

On Our Radar: Glass Lewis Responds to SEC Guidance on Proxy Voting Advice

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On October 17, proxy advisory firm Glass Lewis (GL) published a report entitled “Due Diligence—A Resource for Investment Advisors on Glass Lewis Policies and Procedures.” This report responds point by point to SEC guidance released on August 21, which encouraged investment advisors (IAs) to review their proxy voting processes and practices, including conducting due diligence when relying on a proxy advisor (PA), such as GL or ISS for voting recommendations. The following is a summary of SEC due diligence questions from the August 21 guidance and this week’s corresponding GL responses:

- **Does the PA have experience, staff, and competency to assist in voting decisions?**
GL provides information about their highly educated staff with collective ability to speak more than 25 languages and its state-of-the-art technology.
- **Does the PA have an effective process of seeking timely input?** GL states that it updates its policies annually after meeting with hundreds of investors and seeks routine input from issuers. It also states it will meet with issuers outside of solicitation periods and feedback is welcome on its website. Issuers also now have access to GL’s pay methodology through CGLytics.
- **Has the PA adequately disclosed methodologies?** GL answers that its published policy and reports are adequate and clients will have additional information available through CGLytics.
- **Does the PA rely on third-party information?** GL states that most of its information comes from public filings and firms such as CGLytics, Sustainalytics, and Capital IQ, and when this third-party information is used, that fact is disclosed in its reports.

- **What steps are taken to engage with issuers and third parties?** GL responds that all issuers can obtain a free data-only version of their report, that they have an open-door policy for engagement, and that they have launched a Report Feedback Statement (RFS) service in 2019 whereby GL reports all feedback received directly to its investor clients.
- **What is the PA's policy on conflicts or interest, are they disclosed, and what technology is employed in the process?** GL makes a very specific point to note it has never engaged on the consulting side, that if a conflict is detected it is disclosed, and that strict policies are codified in its Conflict of Interest Statement.
- **How effective is the PA's policies for relying on accurate information?** GL uses only information filed by companies themselves, and validates information obtained by third parties. It also provides some detail as to its processes for review of methodologies, workflow, and audit of reports, and provides information about rigorous staff training to ensure quality reports.
- **How does the PA engage with investors?** GL indicates its Report Feedback Statement is a unique opportunity to fulfill this commitment.
- **How does the PA correct material deficiencies?** GL maintains a portal to report errors and if GL's reports are updated, all clients are accordingly notified.
- **How does the PA consider unique company factors?** GL says it has quantitative models, but also reviews issues on a qualitative basis taking into consideration unique facts and circumstances at each company.
- **Investment advisors should evaluate PAs on which they rely on an ongoing basis, including conflicts, business changes, and changes to methodologies.** GL responds by noting that it reviews its conflicts statement annually, proactively notifies clients of material business changes, and has a process in place to regularly update its voting policies.

Interestingly, GL does not respond point by point to the separate SEC guidance directed at proxy advisors themselves. This guidance concluded that proxy advisors are providing solicitations and therefore must carefully review their own methodology, third-party information, and conflicts policies in order to avoid potential securities law violations. Presumably, GL views those guidelines as asked and answered in the due diligence report to IAs summarized above.

We understand that at this juncture, ISS does not intend to put out a corollary response to the August SEC guidance.

About the Author

Deborah Lifshy is a managing director in the New York office, where she specializes in advising clients on compensation matters from a legal perspective including securities disclosure, taxation and corporate governance issues, negotiation contracts, and reasonableness opinion letters.

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