



January 7, 2020

Mr. Alex Goodenough
Policy Analyst
Desk Officer for the U.S. Securities and Exchange Commission
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503-0009

Re: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice
Comments on the Collection of Information Requirements, Release No. 34-87457
SEC File No. S7-22-19
OMB Control No. 3235-0059

Dear Mr. Goodenough:

Thank you for the opportunity to comment on the collection of information burdens of the Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice recently proposed by the Securities and Exchange Commission.¹ Glass Lewis is concerned that the Commission's Paperwork Reduction Act ("PRA") analysis fails to account for the primary collections of information the proposed amendments impose on proxy advisors. In addition, to the extent the Commission's analysis does provide a conclusory, unexplained estimate of the burdens on proxy advisors of complying with one alternative under the collection of information requirements, it grossly understates the actual burdens that would be imposed by the amendments. For these and other reasons detailed below, Glass Lewis respectfully requests that OMB file comments with the Commission and disapprove the collections of information contained in the proposed amendments, pending the Commission providing a revised, careful and reasonable estimate of the burdens and costs associated with such amendments.

Glass Lewis' comments concern only the collection of information burdens that would result from the proposed amendments and are being provided now in accordance with the expedited schedule for commenting on the PRA analysis outlined in the Proposing Release.² Glass Lewis intends to submit additional comments to the Securities and Exchange Commission

¹ Securities and Exchange Commission, Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-87457 (November 5, 2019) (the "Proposing Release").

² Proposing Release at 127 ("OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication."). The proposed rules were published in the Federal Register on December 4, 2019.

concerning other aspects of the proposed rules, including the economic analysis, later in the comment period.

I. Background

A. Glass Lewis

Founded in 2003, Glass Lewis is a leading, independent proxy advisor -- that is, a governance services firm that provides proxy research and vote management services to institutional investor clients throughout the world. While, for the most part, investor clients use Glass Lewis research to help them make proxy voting decisions, these institutions also use Glass Lewis research when engaging with companies before and after shareholder meetings. Further, through Glass Lewis' Web-based vote management system, Viewpoint[®], Glass Lewis provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

Glass Lewis serves more than 1300 institutional investor clients - primarily pension funds, mutual funds and other institutions that invest on behalf of individual investors and have a fiduciary duty to act, including through proxy voting, in the best interests of their beneficiaries. In 2018, Glass Lewis issued 23,210 proxy research reports, including 5565 reports on U.S. issuers and 17,550 reports on non-U.S. issuers. In addition, the significant majority of Glass Lewis' clients have their own custom voting policies. Glass Lewis helps these clients implement their own voting policies by applying those policies to the facts presented by companies in their proxy statements and recommending how they vote accordingly.

Glass Lewis believes that proxy advisors play an important support role, helping institutional investors meet their fiduciary responsibility to vote thousands of securities in an informed manner, usually in a very compressed timeframe. Providing proxy research services to institutional investors is Glass Lewis' core business and sole focus.

B. The Proposed Rules

1. Overview of the Proposed Rules

The proposed amendments have two primary components. First, they would codify the SEC's interpretation that proxy advice is a proxy solicitation.³ While this part of the proposed rule is not itself a collection of information, it would have at least two significant consequences: 1) it would expose proxy advisors to potential private litigation by companies under SEC Rule

³ See Proposed Rule 17 C.F.R. 240.a-1(l)(iii)(A). This interpretation, just made in August 2019, is the subject of a pending lawsuit challenging it, among other grounds, as beyond the SEC's statutory authority. See Institutional Shareholder Services, Inc. v. Securities and Exchange Commission and Walter Clayton III, Case No. 1:19-cv-03275 (D.D.C.) (filed October 31, 2019).

14a-9; and 2) it would make proxy advisors dependent on the exemptions from the SEC's information and filing requirements for proxy solicitations.⁴

Second, having made proxy advisors dependent on the current exemptions from the information and filing requirements for proxy solicitations, the proposed rules would eliminate those exemptions and replace them with three new, mandatory requirements for proxy advisors: 1) a requirement to make additional, specified disclosures related to conflicts of interest in their proxy advice and "in any electronic medium used to deliver the proxy voting advice";⁵ 2) a requirement to provide the relevant companies advance copies of proxy advice reports for review before proxy advisors can share them with their clients;⁶ and 3) a requirement to provide their reports a second time to companies before giving them to clients and, if requested to do so, to include a hyperlink to the companies' response in the proxy advice.⁷ The Commission explained the mandatory issuer "review and feedback" periods as measures to enhance the "accuracy" of proxy advice, which it listed as the primary goal of the proposed amendments. In fact, stressing the need for proxy advisors to carefully consider and take companies' feedback into account, the Proposing Release warned proxy advisors that not incorporating company-suggested revisions could expose them to liability.⁸

By defining proxy advice as a solicitation and substituting the three new conditions for the existing exemption, the proposed amendments would force proxy advisors to choose one of two courses: 1) either they can comply with the information and filing requirements for proxy solicitations, which, among other things, requires making a public filing of their proxy advice with the SEC either before or at the time it is issued,⁹ and including in their filing the "extensive information [required] to be included in the proxy statement;"¹⁰ or 2) they can seek to avail themselves of an exemption from those requirements by making the three new disclosure and information-provision steps described above.

The proposal was issued by a vote of 3-2. The dissenting Commissioners expressed significant concerns about the proposed rules, including the substantial costs and delays the

⁴ Since at least 1992, the SEC had exempted proxy advice from the information and filing requirements applicable to proxy solicitations.

⁵ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(i).

⁶ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(A)(1-2).

⁷ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(B).

⁸ See Proposing Release at 51.

⁹ 17 C.F.R. 240.14a-3.

