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January 31, 2023

State Attorneys General Listed
as Signatories of the January 17, 2023 Letter
c/o The Honorable Sean D. Reyes
Attorney General
State of Utah
350 North State Street, Suite 230
Salt Lake City, UT 84114-2320

Re: State Attorneys General Letter of January 17, 2023

Dear Attorneys General:

Thank you for your letter of January 17, 2023. 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 longstanding work we continue to do to help our clients, which include pension funds in your states, fulfill this responsibility in a manner that benefits and safeguards their beneficiaries' investments. We take our related legal obligations seriously and have fully honored them.

Before responding to your specific questions, we want to explain our role as a proxy advisor and our benchmark policy on climate issues and racial equity audits.

The Role of a Proxy Advisor

As a proxy advisor, Glass Lewis' role is to assist its institutional shareholder clients in implementing their chosen proxy voting policy. Once an investor client has selected a policy that closely aligns with its views, 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 such policy. Put simply, Glass Lewis does not decide how its clients vote.

Your letter characterizes our benchmark policy as Glass Lewis' "pledge" or "commitment" or even "advocacy" for a particular position. That fundamentally misunderstands our voting policies and how they are used in our work.

The Glass Lewis benchmark policy is one voting option our clients can choose. It generally reflects the current, predominant views of our institutional investor clients on corporate governance best practices. We recognize, however, that our clients have a broad range of views on proxy voting issues,[1] as well as different investment strategies and time horizons. For that reason, Glass Lewis offers its clients a menu

[1] 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).

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.[2]

In particular, we are proud to have recently introduced an updated and enhanced version of our Governance-Focused Policy.[3] The Governance-Focused Policy is designed for 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. This policy, in fact, is used by retirement plans in some of your states. 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. Indeed, the use of a custom voting policy is a common approach leveraged by many public pension funds in the United States and abroad to 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. Again, our role is not to advocate or seek to persuade our clients to adopt a particular proxy voting policy or to vote in any particular way on a ballot item. And we certainly have not made any "pledge" or "commitment" as to their votes. Our role is to provide objective research and other tools to help our clients vote as they see fit. We take that role – and associated legal responsibilities we have under our contracts with those clients and applicable law – seriously.

Glass Lewis Benchmark Policy's Approach to Environmental and Social Issues

Your letter questions our benchmark policy's approach to certain climate and social issues. Our benchmark policy[4] -- like the proxy voting policies of many institutional investors -- recognizes that how companies manage the risks and opportunities associated with climate change, as well as the composition of their board and workforce, can be material issues. Importantly, however, our benchmark

[2] See Glass Lewis, Proxy Voting Policy Options, available at https://www.glasslewis.com/proxy-voting-policy-options/.

[3] 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 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.

[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/. Because your letter discusses both management and shareholder proposals, for simplicity, we collectively refer to the documents in this letter as our "benchmark policy."

policy considers these issues as they relate to mitigating risk and promoting the long-term economic interest of shareholders. As that 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 a social goal -- have not demonstrated a nexus to shareholder value.

Climate Issues

As to climate issues in particular, your letter suggests that Glass Lewis and ISS, another proxy advisor, have shown an "apparent preference for environmental goals over financial ones." To support this, your letter recites a number of statements from ISS, including publications of its ESG consulting arm, on the Paris Agreement and the global energy transition more generally. As to Glass Lewis, the only references in your letter are two quoted excerpts from our benchmark policy (on climate reporting and so-called "Say on Climate" votes), as well as two of our specific voting recommendations. We address your points related to Glass Lewis below.

First, you characterize our benchmark policy on climate reporting as inconsistent with a focus on long-term economic value. That is simply not the case, however.

Climate risk – how companies are managing the risks and opportunities presented by climate change – is widely recognized as a material risk-return factor today. Increased storm activity and changing weather patterns have and will likely continue to result in business disruption, loss of property, damage to critical infrastructure, and difficulty surrounding certain commodities. In addition, many companies with global operations will need to comply with strengthening regulations concerning greenhouse gas emissions and other environmental impacts. As a result, investors with over $130 trillion in assets under management have requested that companies disclose their climate risks through just one of the current platforms in use.[5] Faced with this market demand, corporate climate reporting has become a common practice. Even in the United States, where such reporting is a newer development, some 96% of the companies in the S&P 500 now publish sustainability reports using various third-party standards, which include information about climate risks.[6] Simply ignoring climate risk is not an option today.

