October 18, 2010

The Honorable Mary L. Shapiro
Chair
U.S. Securities and Exchange Commission
100 F Street, NE Washington DC 20549-1090

RE: File No. S7-14-10
S.E.C. Concept Release on the U.S. Proxy System

Dear Ms. Shapiro:

We welcome the opportunity to comment on the proposed rule changes to the proxy voting system in the United States and commend the work of the S.E.C. in exploring enhancements to the proxy voting system. We believe the S.E.C.'s tripartite focus on the accuracy, transparency and efficiency of the voting process; on communications and shareholder participation; and on the relationship between voting power and economic interest is particularly relevant given the increased shareholder scrutiny of risk controls, executive compensation and director competence and performance. Further, we believe both the public and the securities markets will benefit from significant implementation of the S.E.C.'s proposals.

Glass Lewis is an independent governance services firm, which provides proxy voting research, analysis, recommendations and custom services to institutional investors from around the world. While, for the most part, our clients use our research to help them form their proxy voting decisions, our clients also utilize our research when engaging with companies before and after their 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 custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

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 concept release where we felt our input would be most relevant.

We believe some of the proposed changes will promote transparency, enable full vote confirmation and provide for more efficient, therefore less costly, means of disseminating meeting information. This will encourage greater participation by shareholders, including retail shareholders, through a simpler, more transparent system.

The ability of shareholders to effect change at public companies through the power of their voting at shareholder meetings has never been greater. Recent S.E.C. and Congressional rulemaking has enhanced the ability for shareholders to participate more meaningfully in the shareholder voting process through the elimination of broker voting in director elections and facilitation of shareholder access to the proxy. We recognize that the implementation of shareholder access has been suspended pending the outcome of the legal challenge of the S.E.C.'s rulemaking, but we believe the ability of shareholders to nominate directors is a fundamental shareholder right that should be upheld. In addition, a growing number of companies are adopting shareholder-friendly structures and provisions, including majority voting for directors. Further, as a result of the global financial crisis, shareholders are more closely examining their portfolio companies' corporate governance and are increasingly holding boards accountable for oversight lapses. Therefore, we believe it is essential to ensure the integrity of the voting process in order to ensure that votes are counted correctly. Director elections and proxy access, when implemented, can improve corporate outcomes.

Accuracy, Transparency, and Efficiency of the Voting Process

Vote confirmation

We believe shareholders are entitled to receive full vote confirmation, i.e. proof that not only were their votes transmitted prior to cutoff but that the correct number of shares was tabulated and that the voting on each proposal was in accordance with the beneficial shareholder's instructions. Complete vote confirmation would affirm the integrity of the vote and reinforce the importance of voting. Admittedly, there are factors that make complete vote confirmations a complicated process. However, there are already instances where confirmations are being provided to investors today, so we believe the complicating factors can be readily overcome if the appropriate incentives exist for the various intermediaries involved in the voting process. In return, a fully transparent and accurate voting system would significantly strengthen the value of, and therefore shareholder care applied to, proxy voting. Further, we believe it is essential to ensure that only shareholders of record are able to cast votes and that only those votes are ultimately tabulated; a robust confirmation process could provide this assurance.

Most large institutions have multiple funds and accounts. Under the current system, it is nearly impossible for shareholders to learn whether the votes of each individual account are submitted without deviation along the complete chain of intermediaries, i.e. from the shareholder to the company. The complexity and opacity of the current process, as described below, make it difficult to determine for certain if there were no mistakes in the transmission of votes. This means that shareholders are unable to confirm not only if the shares were tabulated but, more troubling, whether the shares were voted as instructed.

(Any deviation from tabulation of a shareholder's actual number of votes detracts from both the impact of that vote as well as the willingness of shareholders to devote attention and resources to casting an informed vote.)

We recognize that vote confirmation is made more challenging by the number of entities in the chain of intermediaries (e.g., institutional shareholders, custodian banks, sub-custodians, depositaries, proxy solicitors, transfer agents, proxy distribution agents, proxy voting agents like Glass Lewis, tabulators, etc.). This complexity is exacerbated by both the lack of standard account identifiers, since each intermediary may assign a different identifier to the same account, and the absence of a robust communication standard, making ballot reconciliation a resource-intensive, time-consuming and, occasionally, inexact exercise. As one of the chain of intermediaries, we look forward to working with the other intermediaries to develop further processes and procedures to facilitate the accurate tabulation of votes.