¹⁰ Proposing Release at 23.

mandatory issuer review and feedback periods would impose on the proxy voting system. In fact, one of the dissenting Commissioners illustrated how the proposed rule could lead to an issuer having more time to review a proxy advisor's advice than the proxy advisor had to prepare it.¹¹ In addition to their substantive objections, one of the dissenting Commissioners noted "how rushed and incomplete the analysis underlying today's actions is."¹²

2. The Commission's Paperwork Reduction Analysis

The Commission included a Paperwork Reduction Act analysis in its proposing release and indicated that, as required by 44 U.S.C. 3507(d) and 5 C.F.R. 1320.11, it had submitted that analysis to the Office of Management and Budget for review of the proposed, new collections of information in the proposed rules. (The Commission's existing proxy rules are an approved collection of information, designated Regulation 14A (Commission Rules 14a-1 through 14a-21 and Schedule 14A) (OMB Control No. 3235-0059)). The Proposing Release's PRA analysis occupies seven pages of text, including three tables, near the end of the release. The PRA analysis begins by acknowledging three premises -

- "The hours and costs associated with maintaining, disclosing, or providing the information required by the proposed amendments constitute paperwork burdens imposed by such collection of information;"¹³
- "To the extent that a person or entity incurs a burden imposed by Regulation 14A, it is encompassed within the collection of information estimates for Regulation 14A. This includes registrants and other soliciting persons preparing, filing, processing and circulating their definitive proxy and information statements and additional soliciting materials, *as well as the efforts of third parties such as proxy voting advice businesses whose voting advice falls within the ambit of the federal rules and regulations that govern proxy solicitations;*"¹⁴ and

¹¹ See Statement of the Honorable Allison Herren Lee at SEC Open Meeting (November 5, 2019) (an "issuer could actually wind up with more time to review the proxy advisor's recommendation than the proxy advisor itself would have to write it. How can this possibly result in improved quality or even be workable?") (footnote omitted), available at <https://www.sec.gov/news/public-statement/statement-lee-2019-11-05-shareholder-rights>.

¹² Statement of the Honorable Robert J. Jackson, Jr. at SEC Open Meeting (November 5, 2019), available at <https://www.sec.gov/news/public-statement/statement-jackson-2019-11-05-open-meeting>.

¹³ Proposing Release at 121.

¹⁴ Proposing Release at 121 n. 268 (emphasis added).

- “Compliance with the proposed amendments would be mandatory for proxy voting advice businesses relying on the exemptions in Rules 14a-2(b)(1) or (b)(3).”¹⁵

Having established this foundation, however, the remainder of the section fails, at a basic level, to carry out the analysis that necessarily follows from these premises. The PRA analysis makes no mention of the consequences of proxy advisors having to comply with the information and filing requirements of the SEC’s proxy rules. Nor does it discuss, other than in passing, the alternative for proxy advisors to conduct two new rounds of mandatory disclosure to, and review by, companies in order to be exempt from those requirements. There is no discussion of the steps that would be required to make these disclosures, nor any estimate of how many companies would receive and respond to draft proxy advice or any of the other predicates to estimating the burdens that would be imposed by the new collections of information. Having skipped over any discussion or analysis of the primary new burdens the rule would impose, the analysis then summarily concludes that, after the initial year, compliance with the new disclosure and review requirements would take proxy advisors an average of 250 hours per year -- or somewhat less than three minutes for each US public company on which Glass Lewis publishes a research report.

II. The Proposing Release does not analyze or estimate the burden of subjecting proxy advice to the information and filing requirements for proxy solicitations.

As discussed above, the first component of the proposed rules would codify the SEC’s interpretation that proxy advice is a solicitation, thereby subjecting proxy advisors’ advice to the information and filing requirements of the SEC’s proxy rules. While the Proposing Release does summarily assert that the “information and filing requirements of the proxy rules (including the filing and furnishing of a proxy statement with information about the registrant and proxy cards with means for casting votes) or compliance with the proposed conditions of the exemptions . . . [is] appropriate for a person who chooses to actively market and sell its proxy voting advice,”¹⁶ the SEC’s PRA analysis does not analyze, estimate - or, in fact, even mention - the information and filing requirements. In reality, imposing these requirements on proxy advisors would amount to a massive paperwork filing burden, perhaps unprecedented in SEC regulation in its frequency. It would also require proxy advisors to publicly file proprietary information - the proxy advice that is their product - even though the SEC has no apparent plans or use for the information. For these reasons, OMB should submit comments on and disapprove the PRA analysis, pending the Commission analyzing and justifying these aspects of the paperwork burdens created by its proposed rules.

A. The information and filing requirements are a collection of information.

¹⁵ Proposing Release at 122.

¹⁶ Proposing Release at 20.

The proposed rules would codify the SEC’s interpretation that proxy advice is a proxy solicitation. As the SEC explains in the release, “any person engaging in a proxy solicitation, unless exempt, is generally subject to the filing and information requirements” The release goes on to explain what the filing and information requirements entail -

Among other things, the person making the solicitation is required to prepare a proxy statement with the information prescribed by Schedule 14A, together with a proxy card in a specified format, file these materials with the Commission, and furnish them to every shareholder who is solicited. Schedule 14A requires *extensive information* to be included in the proxy statement, such as descriptions of matters up for shareholder vote, securities ownership information of certain beneficial owners and management, disclosures of the registrant’s executive compensation and related party transactions, and, for certain matters, financial statements.¹⁷

As a mandate to file “extensive information” with the government, this is clearly a collection of information.¹⁸ The SEC has, in fact, previously acknowledged that the information and filing requirements of the proxy rules are collections of information¹⁹ and its PRA analysis in connection with these proposed rules estimates the additional burden for companies of having to file their proxy advice rebuttals as additional soliciting materials under this regime.²⁰

B. The PRA does not mention this collection of information.

Notwithstanding that this is a primary feature of the rules and the significance of the burden it would impose, subjecting proxy advisors to the information and filing requirements is not analyzed, estimated or even mentioned in the PRA analysis. For Glass Lewis, compliance with these rules, as we understand them, would entail making roughly 5565 filings with the SEC a year, or over 21 filings each business day of the year on an ongoing basis. As the SEC’s release explains, each filing would require Glass Lewis to “prepare a proxy statement with the information prescribed by Schedule 14A, together with a proxy card in a specified format, file these materials with the Commission, and furnish them to every shareholder who is solicited.” The SEC has previously estimated that it takes a company approximately 130 hours, on average,

¹⁷ Proposing Release at 23 (footnote omitted; emphasis added).

¹⁸ See 44 U.S.C. § 3502(3).