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[5] See CDP, About Us, available at [https://www.cdp.net/en/investor/request-environmental-information#d52d69887a88f63e15931b5db2cbe80d.](https://www.cdp.net/en/investor/request-environmental-information#d52d69887a88f63e15931b5db2cbe80d)

[6] See G&A Institute, "2022 Sustainability Reporting in Focus," available at [https://www.ga-institute.com/research/ga-research-directory/sustainability-reporting-trends/2022-sustainability-reporting-in-focus.html.](https://www.ga-institute.com/research/ga-research-directory/sustainability-reporting-trends/2022-sustainability-reporting-in-focus.html)

Glass Lewis' benchmark policy on climate reporting reflects this reality, while being carefully tailored to provide a company-by-company assessment of the issue's importance. That policy thus generally supports shareholder requests for enhanced company-specific climate disclosure, but also notes that –

> we will closely evaluate the request of each resolution in the context of a company's unique circumstances and will evaluate the following when making vote recommendations: (i) how the company's operations could be impacted by climate-related issues; (ii) the company's current policies and the level and evolution of its related disclosure; (iii) whether a company provides board-level oversight of climate-related risks; (iv) the disclosure and oversight afforded to climate change-related issues at peer companies; and (v) if companies in the company's market and/or industry have provided any disclosure that is aligned with the TCFD's recommendations.[7]

In addition to the case-by-case factors articulated above, our benchmark policy explicitly states that we may recommend against these proposals "if we do not believe that adoption of the resolution, as written, is consistent with **long-term shareholder value creation**." (emphasis added) This is simply not an environmental "commitment" or "pledge" that somehow conflicts with a focus on economic value.

Your letter also quotes a portion of our benchmark policy on so-called Say on Climate votes and suggests it reflects our "pursuit of net zero" and "intent to punish American companies for being out of step with net zero." At the outset, we note that the term "net zero," while a focus of your letter, is used only twice in our benchmark proxy voting policies and only in connection with our discussion of Say on Climate votes, which is an emerging practice mainly outside the United States. As to those votes, our policy is that "Glass Lewis will generally recommend **against** shareholder proposals requesting that companies adopt a Say on Climate vote." (emphasis added) This policy is based in part on the fact that "we have observed over the past year that shareholders are being asked to make informed voting decisions associated with the setting of companies' long-term business strategy – as is the case with the establishment of net zero emissions goals to 2050 - with potentially incomplete information relating to operational changes and related costs." While our benchmark policy does generally support companies' disclosure of their climate-related risks and opportunities, the policy simply does not require companies to adopt a net zero emissions goal.[8]

Your letter also questions specific recommendations we made related to two non-U.S. companies – Woodside Petroleum, an Australian fossil fuel company, and BHP Group PLC, a U.K. mining company with global operations.[9] Both recommendations related to situations in which company management had chosen to put forward a proposal for the company's shareholders to approve a climate transition plan, which, again, is an emerging trend among mainly non-U.S. companies. Your analysis rests on press descriptions of our recommendations, which inevitably do not capture the full extent of our reasoning.

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[7] The TCFD, or Task Force on Climate-Related Financial Disclosures, was established by the Financial Stability Board and offers a framework that is commonly used by companies and investors for communicating information about climate-related risks that companies may face.

[8] For discussion of the company-specific analysis our benchmark policy uses for shareholder proposals requesting emission reduction targets, please see our response to Question 7 below.

[9] The recommendation you question related to Woodside Petroleum's May 2022 Annual General Meeting, which preceded its merger with BHP later that year.

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We are separately transmitting to Attorney General Reyes' office a complete copy of the two research reports you reference, with our full analysis of those issues, as well as the other management and shareholder proposals at issue at those companies' meetings. We believe the analysis in our research reports fully explains how our benchmark policies' recommendations are consistent with a focus on long-term shareholder value.

Finally, your letter suggests that both ISS and Glass Lewis "offer[] a substantial number of services related to ESG investing," which creates a "blatant conflict of interest." Glass Lewis does not, however, offer consulting services related to ESG investing.

