format and at the same time with the same recommendations. The reports are not customized to any client or client investment strategy and our fees are based on the number of reports, not in response to any voting decision or incident to any transaction.

## Conflicts

We believe the DOL should adopt rules to eliminate, reduce or require disclosure of conflicts to the greatest extent possible. Because conflicts can arise not just in providing services but even in the solicitation of them, the cleanest and most effective way to manage conflicts is to not have them.

Recognizing this, we were founded with the core policy of not providing any consulting services to corporate issuers. As a result, Glass Lewis does not solicit nor provide consulting services or compensation-setting tools to the corporate issuers whose proxy proposals we analyze. We believe this is a business practice the DOL should consider mandating for proxy research providers to pension plans.

Proxy providers, in general, employ one of two distinct business models. In the first model, followed by Glass Lewis, the provider serves only the investor community by providing proxy research, data, analysis, recommendations and voting services to institutional clients; these providers do not provide any services to corporate issuers, thereby avoiding conflicts. However in the second model, in addition to working for institutional clients, some providers of proxy advisory services also provide consulting services and sell compensation design tools to companies they analyze. We believe the DOL should, consistent with widely accepted fiduciary standards, prohibit research providers from providing and marketing such services to public companies if they are also providing proxy research, analysis and recommendations to institutional clients about those companies.

Just as corporate issuers bear the burden to disclose potential conflicts, we believe the onus should be on the conflicted party to disclose any potential conflicts. Recognizing the necessity and benefits of transparency, since our founding we have provided specific disclosure on the front page of our reports regarding potential conflicts. For example, when an institutional shareholder client solicits votes via a shareholder proposal, contest, or a director “vote no” campaign, we disclose that on the front page of our report. We also specifically disclose when an investment manager subsidiary of a public company on which we are writing a report subscribes to our research. One proxy provider that follows the second model, described above, does not currently disclose in its reports the relationships it has with companies it analyzes, nor does it disclose in the report if a dissident shareholder in a proxy fight or a proponent of a shareholder proposal is a client. It requires shareholders to contact the provider for such information, a significant burden during the proxy season.

Furthermore, where our parent, Ontario Teachers’ Pension Plan, has a significant, reportable stake in a company, has publicly announced its ownership in a company, or



has an ownership stake or an interest in acquiring an ownership stake which has come to the attention of Glass Lewis through public disclosure or news reports, we disclose that on the front page of our report for that company.

We also have robust policies in place to address personnel conflicts. If a member of either our Research Advisory Council or Strategic Committee is an executive or director of a public company, we disclose that specific relationship on the front page of our report on that company. In addition, where any employee's relative is an executive or director of a public company, the relationship is disclosed and that employee plays no role in the analysis or recommendation of that company

### Regulation

We believe prudent regulation, appropriate to the unique role of proxy advisors, would be helpful in attaining the goals of the DOL to eliminate, reduce, and disclose conflicts, and to reaffirm the integrity of the advice provided to retirement plans. While we do not believe it is prudent to consider un-conflicted proxy advisers as fiduciaries, we do believe some oversight on the activities of proxy advisory firms may address the concerns regarding conflicts.

The goal of S.E.C.-mandated disclosure to shareholders by companies of material issues, such as financial performance, is to provide investors with relevant information when making investment decisions; similarly, we believe advisors should specifically disclose information about their conflicts arising from selling consulting services to issuers, just as public companies must disclose potential conflicts from buying services from providers such as audit firms and compensation consultants.

While we are not registered as an investment advisor, some proxy research providers, including one that engages in significant business with corporate issuers, is registered. We believe that registration and, therefore, treatment as a fiduciary, have not resolved those conflicts adequately. We therefore do not believe considering un-conflicted proxy advisors to be fiduciaries would resolve the concerns raised in the proposal regarding conflicts. Furthermore, we do not believe fiduciary status is universally relevant to the proxy advisory business, since proxy advisors do not provide investment advice, execute trades or manage any client money.

We believe proxy advisors should be exempt from consideration as fiduciaries, similar to the treatment of nationally recognized credit rating agencies. However, if the DOL feels that it is appropriate to require further regulation for proxy advisors to address the stated goal of limiting potential conflicts, we believe an exception from such consideration should be made for advisors like Glass Lewis that do not consult for or sell compensation



solutions to corporate issuers. One way would be to add un-conflicted advisors (i.e., those that do not provide consulting services to corporate issuers) to the limitation list of entities excluded from the definition of “fiduciary.”

The exclusion of advisors that do not have conflicted business models will have the added benefit of not creating an additional hurdle for new entrants into the advisory space, since initial and ongoing compliance obligations associated with being a fiduciary are expensive and resource intensive. Further, the number of proxy research providers is relatively small and the largest provider has significant market share. Competition in recent years has greatly benefited shareholders, as it has resulted in better research and service from all providers.

We would be happy to provide any additional information regarding this matter. Thank you for the opportunity to comment on the proposed redefinition of fiduciary.

Sincerely,

/s/

Katherine Rabin, Chief Executive Officer

/s/

Robert McCormick, Chief Policy Officer