¹⁹ See 83 Fed. Reg. 47229 at 47229-230 (Sept. 18, 2018) (“Regulation 14A (Exchange Act Rules 14a-1 through 14a-21 and Schedule 14A) (17 CFR 240.14a-1 through 240.14a-21 and 240.14a-101) sets forth the requirements for the dissemination, content and filing of proxy or consent solicitation materials in connection with annual or other meetings of holders of a Section 12-registered class of securities. We estimate that Schedule 14A takes approximately 130.4052 hours per response and will be filed by approximately 5,586 issuers annually.”)

²⁰ See Proposing Release at 122.

to compile the “extensive information” required and take the other necessary steps to comply with these rules. If each of Glass Lewis’ 5565 U.S. proxy research reports in 2018 required compliance with the information and filing requirements, applying the SEC’s current estimate of burden hours would mean an annual burden for Glass Lewis alone of 725,705 hours. The collective, ongoing burden for Glass Lewis and other proxy advisors collectively would be several multiples of the total burden hours imposed by Regulation 14A today. Again, though, none of this is mentioned, analyzed or estimated in the Proposing Release’s PRA analysis.

C. The frequency of the required filings would be highly and impermissibly burdensome.

The proposed amendments are also impermissible under the PRA because they would require proxy advisors to report information to the agency more often than quarterly. According to the Proposing Release, the proxy statement filings made with the SEC in 2018 were made by 5690 registrants out of 18,584 eligible filers.²¹ Most companies did not make a proxy filing and the vast majority of those that did presumably made one filing. In contrast, this proposed rule would impose a fundamentally different and vastly greater burden on proxy advisors. As noted above, Glass Lewis - and other similarly situated proxy advisors - would each have to make in excess of 21 SEC filings each business day of the year on an ongoing basis.²²

The PRA, of course, is intended to prevent the government from imposing such excessive filing burdens on private businesses.²³ OMB regulations explain that “[u]nless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information . . . [r]equiring respondents to report information to the agency more often than quarterly.”²⁴ Here, there is no statutory requirement and the SEC has shown no need for any filing requirement, let alone one with this seemingly unprecedented burden and frequency. Clearly, mandating that a business make dozens of filings with the SEC every business day on an ongoing basis far exceeds a “more often

²¹ See Proposing Release at 90-91 (explaining the existing regime).

²² For these purposes, Glass Lewis is counting all iterations of its advice on a particular company for an annual meeting as one filing. Under the proposed rules, however, a proxy advisor might have to make several filings for one company’s annual meeting. See discussion below of the Proposing Release’s treatment of “specialty reports” and “custom advice.”

²³ The PRA’s central purpose is to “minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government.” 44 U.S.C. § 3501(1).

²⁴ 5 C.F.R. 1320.5(d)(2)(i).

than quarterly” filing requirement and OMB should file comments on and conditionally disapprove it on that basis.

D. Subjecting proxy advice to the information and filing requirements would also require proxy advisors to publicly file proprietary information.

Imposition of the information and filing requirements would also require proxy advisors to publicly disclose their proprietary information. The SEC’s filing requirements for proxy statements provide that a proxy statement must be “publicly-filed.”²⁵ And proxy advisors’ reports and other advice are clearly proprietary information.²⁶ Put simply, “[p]roxy advisors’ product is their advice.”²⁷ In fact, the SEC’s Proposing Release itself seems to recognize that proxy advisors’ reports are proprietary, both in its questions²⁸ and by proposing to allow the use of a confidentiality agreement with the issuer reviewing it (although not when it is filed with the SEC).²⁹

The PRA, of course, is intended to prevent this sort of misuse of government filing requirements. OMB regulations explain that --

Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information . . . [r]equiring respondents to submit proprietary, trade secret, or other

²⁵ 17 C.F.R. 240.14a-3(a)(1), (3).

²⁶ There is no general definition of proprietary information in the U.S. legal code, but it is generally understood as “commercially valuable information that the employer has developed or obtained and taken reasonable measures to keep confidential.” Chris Montville, “Reforming the Law of Proprietary Information,” 56 Duke L. J. 1159 (2007).

²⁷ George W. Dent, Jr., “A Defense of Proxy Advisors,” 2014 Mich. St. L. Rev. 1287 (2014).

²⁸ See Proposing Release at 64 (“Are there any risks raised by proxy voting advice businesses providing advance copies of voting advice (e.g., misuse of material, nonpublic information, or misappropriation of proprietary information), and if so, how can such risks be managed?”).

²⁹ See Proposed Rule 14a-2(b)(9)(ii), Note 2. See also Proposing Release at 106 (“The requirement to provide proxy voting advice to registrants and other soliciting persons for their review and feedback would increase the risk that commercially sensitive information about proxy voting advice may be disseminated more broadly. To mitigate this risk, the proposed amendments to Rule 14a-2(b)(9) would allow proxy voting advice businesses to require that registrants and other soliciting persons agree to keep the information confidential as a condition of receiving the proxy voting advice.”).

confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.³⁰

Here, there is no statutory requirement or other substantial need. And the Proposing Release does not suggest that any procedures to protect the information's confidentiality are in place. For this reason, as well, the proposed information collection should be conditionally disapproved.

E. The SEC has no plan or intention to use filed proxy advice.

Despite the enormous burden and other adverse consequences to proxy advisors, the proposed information collection will have little or no practical utility to the SEC. In order “[t]o obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information . . . [h]as practical utility.”³¹ OMB regulations define “practical utility” as “the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.”³²

The Proposing Release, however, does not explain what practical utility proxy advice filings would serve. There is no indication that the SEC has a plan to – or even could – review, analyze, and digest in a timely manner the tens of thousands of proxy advice documents that would be filed with it in any meaningful or useful way. As a result of the broad scope of the proposed information collection requirements, the Commission would be deluged with tens of thousands of pages of information that it has no plans to use.

Indeed, the lack of attention to the information and filing requirements in the Proposing Release strongly suggests that this massive paperwork burden is not being imposed because the SEC, or even the public at large, needs the information that would be compelled. Instead, imposition of the information and filing requirements seems to only serve an *in terrorem* effect. Because of its profound burdensomeness and the damage the forced publication of proprietary information would have on proxy advisors' business, the SEC's proposed requirement would effectively force proxy advisors to comply with onerous “exemptive conditions” that the SEC would not have statutory authority to impose directly. This is the sort of misuse of government paperwork requirements that the Paperwork Reduction Act was meant to avoid.