Racial Equity Audits

Your letter also accuses Glass Lewis of having "advocated for quotas and racial equity audits of questionable efficacy and legality" and suggests that our advice on these issues "appears to focus on goals apart from economic value." Again, however, these claims are disproved by our benchmark guidelines themselves.

Our benchmark policy does recognize the "importance of ensuring that the board is composed of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights." To that end, we will consider the composition of the board for representation of diverse director candidates in evaluating the performance of the chair of the board's nominating committee. In addition, our benchmark guidelines provide that "in cases of egregious oversight lapses or behavior seriously detrimental to **shareholder value**, we will consider supporting reasonable, well-crafted proposals to broaden a board's composition including, for example, to increase board diversity where there is evidence a board's lack of diversity led to a **decline in shareholder value**." (emphases added)

Our approach to racial equity audits is also company-specific and grounded in considerations of shareholder value. As our benchmark policy explains, we will undertake a company-by-company assessment of such proposals, including considering whether the company has been the subject of "any relevant controversies, fines, or lawsuits." Our benchmark policy notes that, "[a]fter taking into account these company-specific factors, we will generally recommend in favor of well-crafted proposals requesting that companies undertake a racial or civil rights-related audit when we believe that doing so could help the target company identify and mitigate potentially significant risks." Consistent with this policy, we have recommended in favor of some, but not all, such proposals that have been presented for a vote.[10]

* * *

We respond to the specific questions in your letter (which we have reprinted in italics) below.

[10] For more detail on our analysis of one such proposal under our benchmark policy, please see our response to Question 8 below.

1. Do you agree that you have undertaken contractual duties of care and loyalty in providing advice, including to our States or their investment vehicles where you have contracted to provide services? And do you agree that these duties include acting with reasonable diligence and without conflicts of interest? Finally, do you agree that your agreements typically require you to consider only one goal: the economic value of the beneficiary's investments?

Our contracts typically require us to provide specified services to our clients, such as proxy research and shareholder voting recommendations and/or vote execution and related reporting and recordkeeping services. At times, our contracts also contain performance standards for these services. Our contracts do not typically include the terms referenced in your question. In particular, our contracts do not typically refer to the goal of the client's proxy voting policy, although they may specify that Glass Lewis will provide its services according to that client-chosen policy and other client directions.

That said, as a matter of business practice, we have committed to adhering to the internationally-endorsed Best Practice Principles for Providers of Shareholder Voting Research and Analysis.[11] Those principles address, among other things, maintaining a high level of service quality and disclosure of policies that address potential or actual conflicts of interest. We apply the Best Practice Principles, without exception, and annually report on our compliance with them through a detailed, publicly available report. To ensure rigor in this process, the Best Practice Principles Group has formed an Independent Oversight Committee ("IOC"), which conducts an independent, annual review process for Best Practice Principles signatories' annual compliance statements and reports its findings. We were pleased to be recognized for Best in Class reporting on a number of topics in the IOC's most recent annual report, including our policies and procedures for managing and disclosing potential conflicts of interest.

2. Explain your materiality analysis for requiring the disclosure of emissions reduction targets. Given that material information must already be disclosed, please explain whether you believe that either (i) companies are systematically failing to disclose material information, or (ii) companies should disclose nonmaterial information.

As a proxy advisor, we cannot, of course, require a company to make any disclosure. In addition, virtually all shareholder proposals in the United States and Canada are "precatory," meaning they are not binding on companies' boards and management even if supported by a majority of a company's shareholders. As to our approach to shareholder proposals on environmental disclosures generally, our benchmark policy explains that –

> 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.

This is a separate question from whether a company has fulfilled its disclosure obligations under U.S. or another jurisdiction's securities laws, although we do, of course, consider a company's other disclosures

[11] The Best Practice Principles are available at https://bppgrp.info/.

as part of evaluating any shareholder disclosure request. We address our approach to assessing shareholder proposals specifically requesting emission reduction targets in our response to Question 3 below.

3. Explain how you determine "appropriate" emissions reduction targets for each company and the financial basis for your determination. Please explain how you determine that a company should provide emissions reduction targets in the absence of any legal duty to do so. Please also address the following.