We believe vote confirmation could be facilitated through the creation of an electronic tag for each account that could be followed through the chain of intermediaries involved. Using a unique identifying code provides the added benefit of allowing shareholders to retain their anonymity if they want. Ideally, a central entity with no economic stake in the process, such as the DTC, would assign and manage the identification codes. Electronic confirmation is preferable to paper confirmation, since there is already a tremendous amount of paper used in the proxy voting process with concomitant costs and increased likelihood of misplacement.

We believe frequent audits of voting activity should be conducted to ensure the integrity of the process. Further, we believe access to voting data in order to conduct such audits should not be limited to shareholders and their representatives (e.g. audit firms hired by shareholders), but should be granted to custodians, depositaries or firms hired by regulators or exchanges. Since all intermediaries have a role in the proxy voting process, all intermediaries should have access to voting records to ensure all votes were cast in a timely manner, in accordance with the shareholder's instructions and in the correct amount. To facilitate audits for clients, our systems have robust audit capabilities, featuring time and date stamps of each ballot action, e.g., receipt of instruction, vote confirmation, transmittal, etc.

Share Lending

We recognize that share lending provides a valuable means of maximizing returns for mutual fund shareholders and pension beneficiaries. However, this practice can also result in the separation of economic and voting interests. When institutional investors lend their portfolio securities, the lending institution generally may not vote these shares unless it recalls them. For votes with a material financial impact, shareholders recall lent shares in order to vote them, reversing the impact of this separation of the economic and voting interests. Some shareholders, in order to ensure they do not miss an important vote, have chosen one of two extreme options: 1) not lending shares at all, inhibiting both market liquidity and eliminating a reliable revenue source; or, 2) recalling lent shares for every vote, which is very costly and therefore may not be in the interest of the shareholder and ultimate beneficiaries. However, we believe there are several options that would put shareholders in a position to evaluate if the issue being voted on is material enough to warrant recalling the lent shares, including: prior notification, advanced record date and dual record dates.

To determine whether to recall shares on a selective basis, shareholders must be in a position to evaluate if the issue being voted is material enough to warrant recalling the lent shares.

Prior notification: The easiest way to ensure shareholders have the opportunity to recall lent shares would be for issuers to provide full advance notice of their proposals prior to record date. We believe that, with adequate notification, shareholders would be armed with enough information to decide whether to recall their shares. Often the decision whether to recall shares on loan requires the input of several investment professionals, usually meeting in committee and only periodically. Therefore, public notice of the issues to be voted on should be made as far in advance of the record date as possible. Indeed, we believe information should be distributed at least 21 days prior to record date.

Advance record date: To address concerns about companies having sufficient time to provide the information and, in some cases, await S.E.C. decisions on no-action requests to exclude shareholder proposals, prior notification could also be accomplished by moving the record date closer to the meeting while retaining the current timing for information distribution. As such, information relevant to making voting decisions would still be provided to shareholders in time to conduct full analysis of the issues, which is critical given the compressed nature of the proxy season (most U.S. companies hold their annual meetings within the same three-month time span).

Dual record dates: Similarly, the use of two record dates, one for determining holders to distribute information to (i.e. the “distribution record date”) and the second for actual vote authority determination (i.e. the “voting record date”) would enable shareholders to recall any loaned securities prior to the record date. Again, we believe the distribution record date should be at least 45-60 days prior to meeting date (similar to the current record date) and that the voting record date should be no closer than 21 days prior to meeting date

Using a record date closer to the meeting or establishing dual record dates would be similar to the voting process employed in the U.K. and other markets. In the U.K., the proxy distribution agents hired by the custodian banks set an information distribution date well in advance of the meeting (generally 20 business days) to determine the shareholders for information distribution purposes and then employ a registration date (i.e. a record date) two days prior to the meeting date.

However, setting the registration date so close to the meeting can make it very difficult to distribute ballots and meeting information to investors that buy shares close to the meeting date. For example, if a shareholder were to purchase stock in a company three days prior to the company's meeting, the investor would be eligible to vote but would find doing so very difficult, given the short time frame for intermediaries to process the ballot and for shareholders to cast an informed vote. Also, a record date just two days prior to the meeting makes it difficult to determine the actual number of shares voted, since the process requires the use of a pre-submitted vote instruction form that is adjusted to the respective share amount on the voting record date. We believe the process in the U.K. is an example of both the advantages of distributing information prior to the record date as well as the disadvantages of a voting record date too close to the meeting date.