³⁰ 5 C.F.R. 1320.5(d)(2)(viii).

³¹ 5 C.F.R. 1320.5(d)(1)(iii).

³² 5 C.F.R. 1320.3(l).

III. The Proposing Release fails to meaningfully analyze the burdens of the new exemptive conditions.

Implicitly recognizing the grossly excessive burden and impracticality of complying with the proxy solicitation information and filing requirements, most of the SEC's release assumes that proxy advisors would seek to comply with the new conditions the proposed amendments would require in order to be exempt from those requirements. As described above, those conditions would require proxy advisors to: 1) make additional conflict of interest disclosures; 2) provide their proxy advice to companies and others for their "review and feedback" before sharing it with clients; and 3) provide it a second time to companies and others before giving it to clients and, if requested to do so, include a hyperlink to the companies' response to the proxy advice.

Despite this assumption through most of the Proposing Release, the Commission's PRA analysis does not actually discuss any of these conditions or make any of the estimates that would be necessary to gauge the significant burden they would impose on proxy advisors. Moreover, the only relevant estimate the analysis does make - that one-third of the companies that filed proxy statements in recent years would be the subject of proxy advice - is unexplained and wrong by several orders of magnitude. The analysis then compounds these errors by summarily concluding, with no analysis or explanation, that all the new requirements imposed on proxy advisors by the proposed rules could somehow be complied with in a matter of a couple minutes per company. For these reasons, as well, OMB should comment on and disapprove the collection of information burdens in the proposed rules, pending a more careful, reasoned analysis of the paperwork burdens its amendments would impose.

A. The new exemptive conditions are collections of information.

As the Commission seems to recognize, the mandatory new disclosures - of conflicts and providing advance review copies to issuers - are also collections of information. The definition of collection of information includes "requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format."³³ As Congress explained in broadening the PRA in 1995 to clearly cover third-party disclosure requirements:

Whether a "collection of information" is conducted for or simply sponsored by the Federal government, rather than whether the government is the primary or immediate user of the information collected by a respondent, is the primary factor which determines whether a collection of information is covered by the meaning of the term. . . . *Agency third-party information disclosure requirements are within the scope of the Act.*³⁴

³³ 44 U.S.C. § 3502(3).

³⁴ S. Rept. No. 104-8, Paperwork Reduction Act of 1995 (Feb. 14, 1995) (emphasis added). See also id. (PRA being amended to avoid "circumvent[ion] by simply recasting the proposed

Here, even though the SEC did not explicitly say so or make any of the necessary estimates, the SEC seemed to recognize this and cover the new exemptive conditions in its PRA analysis.³⁵

B. The PRA analysis fails to discuss or analyze the burdens of these new collections of information.

Despite the fact that the new conflict disclosures and issuer review and feedback procedures are the centerpiece of the rulemaking, they are not discussed or analyzed in any way in the Commission’s PRA analysis. Instead, the very short, non-boilerplate portion of that analysis is bifurcated into a discussion of: 1) the “increase [in] the number of responses to the existing collection of information for Regulation 14A” (i.e., companies that would have to file their hyperlinked responses as additional soliciting materials, which the SEC estimates would happen an additional 174 times per year); and 2) the “change [in] the estimated burden per response” (i.e., the amount of extra time parties have to spend on current proxy statements). What this analysis ignores - or at least completely minimizes - is that the new mandates for proxy advisors to make additional conflict disclosures and repeatedly provide their reports to companies are themselves collections of information that should be analyzed under the PRA.

Specifically, the PRA analysis contains no discussion or estimates of basic elements of how the proposed rules would affect proxy advisors, such as -

1. How many conflict disclosures would have to be made a year and how many burden hours it would take proxy advisors to identify and disclose those conflicts in accordance with the rules;³⁶

paperwork burden as a third-party paperwork requirement, i.e., one imposed by a private party on another private party, even if directed to do so by a Federal agency regulation”).

³⁵ See Proposing Release at 124, Table 1 note d (“ This estimate . . . is intended to be inclusive of all burdens reasonably anticipated to be associated with the [proxy voting advice] business’s compliance with the conditions of proposed Rule 14a-2(b)(9), including, for example, identification and preparation of disclosure concerning conflicts of interest required by proposed Rule 14a-2(b)(9)(i) and communication with registrants and other eligible soliciting persons.”) The SEC also explicitly acknowledged in the PRA analysis for its companion proposal, issued the same day and also submitted to OMB for approval, that two separate requirements in that proposed rule for one private party to provide another with specified information were collections of information and made estimates of how often those disclosures would occur and how many burden hours they would require to prepare and submit. See Securities and Exchange Commission, Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Release No. 34-87458 at 164 (November 5, 2019) (PRA analysis of Rule 14a-8(b)(1)(iii) and 14a-8(b)(1)(iv)).

³⁶ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(i).

2. How many burden hours it would take proxy advisors to ascertain the issuer's review period (i.e., how long before the annual meeting the company's proxy statement was filed and, accordingly, what review period they are entitled to) and implement and track that internally;³⁷
3. How many times a year proxy advisors would have to provide proxy advice to companies for a five business day review period and how many burden hours implementing that review process would take;³⁸
4. How many times a year proxy advisors would have to provide proxy advice to companies for a three business day review period and how many burden hours implementing that review process would take;³⁹
5. For companies eligible for either review period, how many burden hours it would take proxy advisors to negotiate or secure the confidentiality agreements needed to facilitate the issuer review process;⁴⁰
6. How many companies eligible for either review period would respond to the proxy advice and how many burden hours it would take proxy advisors to consider and react to companies' responses or verify that no response has been provided;⁴¹
7. For companies entitled to the final notice, how many burden hours it would take proxy advisors to provide a final notice of proxy voting advice;⁴²

³⁷ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(A)(1)-(2). The SEC's PRA analysis did make a summary, unexplained estimate of how many companies would be subject to proxy advice each year. Unfortunately, however: 1) the Commission did not refer to or use that estimate in any apparent manner to estimate the burdens of the proposed rule on proxy advisors; and 2) as explained below, the estimate appears to be understated by nearly 200%.