> *a. Explain your assumptions regarding the achievement of net zero, including the timeframe for achieving net zero within the United States, China, India, and globally; when you believe the United States, China, and India will mandate net zero compliance; and what you believe will be the economic impact of achieving net zero in the United States, China, and India both in terms of GDP and consumer gas and electricity prices. This explanation should include any political and/or legal developments in each country that you believe are necessary for achieving net zero.*
>
> *b. Do you agree with the International Energy Agency that "in 2050, almost half the reductions come from technologies that are currently only at the demonstration or prototype phase?" If not, please explain. If yes, please explain the basis for your assumption that these technologies will be sufficiently widespread and economical to be deployed, such that companies must presently make assumptions based on their availability.*
>
> *c. Do you agree with the International Energy Agency that achieving net zero by 2050 means an approximately 8% decrease in global energy demand for an economy that is estimated to be twice as large and serve 2 billion more people? If not, please explain. If yes, please explain your assumptions about the impact on the American consumer regarding energy prices and the political impact energy price increases will have on net zero policy. (footnotes omitted.)*

As to shareholder proposals specifically requesting emission reduction targets, our benchmark policy provides –

> On a case-by-case basis, we will consider supporting well-crafted proposals requesting that companies report their greenhouse gas (GHG) emissions and adopt a reduction goal for these emissions. Particularly for companies operating in carbon- or energy- intensive industries, such as those in the basic materials, integrated oil and gas, iron and steel, transportation, utilities and construction industries, we believe that managing and mitigating carbon emissions are important to ensuring long-term financial and environmental sustainability. As such, we will carefully review these proposals on a case-by-case basis, taking into account: (i) the industry in which the company operates; (ii) the existence of robust risk management of environmental issues as evidenced by material fines, lawsuits or reputational damage; and (iii) the disclosure and GHG reduction targets adopted by the company's peers.

Our approach is not contingent on any set of assumptions about the timeline, technologies, or consequences of a global transition to net zero or a low-carbon economy and we recognize the uncertainties around those issues. Instead, when faced with such proposals, we focus on whether companies are disclosing sufficient information and managing the climate-related risks and opportunities associated with their particular industry and other circumstances. We will support such proposals when we believe that the establishment of certain GHG targets would result in practices that

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would serve to mitigate certain financially material risks, or when increasing disclosure would allow shareholders to better understand the risks facing the company and how the company is monitoring and managing the climate-related risks associated with its business.

4. Please describe your assumptions about the odds of China invading Taiwan, the likely consequences for U.S. companies from supply chain disruption and otherwise, and why you require disclosures regarding emissions reduction targets, but not for exposure to China.

We have not made any such assumptions, although we do generally monitor for geopolitical developments that may impact companies within our research universe. As your question suggests, in certain circumstances, such developments can have consequences for a company's risk profile and shareholder value that warrant additional disclosure to the company's shareholders. For example, last year in the wake of Russia's invasion of Ukraine, we modified our research approach to both Russian companies and non-Russian companies with material operations in that country.[12] As to the latter, we noted that –

> While we do not believe it is our position to make judgment calls on companies' strategies with respect to their presence in Russia, we believe that, from a governance standpoint, shareholders can reasonably expect companies that have decided to maintain material activities or operations in Russia to provide extensive disclosure to the market, clearly outlining the basis on which this decision was made, the extent of the company's exposure to Russia, and an evaluation of the risk associated with maintaining activities or operations in Russia, as well as any actions that have been taken to mitigate this risk.[13]

If geopolitical events unfold that result in shareholders of companies with material exposure to China and/or Taiwan facing similar risks, we would similarly reevaluate whether additional disclosures of these risks to shareholders was warranted.[14]

5. Do you agree that pressuring companies to adopt renewable energy means increasing dependance on China, given China's dominance of the renewable energy supply chain?

When reviewing proposals requesting an action or disclosure related to renewable energy, our benchmark policy considers the following factors: "(i) current energy regulations facing the company and their attendant risks to its operations; (ii) the company's responsiveness to issues related to energy efficiency and renewable energy; (iii) the company's current disclosure on this issue; and (iv) whether the company's actions and disclosure are aligned with that of its peers." Thus, our benchmark policy –

> may consider recommending in favor of a well-crafted proposal that requests increased disclosure of renewable energy strategies or efforts toward increased energy efficiency, if: (i)

[12] See "Glass Lewis' Research Approach in the Context of Russia's Invasion of Ukraine," available at https://www.glasslewis.com/glass-lewis-research-approach-in-the-context-of-russias-invasion-of-ukraine/.