Therefore, to avoid problems with a record date too near to the meeting date with associated challenges of determining voting authority, we believe the record date should be no closer than 21 calendar days prior to the meeting date. A record date 21 days prior to the meeting, coupled with prior information distribution, would ensure shareholders have enough time and information to recall shares on loan and would provide enough time to identify shareholders, provide them with requisite information, reconcile missing ballots, etc. Further, a record date 21 days prior to the meeting date provides the added benefit of making it more likely that record-date shareholders are still likely to be shareholders at the time of the meeting.

While we are not advocating for a specific option (prior notification, advanced record date or dual record dates), we urge the Commission to ensure that shareholders can determine prior to the voting record date what the proposals will be and can therefore make an informed decision as to whether or not to recall shares. To reiterate, with voting taking on added importance due to the elimination of broker voting and the growth of majority voting for directors, we believe it is important to ensure every vote is cast by interested, fully-informed shareholders.

While we recommend disclosing the actual voting proposals with sufficient time in advance of the record date, we believe the submission of subsequent proposals that could be added to the agenda after the record date or at the shareholder meeting should be prohibited.

Issuers should not be able to add proposals to the agenda after the record date except for shareholder proposals for which they are requesting no-action relief (i.e. S.E.C. permission to exclude), in which case they should disclose information regarding the pending shareholder proposal in the proxy. This would preclude issuers from gaming the system by initially presenting non-controversial proposals, for which shareholders are less likely to recall shares on loan in order to vote them, and then adding controversial proposals after the window to recall has closed. To allow such subsequent proposal submission would defeat the purpose of prior disclosure.

Another consequence of share lending is that it makes determining the actual beneficial owner more challenging; securities lending is by far the most common reason for share discrepancies. We recommend the S.E.C. require better disclosure of shares on loan by all intermediaries in the voting process, which would limit under- or over-voting due to confusion as to the identity of the beneficial owner. Full disclosure would further enhance the integrity of the voting process.

Another way to limit the unintended deleterious effects of share lending would be to decouple the dividend record date from the voting record date. Since lending is sometimes used for dividend swaps, companies could be required to separate dividend record dates sufficiently from voting record dates so that lending shares for such swaps would no longer negatively impact voting or create confusion about beneficial ownership for voting purposes. Further, employing either dual record dates or a voting record date closer to the meeting would mitigate "empty voting," since shareholders would be more likely to continue to hold the shares.

Proxy Research Firms

As the second largest proxy research firm in the world, we are happy to share our perspective on our role in the financial markets. We believe proxy firms play an important support role, helping institutional investors meet their fiduciary responsibility to vote thousands of securities, usually in a very compressed time frame.[1] 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,

[1] The compressed time frame of certain markets' proxy seasons is exemplified by Japan where 75% of the Tokyo Stock Exchange companies' annual meetings are held in June and nearly 70% during the last two weeks of June.

none of the information contained in Glass Lewis' research reports is personal or is tailored to the investment strategy of any specific client.

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

Just as many clients rely on the expertise of investment professionals in determining investment strategy, selecting asset allocation strategies and picking stocks, etc., some clients rely on our expertise in voting on proxy proposals. While these clients may design a custom 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 adopt our policy 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 policy as their policy, with the ability to review and change votes, which they do routinely.

Research Process and Quality: Proof of the Pudding Is in the Tasting

We believe the ultimate arbiter of the quality of any research is the end user, i.e. the institutional clients that engage the services of the research provider. Users are free to choose among the various proxy research providers.

Since 2003, Glass Lewis has primarily engaged in researching, analyzing and making voting recommendations regarding proxy voting matters at companies worldwide. We employ an experienced, multi-disciplinary team that leverages formal training and real world experience in finance, accounting, law, business management, public policy and international relations. We conduct a detailed analysis of each issue at each company while eschewing a one-size-fits-all approach.

Our research professionals analyze public company filings, specifically proxy statements and financial statements, as well as multiple external original research sources to evaluate board effectiveness and company risk profiles. Our research team is led by our Chief Policy Officer, an attorney, and our Chief Operating Officer, an MBA graduate, who have a combined 30 years experience working in corporate governance and proxy voting. Other members of our research management team include our Managing Director of Mergers & Acquisition Analysis who holds an MBA and worked as an investment banking analyst for a global investment bank; our Director of Global Compensation Analysis who also holds an MBA and has worked for several governance research firms in his career including, most recently, a large compensation consultancy; and our Director of European Policy, an Italian attorney who was in-house corporate counsel to two Italian companies and whose law degree thesis was on takeover bids. Our team leverages Glass Lewis' sophisticated proprietary research database enabling us to track company and director performance and governance over the past eight years.

Proxy advisers, like many other research providers, such as those making buy and sell recommendations, credit rating agencies, forensic accounting research etc., do not maintain an economic stake in the companies covered. On a practical basis, the costs would be prohibitive since we cover approximately 20,000 companies. However, just because we do not have an economic stake in the companies we analyze does not mean the research is any less thorough. As for concerns about barriers to entry in the proxy research industry, we are evidence of the lack of true barriers to competition, since most of our clients formerly used competitors' research; we are now preparing for our 9th proxy season after launching our company from scratch in 2003.

Disclosing Research Reports and Methodology

We do not believe public disclosure of our research either in general or relating to executive compensation plans in particular would provide any benefit in regard to conflicts. (As discussed in detail below, the best way to address conflicts is to not have them; the next best method is robust disclosure about the relationship.)

Glass Lewis' guidelines and compensation evaluation tools are designed for our paying subscribers, who bear the expense of our services through the subscription fees they pay to us. Both the benefits and costs of our services ultimately fall on our clients' beneficiaries (e.g., mutual fund shareholders and public pension plan participants). We do not believe these ultimate beneficiaries should subsidize the free public display of proprietary research for which they have paid. Further, other proprietary research providers, including those making buy and sell recommendations, do not give away their research.

We do not believe that giving away our research, even after a company's shareholder meeting, is an effective way, never mind the best way, to address potential risks. Nor do we think our clients should bear the cost of subsidizing others' use of our research for the putative, marginal benefit of conflict avoidance when there are other, significantly more effective means to do so. Giving away our research would limit the competitive advantage our research provides to our clients and, requiring this of all providers, may impede further entrants into the proxy research space. Further, public disclosure may encourage companies to match their practices to advisers' models rather than designing programs that are in the interest of shareholders.

Competition

As the second largest proxy research provider, we believe we bring a unique perspective to the issue of competition in our industry. We recognize that the number of proxy research providers is relatively small and that the largest provider has significant market share. However, we believe that competition has greatly benefited shareholders, as it has resulted in better research and service from all providers. The size and longevity of other providers have not hindered or constrained our growth but have caused us to sharpen our research and client focus.

Conflict Avoidance and Management: Sunlight Is the Best Disinfectant

We believe the S.E.C. should adopt rules to eliminate, reduce or require disclosure of conflicts to the greatest extent possible. Since conflicts can arise not just in the provision of 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 for corporate issuers. As a result, Glass Lewis does not solicit nor provide consulting services to the corporate issuers whose proxy proposals we analyze. We believe this is a model the S.E.C. should consider.

We believe examining the treatment of other conflicts is illustrative for determining the precedent for successful examples of conflict avoidance and disclosure. One example of an industry where the current solution was found ineffective is the credit ratings industry. Some credit rating agencies, which, in effect, sell their ratings to the companies they rate, have been found to have altered ratings at the request of issuers.[2] This ability to potentially negotiate a better rating creates the opportunity to "game" the system.

[2] In re Moody's Corporation Securities Litigation, Case 1:07-cv-08375-SWK

On the other hand, the treatment of audit firm conflicts under Sarbanes-Oxley provides an example of an effective means of limiting conflicts by significantly limiting an audit firm's ability to work for both the audit committee and company executives, coupled with specific disclosure requirements. Similarly, compensation consultants have increasingly been prohibited by companies from providing consulting services to both the board and management.

However, we recognize that some conflicts are unavoidable. In those cases, regulatory bodies have historically required public companies to provide significant disclosure about potential conflicts. For example, issuers must disclose the audit firm fees paid for both audit and non-audit work to highlight any conflicts. Similarly, companies must disclose certain related-party transactions of executives and directors so that investors are able to determine if those conflicts affected the independence and ultimately the performance of the director. Further, the S.E.C. requires companies to disclose certain fees paid to compensation consultants as an indication of potential conflicts when the consultants provide additional services to the company. We believe that research providers should be required to provide robust and specific disclosure about their potential conflicts. Only in this way can the users of the research make a determination if the research is tainted by the conflict.

Further, just as companies 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. 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 Glass Lewis becomes aware through public disclosure of OTPP's ownership stake in a company we are covering, 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 release to enhance transparency in the system, to eliminate, reduce, and disclose conflicts, and to facilitate and not discourage competition as well as to reaffirm the accuracy and integrity of the shareholder vote. While we understand it may not be feasible for the S.E.C. to create an entirely new framework to regulate the relatively small number of proxy research firms, we do believe some oversight on the activities of proxy advisory firms may address the concerns the market has regarding the role of these firms.

However, we do not believe this would be necessarily achieved through a requirement for each proxy advisor to register as an investment advisor under Advisers Act Section 203A(c), nor do we think a new registration or regulation is necessary. 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.

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 conflicts from buying services from providers such as audit firms and compensation consultants.

While we are not registered as an investment advisor, the largest proxy research provider and the one which engages in significant business with corporate issuers is registered; registration has not resolved those conflicts adequately however. We believe requiring registration would not resolve the concerns raised in the Concept Release regarding conflicts and quality. Furthermore, we do not believe registration is relevant to the proxy advisory business, since proxy advisors do not provide investment advice, execute trades or manage any client money. We do not think the exact model used for credit rating agencies was effective in preventing oversight lapses. However, aspects of that model, such as prohibiting certain activities while mandating periodic disclosures, could be effective.

We believe a more effective approach to registration as an investment advisor would be to create a new exclusion from the definition of investment adviser in Section 202(a)(11) (similar to the publisher's exception), whereby proxy advisory firms would be exempt from registration but instead would be required to comply with certain rules which would

(i) preclude them from carrying out certain activities that conflict with their role as proxy advisors (e.g. consulting with issuers) and (ii) require the implementation of a formal conflict disclosure process to address existing and unavoidable conflicts of interest.

Alternatively, since we believe requiring more specific disclosure regarding conflicts would be the most effective means, apart from prohibiting certain conflicts altogether, to address conflicts, we believe proxy advisors could be made subject to Exchange Act Rule 14a-2(b)(3), wherein advisors would disclose any significant relationship with issuers.

We believe either of these approaches would allow for more customized rulemaking and adequate oversight of these firms by the S.E.C. This would have the added benefit of not creating an additional hurdle for new entrants, since initial and ongoing compliance with registration is expensive and resource intensive. Furthermore, many of the requirements for registered investment advisers are not pertinent to proxy advisors and therefore neither the exercise of complying with the registration nor the registration itself would have great utility to institutional investor clients.

Research Accuracy and Process Transparency

Since our founding, we have employed a robust process for revising reports in response to updates, errors and omissions. If a company updates its proxy materials or notifies us of an error or oversight, we revise the report, explain the nature of the revision in a note on the front page of the report and directly send an email with both the explanation of the change and the revised report to each client who viewed the report. Since we publish our reports well in advance of companies' shareholder meetings (an average of three weeks before the meeting), our clients have significant time prior to the meeting to review our analysis, including any revisions, in making their voting decision.

Although we do not consult directly for companies, most corporate issuers employ service providers (e.g. proxy solicitors, law firms) who are clients of Glass Lewis and, as such, most issuers can access our analysis and recommendations through such providers prior to the voting cutoff date. The publication of our reports well in advance of meeting date allows for sufficient time for us to revise reports, if necessary, in response to input from issuers and their representatives. Furthermore, just as we disclose specific information about conflicts on the front page of our reports, we describe the exact nature of all report revisions, including changes to our recommendations, on the front page of our reports.

While we post summary versions of our guidelines and approach to evaluating compensation on our public website, we only share our guidelines and proprietary approaches to evaluating compensation with our paying clients.

We would be happy to provide any additional information to the S.E.C. regarding this matter. Thank you for the opportunity to comment on the proposed concept release regarding the U.S. Proxy System.

Sincerely,
/s/
Katherine Rabin, Chief Executive Officer

/s/
Robert McCormick, Chief Policy Officer

cc: Kathleen L. Casey, Commissioner, Securities and Exchange Commission
Elisse B. Walter, Commissioner, Securities and Exchange Commission
Luis A. Aguilar, Commissioner, Securities and Exchange Commission
Troy A. Paredes, Commissioner, Securities and Exchange Commission