³⁸ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(A)(1).

³⁹ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(A)(2).

⁴⁰ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii), Note 2.

⁴¹ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(A)(1), (2).

⁴² Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(B).



8. How many companies would provide a response to the final notice and how many burden hours it would take proxy advisors to consider and react to companies' responses to the final notice or verify that no response has been provided;⁴³ and
9. How many burden hours it would take proxy advisors to process, review and implement each of the SEC-estimated 261 annual requests by companies for a hyperlinked response to be included in the proxy advice and any electronic medium used to deliver the proxy voting advice.⁴⁴

None of these nine required procedural steps are discussed, analyzed or the subject of estimates in the Commission's PRA analysis. Without a reasonable estimate of how many times each of these steps would occur and how many burden hours on average each of them would take, a reasonable overall estimate of the additional burden on proxy advisors of complying with these new requirements is not possible. Without estimates of any of them, the PRA analysis amounts to little more than guesswork.⁴⁵

C. To the extent the analysis does summarily estimate the burden on proxy advisors, it is woefully understated.

Despite failing to discuss or analyze the issuer review mechanisms or to make any of the necessary estimates to calculate the burdens of the proposed rules on proxy advisors, the PRA analysis does purport to provide an estimate of the overall burden of the new exemptive conditions on proxy advisors. Specifically, PRA Table 1 shows a "Burden Increase: Hours Per Respondent" for each Proxy Advisor of 500 hours. The sole explanation for this figure comes in a footnote to the table:

This estimate, which is an average of the burden expected to be incurred by each proxy voting advice business, is intended to be inclusive of all burdens reasonably anticipated to be associated with the business's compliance with the conditions of proposed Rule

⁴³ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(ii)(B). For present purposes, Glass Lewis assumes that the rule would not require that changes to proxy advice at this stage would trigger multiple rounds of "final notices" to be sent before the advice can be finalized and shared with proxy advisors' clients. Glass Lewis understands that this possibility was an unintended consequence of how the proposed rules are drafted, which would be clarified in any final rules should the Commission proceed with this rulemaking. If this result was intended, its burdens, too, should have been estimated.

⁴⁴ Proposed Rule 17 C.F.R. 240.14a-2(b)(9)(iii). For purposes of assessing the burden on companies of having to file these as supplemental proxy statements, the SEC estimated that there would be 261 such requests per year. See Proposing Release at 122 n. 269.

⁴⁵ For a preliminary estimate of the burden hours compliance with these required steps would impose on Glass Lewis, see the Table below in Section III.D.

14a-2(b)(9), including, for example, identification and preparation of disclosure concerning conflicts of interest required by proposed Rule 14a-2(b)(9)(i) and communication with registrants and other eligible soliciting persons. Our assumption is that the burden would be greatest in the first year after adoption, as the businesses incorporate the new requirements into their existing practices and procedures. We estimate that the burden would be 1,000 hours in the first year and 250 hours in each of the following years for a three-year average of 500 burden hours.⁴⁶

Thus, by saying this estimate is “intended to be inclusive of all burdens reasonably anticipated to be associated with the business’s compliance with the conditions of proposed Rule 14a-2(b)(9),” this appears to purport to be a total of the burden hours that would be incurred by proxy advisors to comply with all three new exemptive conditions on an ongoing basis. Given that Glass Lewis provided proxy advice on some 5565 issuers in 2018, this means that, after the initial year, the SEC estimates that compliance with the new exemptive conditions would take somewhat less than three minutes for each issuer. In fact, it is hard to imagine how a proxy advisor could complete any of the nine procedural steps above - let alone all nine - in less than three minutes. This estimate does not reflect a serious effort to comply with the agency’s responsibilities under the PRA.

While some of the steps required by the proposed rules are mostly administrative, they would all involve complexities. Moreover, given the scale of the undertaking - involving over 5500 companies a year and potentially multiple iterations of proxy advice for each company - combined with the fact that a failure to comply could carry legal consequences, including potential SEC enforcement action, the additional burden on proxy advisors to carry out these new procedures would be significant.⁴⁷

For example, today, Glass Lewis’ practice is to provide the subjects of its research the facts underlying the relevant report for their review while the report is being prepared. This practice is deliberately limited. Glass Lewis finds that by providing the facts underlying the report, it can get the benefit of company review without compromising the independence of its advice or inviting time-consuming and unproductive debates about Glass Lewis’ methodology or what result that methodology should lead to in the context of a particular recommendation. For similar reasons, Glass Lewis only meets with companies to get their input on its methodology outside of the proxy season, when its time and resources need to be dedicated to meeting its clients’ needs.

⁴⁶ Proposing Release at 124, PRA Table 1, note d (emphasis added).

⁴⁷ To be sure, not all of these steps would have to be undertaken for all 5565 companies Glass Lewis advised on in 2018. But some of the more complex ones would and most of the steps would be required for most of these companies. As shown below, Glass Lewis believes a more reasonable estimate of the ongoing burden for proxy advisors would be close to 60,000 burden hours a year.

The SEC’s proposed rules, however, would undo this market practice. Glass Lewis and other proxy advisors would be required to provide their full reports to all companies they cover for defined review periods. And that review would explicitly invite companies to challenge the proxy advisors’ methodology, as well as factual matters. In fact, as noted above, the SEC has explicitly warned proxy advisors that do not take company suggestions during this review process that their failure to do so could precipitate litigation. In the Proposing Release’s words, while the proposed rule “does not require proxy voting advice businesses to accept any such suggested revisions. *It is equally important to recognize, however, that proxy voting advice subject to the Rule 14a-2(b) exemptions is not exempt from Rule 14a-9 liability, which prohibits materially misleading misstatements or omissions in proxy solicitations.*”⁴⁸ This not-too-subtle threat means that proxy advisors will have to review company feedback with an eye on the SEC’s invitation, should they not take all company comments, for companies to sue them.