[13] Id.

[14] We also considered the Russian invasion of Ukraine and the attendant energy issues as part of the rationale under our benchmark policy for not supporting certain climate-related shareholder proposals this past year (such as shareholder proposals on restricting banks' ability to finance oil and gas expansion).

there is credible evidence of egregious or illegal behavior regarding the company's energy strategy or actions in this regard; (ii) the company has been largely unresponsive to shifting regulatory changes related to energy policies; or (iii) adoption of the requested disclosure will clearly lead to an increase in or the protection of shareholder value.

Our benchmark policy further explains that "we are not inclined to support proposals requesting the adoption of renewable energy goals or proposals seeking the implementation of prescriptive policies related to energy efficiency or renewable energy." In fact, our benchmark policy has only recommended supporting one renewable energy shareholder proposal ever, in 2011.[15]

In terms of the consequences of any transition to different energy sources, our benchmark policy is focused on long-term shareholder value, rather than any ancillary goal, including the promotion of any nation's energy industry or energy independence. We believe that issues of individual countries' national interest are best considered and, if appropriate, addressed through national governing authorities' initiatives, rather than seeking to inject those considerations into shareholders' proxy voting decisions.

6. Please explain how adherence to net zero initiatives will impact American agriculture and/or food security including the use of fertilizer. Do you agree that net zero emissions policies may further increase American reliance on China and Chinese companies for food production?

Again, our benchmark policy is focused on long-term shareholder value, rather than any ancillary goal, including the promotion of U.S. agriculture or food security. As noted above, we believe that issues of individual countries' national interest are best considered and, if appropriate, addressed through national governing authorities' initiatives, rather than seeking to inject those considerations into shareholders' proxy voting decisions. Of course, our voting policies on climate plans or shareholder proposals requesting the disclosure or setting of greenhouse gas emission reduction targets do not just apply to U.S. companies.

7. Provide support for your apparent conclusion that no company that is a significant emitter of greenhouse gases may decide that it is in its financial interest not to reduce emissions and therefore not establish emissions reduction targets.

We have not made any such conclusion. To the contrary, our benchmark policy states that "we will carefully review [GHG emission reduction] proposals **on a case-by-case basis**, taking into account: (i) the industry in which the company operates; (ii) the existence of robust risk management of environmental

[15] The shareholder proposal in question asked the board of a coal company to issue a report on the financial risks of the company's continued reliance on coal contrasted with increased investments in efficiency and cleaner energy, including an assessment of the cumulative costs of environmental compliance for coal plants compared to alternative generating sources. After thoroughly reviewing the circumstances, our report concluded that "[g]iven the lack of disclosure, the Company's recent governance concerns, and the Company's failure to adequately describe board involvement with respect to oversight of environmental matters, we believe that the production of a report, prepared by the board, on the financial risks of continued reliance on coal, including assessment of the cumulative costs of environmental compliance for coal plants compared to alternative generating sources, would provide shareholders with assurance that the Company is evaluating and responding to this issue in a proactive manner."

issues as evidenced by material fines, lawsuits or reputational damage; and (iii) the disclosure and GHG reduction targets adopted by the company's peers." (emphasis added)

This company-by-company approach is reflected in our advice. For example, in 2021 and again in 2022 we analyzed a shareholder proposal at a major U.S. fossil fuel company requesting that the company set Scope 3 emissions targets consistent with the Paris Climate Agreement. Based on the facts presented, including the company's other actions and the nature of the company's business, our benchmark policy recommended shareholders vote against the proposal. Our analysis noted that the "[c]ompany and others like it are at a significant disadvantage relative to others in its industry in its setting of these emissions reduction targets, as setting a Scope 3 emissions reduction target in many ways would be setting a sales reduction target, given the Company effectively sells emissions."

8. Please provide any analysis you conducted to determine that insurance companies' discrimination based on race and sex would not violate the law, and therefore that any recommendation you made did not constitute a recommendation for them to violate the law. Further, please explain how recommending actions that could subject companies to legal liabilities complies with your duty of care and was the product of focus on financial factors.