Notwithstanding this significant and fraught new review process, the SEC does not discuss it in its PRA analysis or specify what portion of its total annual, ongoing burden of 250 hours it would take. In reality, this step alone of adequately considering the issuers’ factual and methodology objections and ensuring that the final proxy advice is not vulnerable to private litigation under Rule 14a-9 could easily take an average of 16 hours, with much of that time necessarily being time spent by legal counsel.⁴⁹ And if 1228 companies (of a possible 5690 proxy statement filers, see explanation of estimate below) made comments each year, that step alone - without even considering the effort required to comply with all the other requirements in the rule - would amount to close to 19,648 burden hours a year on proxy advisors, or 79x the SEC’s total estimate.

D. Glass Lewis’ preliminary, rough estimate of its annual ongoing burden under the proposed rules is 240x the Commission’s estimate.

Based on Glass Lewis’ experience, we have made rough, preliminary estimates of the annual, ongoing burdens of the conflicts and review and feedback requirements of the proposed rules. Given the limited time available due to the SEC’s short public comment period, this work is necessarily preliminary; Glass Lewis and other commenters have only had a matter of weeks to analyze the proposed rules and begin to consider what new systems, additional

⁴⁸ Proposing Release at 51 (emphasis added; footnote omitted). See also U.S. Securities and Exchange Commission Release No. 34-86721, Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice (Aug. 21, 2019) (interpreting the securities laws to expose proxy advisors to actions under Rule 14a-9 and arguing that the 14a-9 cause of action can extend to “opinions” and “beliefs”).

⁴⁹ We note that this is less than the number of business day hours (40 or 24) the proposed rule would afford companies to review and comment on proxy advice under either of the rule’s two initial review periods. Of course, with multiple people involved and weekends and non-business hours taken into account, a company could spend significantly more hours on its objections than the duration of the period in business day hours.



personnel, and other ongoing efforts would be required to comply with them. Glass Lewis will continue to analyze the proposed rules and may include further comments on the anticipated costs and burdens in its comment letter to the Commission.

Estimated Annual, Ongoing Compliance Burden of SEC Exemptive Conditions for Glass Lewis

Required Burden (with estimates of affected issuers and burden hours rounded to whole numbers)	GL Estimate	SEC Estimate ⁵⁰	Diff.
Identify and disclose conflicts in manner specified (identify: 5565 issuers at 1 hour; disclose: 807 issuers ⁵¹ at .5 hour)	5969	N/A	N/A
Ascertain the issuer's review period and implement and track that internally (5565 issuers at .5 hour)	2783	N/A	N/A
Implementation of five business day review period (1457 issuers ⁵² at 1 hour)	1457	N/A	N/A
Implementation of three business day review period (3455 issuers ⁵³ at 1 hours)	3455	N/A	N/A
Negotiate or secure confidentiality agreements (4912 issuers ⁵⁴ at 4 hours)	19,648	N/A	N/A
Consider and react to issuer feedback on proxy advice or verify no response provided (consider: 1228 issuers ⁵⁵ at 16 hours; verify: 3684 issuers at .25 hours)	20,569	N/A	N/A
Implementation of final notice period (4912 issuers at .5 hour)	2456	N/A	N/A
Consider and react to responses to final notice or verify no response provided (consider: 614 issuers ⁵⁶ at 4 hours; verify: 4298 issuers at .25 hours)	3531	N/A	N/A
Process, review and implement requests for a hyperlinked response (261 issuers ⁵⁷ at .5 hours)	131	N/A	N/A
Total (in burden hours)	59,999	250	240x

⁵⁰ Average, annual burden for a proxy advisor after initial year.

⁵¹ Glass Lewis takes a conservative approach to conflicts disclosure, erring on the side of providing its clients more information.

⁵² Extrapolated from Glass Lewis 2018 data. See note 64 below. Includes time to ascertain issuer contact details.

⁵³ Extrapolated from Glass Lewis 2018 data. See note 64 below. Includes time to ascertain issuer contact details.

⁵⁴ Total of two rows above.

⁵⁵ Assumes 25% of 4912 eligible issuers will provide comments.

⁵⁶ Assumes 50% of first-round commenters (1228) will provide comments.

⁵⁷ SEC Estimate.

Even though this is a preliminary, high level estimate (and accordingly may leave out or understate significant components of complying with the proposed rules that may become apparent based on further review⁵⁸), the vast disparity between Glass Lewis' estimates and the Proposing Release's PRA analysis suggests, at a minimum, that the Commission should redo its analysis based on a more careful approach to estimating the proposed rules' burdens.

E. The SEC based its estimates on a fraction of the number of companies that are the subject of proxy advice.

One of the few estimates made in the PRA analysis is that 1,897 registrants would be the subject of proxy voting advice each year. The only explanation of this estimate appears in a note to PRA Table 1:

Using 5,690 registrants that filed proxy materials with the Commission during calendar year 2018 as the upper bound (see Section III.B.1.c. and note 222 supra), we estimate that an average of one-third, or approximately 1,897, would be the subject of proxy voting advice each year, and therefore impacted by the proposed amendments to Rule 14a-2(b).

No other explanation is given for this estimate, and it is not clear why the Commission chose to apply any fraction here. While it is not possible to be sure without the Commission releasing the list, the number of companies subject to proxy advice is likely much closer to

⁵⁸ Also, Glass Lewis has not included in this Table incidental burdens caused by the new information collection requirements, such as the lost efficiency of its analysts who would have to cease work on most proxy research reports for two periods of time and then resume work on them once the company's review period ends ("switching costs") and the additional time its client services teams may need to handle requests from clients with custom voting policies and perform other services once the proxy advice is finalized under the highly compressed timeframes caused by the new review and feedback periods. Including these burdens of the proposed rules would, of course, increase Glass Lewis' estimate of the ongoing compliance burden.

Glass Lewis also focuses in this submission on the Commission's failure to adequately assess and reasonably estimate the annual, ongoing paperwork burden on proxy advisors. We also believe that the first year burden hours estimate, which presumably includes initial start-up efforts and first-year compliance, is also significantly understated. Carrying out the proposed rules' multiple review and feedback periods over a universe of some 5565 proxy research reports a year would be a massive logistical challenge that would require significant, initial year investments in information technology systems to coordinate and manage the necessary work flows. Glass Lewis may comment on this issue further as part of its comments on the proposed rules, including the economic analysis, which did not quantify any of the costs that would be imposed on proxy advisors.