Our proxy voting research is not intended to and does not provide any legal advice. In the United States, under applicable SEC rules, companies can exclude from the ballot any shareholder proposal that would cause them to violate the law.[16] In the situation referenced in your letter, our understanding is that the company sought such a determination from the SEC and the SEC determined that it was "unable to conclude that the Proposal, if implemented, would cause the Company to violate state law."[17] The company in question did not, to our knowledge, challenge that SEC determination in court. We also note that the shareholder proposal was precatory.

With respect to how our recommendation on the shareholder proposal in question was based on financial factors, the first sentence of our benchmark policy research report's analysis stated: "Glass Lewis recommends that shareholders take a close look at proposals such as this to determine whether the actions requested of the Company will clearly lead to **the enhancement or protection of shareholder value**." (emphasis added) After acknowledging the company's other efforts and its statements that it is not able to take race into account in its underwriting and pricing decisions, the analysis noted that the company had previously paid $450,000 to settle a Fair Housing Act lawsuit based on whether the Company's policies or practices inadvertently or disparately impacted certain communities. In light of this prior settlement and other considerations, we concluded "that an independent review of the Company's external impacts could shed light on areas that could result in further fines and/or reputational harm."

[16] 17 C.F.R. 240.14a-8(i)(2) (company can exclude a proposal from the ballot "[i]f the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.").

[17] See Letter of SEC Division of Corporation Finance 14a-8 Review Team to Yafit Cohn, The Travelers Companies (March 30, 2022), available at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2022/trilliumfriendstravelers033022-14a8.pdf.

9. Please explain whether you consider yourselves subject to the federal Investment Advisers Act. If not, explain why not, and (for ISS) further explain why you have represented that you are an investment adviser subject to the Act in your agreements.

Glass Lewis is not subject to the Investment Advisers Act because it does not provide investment advice. As explained above, Glass Lewis provides proxy voting advice to corporate shareholders. Exercising one's right as a shareholder to vote on a company's internal governance matter is different from making a decision as an investor whether to buy or sell a security.[18] Moreover, even if the statutory definition of an investment advisor reached proxy advice -- which it does not -- Glass Lewis' research reports would fall within the statute's exclusion for publishers.[19]

Moreover, companies are generally prohibited from registering with the SEC as an investment adviser unless they have $100 million in client assets under management.[20] Glass Lewis does not have any client assets under management. As the SEC has explained, "Because they typically do not manage client assets, most proxy voting advice businesses would be prohibited from registering with the Commission unless they qualify for an exemption to the prohibition under Rule 203A-2."[21] And, as the SEC has also explained, if this sort of an exemption applied, it "**permits** registration—it does not **require** it. … [A]t a minimum, the Commission would have to amend the Advisers Act rules to require that all proxy voting advice businesses register as investment advisers."[22]

10. Please describe the extent of your coordination with Climate Action 100+, including your communications with Climate Action 100+ or any of its members.

Glass Lewis is not a member of Climate Action 100+, nor do we coordinate our activities with Climate Action 100+. We do reference Climate Action 100+ in certain of our voting policies, as we do with a number of other organizations, and we have hosted at least one webinar with Climate Action 100+ signatories focused on the group's work. Based on client demand, we also offer our voting platform

[18] In statutory terms, proxy voting advice is fundamentally different from the "business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11). Glass Lewis does not provide such investing advice and we expressly disclaim that our corporate governance research and recommendations can or should be used for that purpose. Nor do we think that the remaining clause of the statutory definition is properly read to sweep up anyone whose business involves analyzing or reporting on any issue related to a company.

[19] 15 U.S.C. § 80b-2(a)(11)(D); see also Lowe v. U.S. Securities and Exchange Commission, 472 U.S. 181, 207-08 (1985) ("The [Investment Advisers] Act was designed to apply to those persons . . . who provide personalized advice attuned to a client's concerns, whether by written or verbal communication. The mere fact that a publication contains advice and comment about specific securities does not give it the personalized character that identifies a professional investment adviser.") (footnote omitted).

[20] 15 U.S.C. § 80b–3a.

[21] Brief of U.S. Securities and Exchange Commission in Institutional Shareholder Services v. U.S. Securities and Exchange Commission, Filed Oct. 30, 2020, Case 1:19-cv-03275-APM (D.D.C.), at 9.

[22] Brief of U.S. Securities and Exchange Commission in Institutional Shareholder Services v. U.S. Securities and Exchange Commission, Filed Dec. 9, 2020, Case 1:19-cv-03275-APM (D.D.C.), at 16-17 (emphasis in original; footnote and citations omitted).

clients a Climate Action 100+ watchlist function that is sourced from data Climate Action 100+ makes publicly available.

In terms of communications, Glass Lewis has long welcomed dialogue with public companies, shareholder proponents, and other stakeholders in order to foster mutual understanding, transparency, and feedback with respect to Glass Lewis' policies, methodologies, and analysis. To that end, we have developed an Engagement Policy to guide our interactions with outside parties and make this policy available on our website.[23] To give a sense of the scale of our communications, our Research analysts held some 1,300 engagements with companies and other stakeholders last year.

It is our understanding that Climate Action 100+ is primarily managed, at least in the United States, by Ceres. Ceres has engaged with Glass Lewis and expressed its views to Glass Lewis on relevant policy issues and shareholder proposals on a number of occasions. In terms of communications with Climate Action 100+ members, according to Climate Action 100+'s website, it "is made up of 700 global investors who are responsible for more than $68 trillion in assets under management." A number of these investors are also among our approximately 1300 institutional investor clients, who we are in dialogue with on an ongoing basis, of course.

11. Please identify which asset managers belonging to the Net Zero Asset Managers Initiative engaged with you on the issue of emissions reductions as it relates to your products or services, describe what they communicated to you, and describe any response that you provided.

Glass Lewis is not a member of the Net Zero Asset Managers Initiative or the Net Zero Financial Service Provider's Alliance. Nor does Glass Lewis coordinate its activities with these organizations.

In terms of communications, as noted above, Glass Lewis welcomes dialogue with all relevant stakeholders and regularly meets with investors, companies and other stakeholders with a range of views. The Net Zero Asset Managers Initiative has engaged with us on a number of occasions and expressed its views with respect to relevant policy issues. In terms of communications with asset managers that are Net Zero Asset Managers Initiative members, according to its website, the Net Zero Asset Managers Initiative has 301 signatories with $59 trillion in assets under management. There is some overlap between these asset manager signatories and our approximately 1,300 institutional investor clients, and, as noted above, we talk to our clients on an ongoing basis.

* * *

As is reflected in their votes and statements, it is clear that most institutional shareholders today believe that effective and robust oversight of ESG risks is critical to ensuring the long-term viability of companies and that a failure to mitigate these risks, or fully allow shareholders to understand these risks, poses real

[23] See Glass Lewis Engagement Policy (updated October 2021), available at https://www.glasslewis.com/wp-content/uploads/2021/01/Engagement-Policy.pdf.

risks to enterprise and shareholder value.[24] Many of our shareholder clients – who often have their own legal responsibilities to safeguard pensioners' and other individuals' investments – believe they need this information to serve as prudent stewards and fiduciaries. Glass Lewis' benchmark policy reflects this common perspective and is available to clients who want to use it in their stewardship activities.

At the same time, we recognize that some shareholders have different views or investment time horizons and may not see many environmental and social issues as material considerations. For such clients, we offer our Governance-Focused Policy and other tools to help them vote proxies as they see fit. As discussed above, it is up to our clients to choose their voting policy and, ultimately, how they cast each vote. Glass Lewis is equally committed to serving all our clients, whatever their views and however they decide to vote.

We appreciate the opportunity to respond to your questions and explain our benchmark policy and role in the proxy voting process.

Sincerely,

Kevin Cameron
Executive Chair

[24] This view is not limited to investors. See Martin Lipton, Wachtell, Lipton, Rosen & Katz, "Update on ESG, Stakeholder Governance, and Corporate Purpose," Harvard Law School Forum on Corporate Governance (Jan. 28, 2023) ("Regardless of one's political preferences, the inescapable reality is that ESG risks have long been considered by boards and management — along with all other material risks and issues . . . — and must continue to be so considered in order to ensure the company's value over the long term."), available at https://corpgov.law.harvard.edu/2023/01/28/update-on-esg-stakeholder-governance-and-corporate-purpose/#more-154416.