100% of those that filed proxy materials with the Commission.⁵⁹ The business model of proxy advisors requires them to cover all companies their clients are invested in, which, in an era of large asset managers holding diversified portfolios, means they need to cover most, if not all, issuers in countries in which they operate. As noted above, Glass Lewis alone issued 5565 proxy research reports on US companies in 2018. In fact, the Commission’s Proposing Release itself notes that at least two of the four other proxy advisors have a similarly broad scope of coverage.⁶⁰ In light of this, it is not clear why the Commission thought only a fraction of U.S. proxy statement filers would be the subject of proxy advice and it has the effect of understating the total estimated burden hours in the PRA analysis by up to 200%.

F. The PRA Analysis should estimate the number of proxy advice reports to which the proposed rules would apply.

Even if the Commission had not made this fundamental error, however, the number of companies that are the subject of proxy advice is a flawed starting point for analyzing the paperwork burdens of the new exemptive conditions on proxy advisors.⁶¹ Using that as the starting point, as opposed to the draft proxy advice reports that are the primary new information collection burdens, has the effect of significantly underestimating the new paperwork burdens, for two fundamental reasons:

- First, it is very likely that almost all of these companies are covered by multiple proxy advisors. Accordingly, just accounting for this fact, the number of proxy advice reports that proxy advisors would supply for issuer review under the proposed rules would be much greater, potentially five times as high, as the total number of registrants that filed proxy statements in 2018 (5,690).

⁵⁹ The Commission made a similarly unexplained assumption that a third of the 95 “other soliciting persons” would be the subject of proxy advice each year. While, again, it is not possible to say definitively without access to the Commission’s list of the 95 persons, Glass Lewis believes that it would provide proxy advice on most of these situations.

⁶⁰ See Proposing Release at 86 (ISS “cover[s] approximately 44,000 shareholder meetings in 115 countries, annually”); *id.* at 87 (Egan-Jones “cover[s] approximately 40,000 companies”). Our understanding is that the other two proxy advisors noted in the release also provide voting services for all U.S.-traded companies in which their clients invest.

⁶¹ We recognize that the ultimate goal of the PRA analysis was to express the costs and burden hours relative to the existing inventory of approved collections of information under Reg 14A (5,586). The point here is that a reasonable estimate of the burdens of the amendments could not be made without making estimates of the number of new collections of information, such as proxy advice reports that would have to be transmitted for “review and feedback.”



- Second, each proxy advisor could be producing multiple pieces of advice on the same company. As the Proposing Release explains, “the proxy voting advice required to be provided may include *multiple reports*, if applicable, that the proxy voting advice business produces for its clients.”⁶² In fact, the release cites reports that one proxy advisor creates six versions of its reports (a benchmark report and five so-called “specialty reports”), which the Proposing Release specifies must each be provided to companies for advance review.⁶³

Accordingly, a critical estimate and the appropriate starting point for analyzing the PRA burdens of these proposed amendments is the number of proxy advice reports that proxy advisors must supply to issuers and that issuers may choose to provide feedback on or submit a response to under the proposed rules. Based on preliminary review of its data from 2018, Glass Lewis believes that approximately 88% of the 5565 reports it issued on US companies - or 4912 reports - would have been eligible for the proposed rule’s two review periods and response mechanism.⁶⁴ Factoring in other proxy advisors, including their specialty reports, means that there may be seven to ten times this number of proxy advice reports, or about 34,384 to 49,120, for provision and review each year. Since the proposed rule requires at least two rounds of review, twice this number - or something in the range of 68,768 to 98,240 rather than 1,897 - is a rough approximation of the number of new annual collections of information associated with the review and feedback mechanism and should have been the starting point for this aspect of the Commission’s PRA analysis.⁶⁵ With this proper understanding of the scope of the

⁶² Proposing Release at 46 n. 116.

⁶³ See Proposing Release at 18 (“The voting recommendations formulated under the benchmark policy and each of these specialty policies would be considered to be separate communications of proxy voting advice under proposed Rule 14a-1(l)(1)(iii)(A) and for purposes of the proposed rule amendments discussed below.”); see also Proposing Release at 46 n 116 (“some proxy voting advice businesses may provide a so-called “benchmark report,” as well as separate “specialty reports” to a client. See Exxon Letter, *supra* note 94, at p. 7.”) The comment letter cited in this passage from the Proposing Release asserts that ISS produces six versions of its reports.

⁶⁴ Glass Lewis has not historically tracked issuers’ proxy statement filing dates. For internal purposes, it does track the date its analysts set up a “shell” for its proxy research report, which is typically within a few days of the issuers’ filing. These estimates are based on the assumption that the proxy statement filing date was one day before the shell set-up date.

⁶⁵ For purposes of this analysis, we assume that the proposed rules are not intended to cover proxy advisors’ assistance to clients in developing and implementing a custom voting policy. See Proposing Release at 63 (asking whether “the voting advice formulated under the custom policies established by clients . . . [should] be subject to the proposed review and feedback period and final notice of voting advice requirements?”). If the SEC rules were to cover such advice, the number of pieces of advice that would be subject to the proposed rules’ collections

Commission's proposed rules, it can be seen that even some of the seemingly straightforward, ministerial aspects of the rule, such as assembling and transmitting final voting advice to companies, could alone far exceed the Commission's 250 annual burden hour estimate.

IV. The Proposing Release's PRA analysis has other significant flaws.

The PRA has at least three other significant flaws that warrant OMB comment.

A. Issuer burdens not reconciled to the actual terms of the rule

The PRA analysis recognizes that “[i]n addition to proxy voting advice businesses, . . . [companies] would incur some additional paperwork burden as a result of the proposed amendments.”⁶⁶ With little explanation, however, the analysis estimates that it will only take 10 hours on average for a company to review and provide feedback to the two rounds of proxy advice, including potentially submitting a hyperlinked response to the final proxy advice. The SEC's proposed rule, however, would mandate that all companies that file their proxy statements at least 25 days before their annual meeting would receive either five business days (3+2) or seven business days (5+2) for the two rounds of review.⁶⁷ In choosing these longer periods, the Commission cited “the need for registrants . . . to conduct a meaningful assessment of the advice and communicate any concerns or errors regarding the advice.”⁶⁸ In fact, the Commission hypothesizes that issuers might file their proxy statements earlier to qualify for the five business day initial review period, rather than the three business day review period, suggesting that the Commission believes that a number of issuers would feel a need to have five full business days to review and respond to the proxy advice.

In light of this, it is not clear why the SEC did not use, or at least refer to, these new “review and feedback” periods in making its PRA estimate of how much time issuers would take to review and provide feedback on proxy advice. In other words, if these periods - 40 to 56 business hours of time - are needed for issuers to have “sufficient time,” why did the Commission then assume in its PRA analysis that issuers would only need ten hours on average to do what these time periods are for?

To be sure, the issuer PRA burden would not necessarily have to be the same as the time period the Commission allotted for review. An issuer could choose not to review proxy

of information could be hundreds of times higher. See Proposing Release at 79 n. 176 (noting that one proxy advisor implements more than 400 such policies.)

⁶⁶ Proposing Release at 124, PRA Table 1, Note e.

⁶⁷ See Proposing Release at 52 (Commission believes the five and three business day periods would allow companies “sufficient time to assess the voting advice”).

⁶⁸ *Id.*

advice - meaning the rule would have no “benefit” and just impose delay and additional cost - or it could deploy a team of inside and outside counsel throughout its two review periods (and, for that matter, throughout the additional period in which it is waiting for the final notice) to provide feedback.⁶⁹ The point is that the Commission should have considered its PRA issuer burden estimate in light of the time periods it thought necessary for issuer review and comment and, if it thought the 10 hour estimate was appropriate, reconciled this estimate with the much longer periods provided for in the rule. Absent such an analysis - or necessary supporting estimates, such as the number of companies eligible to review and comment on proxy advice, the number of proxy advice reports to review and comment on per year, and the number of companies that would submit comments to proxy advisors - the ten hour estimate and resulting burden hour estimate is both unsupported and likely significantly understated.

B. Inconsistency about number of registrant proxy statement filings

It is also not clear that 5690 registrants - the number the PRA analysis starts with before inexplicably dividing it by three - is correct. The PRA attributes that number to the Commission’s economic analysis. But that analysis says this is the number of registrants that filed proxy statements in 2018 in one place,⁷⁰ while in another place it states: “In 2016, 2017, and 2018, the number of unique registrants that filed proxy materials with the Commission was 5,690, 5,744, and 5,862, respectively.”⁷¹ Accordingly, it is unclear whether an analysis based on 2018 data should use the 5,690 figure or the 5,862 figure that the Commission also cited for 2018. Presumably, one of the two statements is inaccurate.

C. Basic math error in summary table

PRA Table 3 (reproduced below) purports to summarize the total requested paperwork burden of the proposed rules that the Commission is asking OMB to approve. That table, however, contains an obvious error. Specifically, the first column of the Revised Burden section purports to show that the number of “Annual Responses (G) = (A) + (D)” is 5,760. The total of columns A and D, however, is 11,346, not 5,760.

⁶⁹ Issuer work is not limited to review periods. Issuers could also use the time between the first and second review periods to develop further comments on the second round or prepare a response to be included with the final proxy voting advice.

⁷⁰ See Proposing Release at 91.

⁷¹ See Proposing Release at 95.

PRA Table 3. Requested Paperwork Burden under the Proposed Amendments

Reg. 14A	Current Burden			Program Change			Revised Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D) [±]	Increase in Internal Hours (E) ^{±±}	Increase in Professional Costs (F) ^{±±±}	Annual Responses (G) = (A) + (D)	Burden Hours (H) = (B) + (E)	Cost Burden (I) = (C) + (F)
	5,586	551,101	\$73,480,012	5,760	16,478	\$2,197,200	5,760	567,579	\$75,677,212

[±] From Column (A) in PRA Table 2.

^{±±} From Column (D) in PRA Table 2.

^{±±±} From Column (F) in PRA Table 2.

While it is not clear that this error was material to the results of the Commission’s analysis, it is further evidence of “how rushed and incomplete the analysis underlying today’s actions is,” as one of the SEC Commissioners described it. And it provides further reason for OMB to submit comments and conditionally disapprove the requested paperwork burden, pending the Commission performing a more careful analysis.

V. Conclusion

The information collection requirements in the proposed rules are antithetical to the PRA’s central purpose to “minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons”⁷² The proposed new regulatory regime for proxy advisors is premised on a mandate to make tens of thousands of public filings of proprietary information, which the SEC has no use for, apparently in order to compel proxy advisors to instead comply with “exemptive conditions” that the SEC does not have statutory authority to impose directly. And those new conditions themselves would, among other things, require proxy advisors to make tens of thousands of compelled disclosures of their advice to companies for two rounds of their review and feedback.

None of this is adequately discussed, analyzed or estimated in the Commission’s PRA analysis. Instead, the majority of that very short and cursory analysis is devoted to considering the comparatively minor effect of the rule on companies that are the subject of proxy advice and thus are only indirectly affected by the proposed rules on proxy advisors (although even that appears to be significantly understated). The Commission’s summary assertion of a 250 burden hour annual, ongoing estimate for proxy advisors is entirely unexplained, unsupported by any of the necessary estimates to begin to properly estimate the total burden, and is vastly understated. The costs of these excessive paperwork burdens would be borne by proxy advisors and would inevitably have to be passed on to their institutional investor clients, who,

⁷² 44 U.S.C. § 3501(1).



in turn, may have to pass these costs on to their individual investor participants and beneficiaries.

For these reasons and the other reasons stated above, Glass Lewis respectfully requests that the Director of OMB:

1. File comments on the Proposed Amendments with the Commission to the effect that (a) all the collections of information imposed by the Proposed Amendments should be analyzed and estimated in the PRA Analysis; and (b) the Commission's estimates of the burden of these requirements are not adequately supported and should be reassessed; and
2. Disapprove the collections of information contained in the Proposed Amendments unless the Commission makes complete, well-informed, careful and rigorous estimates of the proposed rules' burdens.

* * *

Glass Lewis appreciates the opportunity to comment on the information collection burdens of the SEC's proposed amendments. Thank you for your consideration of these comments.

Sincerely,

Nichol Garzon-Mitchell
Senior Vice President, General Counsel

cc: Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission