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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

November 29, 2023

Gary Retelny, President and CEO
Institutional Shareholder Services, Inc.
1177 Avenue of the Americas, 14th Floor
New York, New York 10036 USA

Kevin Cameron, Executive Chairman
Glass, Lewis & Co.
255 California Street, Suite 1100
San Francisco, CA 94111

Dear Mr. Retelny and Mr. Cameron,

Your companies, International Shareholder Services, Inc., and Glass Lewis & Co., provide proxy voting advice to many businesses and investors who are citizens of our States as well as to our States' investment vehicles.

That voting advice directly impacts how our Nation's largest companies operate. Your companies' proxy advice shapes the choices and activity of businesses and ultimately the United States' and global economy. And that is why you must realize with such important power comes important responsibilities. Responsibilities to advise in a manner consistent with your legal duties. And a responsibility to embrace transparency so that regulators and customers easily understand the recommendations you make and why you make them. Although other problematic areas exist, one major point of this letter is to clearly state our view that recommendations opposing shareholder resolutions to increase transparency in debanking run contrary to your duties, responsibilities, and policies.

We have expressed deep concern that ISS and Glass Lewis are prioritizing certain environmental, social, and governance initiatives and that doing so violates your contractual and statutory duties to issue advice consistent with your responsibilities as a fiduciary.

And our criticism has not been limited to ISS and Glass Lewis. In February, 19 States called on JPMorgan Chase to account for its troubling pattern of apparent debanking. As part of the general market rejection of prioritizing ESG over fiduciary duties, last year shareholders sought to hold financial institutions accountable for denying or restricting service to clients based on their political or religious beliefs through the resolution process.

Politicized debanking harms businesses and their shareholders and undermines the freedom of every American to participate in the marketplace on equal footing.

Unfortunately, all available evidence shows that you oppose those resolutions—contrary to your claims to be apolitical and neutral. Indeed, your recommendations opposing those shareholder resolutions reflect the opposite of your stated commitment to fairness and diversity. Viewpoint discrimination has its own legal liabilities—but so does lying in publicly available policies and disclosures.

Your lack of transparency is troubling. And your voting recommendations on debanking proposals may breach your legal obligations. We seek more transparency and written assurance that you will cease any practice that violates the law, including your duty to act in the best interest of the citizens of our States, or your stated policies on recommendations.

To comply with federal and state law and its contract obligations, ISS and Glass Lewis must give sound proxy advice.

ISS's and Glass Lewis's disregarding federal law governing proxy advisors is illegal. Proxy-advisor recommendations must be free from false or misleading material information. *See* 15 U.S.C. § 78n(a)(1); 17 C.F.R. § 240.14a-9(a). And as the Investment Advisers Act's implementing regulations explain, "[a]n adviser is a fiduciary that owes each of its client's duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting." 68 Fed. Reg. 6585, 6586 (Feb. 7, 2003). Our States contend, consistent with our previous letter, that ISS and Glass Lewis are subject to the Act and its accordant duties.

Moreover, ISS and Glass Lewis advise State-controlled entities, like State pension plans. Your advisory role here necessarily makes you a fiduciary that needs to adhere to fiduciary duties. Your agreements to provide proxy voting services to States' investment vehicles warrant at a minimum that you will exercise duties of care and loyalty in providing advice. Indeed, the contracts themselves, along with some States' laws, expressly impose fiduciary duties on proxy advisors. Fundamental to those duties are the requirements that you maximize economic value and avoid conflicts of interest. To the extent the advice you give relies on ESG considerations that conflict with your duty to maximize the financial return to our States, you are violating those duties.

And no matter what advice you give, proxy-advisor recommendations must be free from false or misleading information. *See* 15 U.S.C. § 78n(a)(1); 17 C.F.R. § 240.14a-9(a). Many States also have blue-sky securities laws prohibiting investment advisers from fraudulent or misleading practices and consumer protection laws prohibiting unfair and deceptive trade practices.

Your advice that is contrary to supporting the economic interest of our States' or your advisees in our States' may violate both federal and state laws.

ISS and Glass Lewis may be violating their legal duties by opposing transparency-in-debanking proposals

Proxy Advisors have a responsibility to ensure that their recommendations concerning debanking proposals advance fiduciary interests. Some proposals calling for additional transparency or other information about debanking efforts, efforts which themselves may implicate financial concerns for an institution, follow the role of a proxy advisor. For example, one proposal calls for transparency on politicized debanking:

> Shareholders request the Board of Directors . . . conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.

A bank, that is, would have to report on policies and practices that jeopardize customers' civil rights and incubate litigation risk because of the growing tide of politicized debanking.

When JPMorgan Chase and PayPal tried to exclude it from the shareholders' ballot last year, the SEC agreed that this proposal addresses a significant social policy issue. We expect that this proposal will be filed again this year at other financial institutions.

Despite the power of transparency and the likelihood of encouraging compliance with State laws, all evidence points toward your opposition to that proposal. Each of the debanking transparency resolutions—for example at JPMorgan Chase and PayPal—received 2% or less of the shareholder vote, a result that would not have happened had you recommended voting for it. That has already worried some of our State Financial Officers who have written to you about your opposition to these proposals.

Our States are particularly concerned with debanking. Non-economic debanking efforts by financial institutions appear to be on the rise. Pressure on financial institutions to reject neutrality on issues including the Second Amendment, oil and gas exploration, immigration, and prison reform is well-documented. Law-abiding citizens and companies should not have to fear political retaliation from banks motivated by activist investors.

Debanking is also targeting religious and conservative groups. For example, Chase allegedly debanked the National Committee for Religious Freedom after demanding its donor list. And Indigenous Advance filed a complaint with the Tennessee Attorney General's office contending that Bank of America debanked it for religious reasons. Greater transparency will provide clarity and assurances that banks are not targeting customers based on protected statuses like religious belief.

Financial institutions' policies often stray from customers' basic civil liberties. They use vague and subjective "reputational risk" policies or prohibitions on "hate" speech to debank political targets disfavored by activists with little concern or oversight. The Viewpoint Diversity Score Business Index which evaluates major companies' respect for free speech and religious liberty found that 21 of the 44 largest financial institutions in the U.S. have those kinds of discriminatory policies.

Debanking presents significant legal, regulatory, and political risk—which is why measures intended to increase transparency around debanking help to limit those risks. Many federal and state laws prohibit discrimination based on religion, political ideology, and other protected statuses. So debanking may raise serious legal concerns. And already there has been serious regulatory backlash to debanking efforts across the country. States are passing legislation to ensure fairness in corporate decision-making and hold companies engaging in illicit ESG efforts accountable. Many of those laws apply to or include financial institutions—and many States may prefer to pass those laws if they believe viewpoint targeting is occurring. Transparency can limit political risks. And already there has been serious regulatory backlash to debanking efforts across the country.

Debanking also presents serious reputational risks. Even the appearance of politicized debanking can do serious financial harm. Many States are evaluating their relationships with banks and investment managers over concerns that those entities are denying service and capital to legal industries like firearms companies and fossil fuel producers. 57% of respondents would likely stop using service providers that do not respect their values, according to a Viewpoint Diversity Score Poll.

Proxy advisors cannot ignore these risks and still fulfill their fiduciary duties. Being transparent about politicized debanking is an opportunity to address these risks and rebuild the record-low trust consumers have in financial institutions. Opposing debanking proposals contradicts ISS and Glass Lewis' other policies and practices. As many of our States noted, both firms have supported broad audits of how a company may be discriminating or otherwise hurting the "civil rights" of its stakeholders and the public.

Indeed, Glass Lewis appears to be speaking out of both sides of its mouth on this issue. It says it supports transparency on ESG issues—"that

insufficient oversight of material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests." Yet it opposed the debanking-transparency proposal that would mitigate companies' legal, financial, regulatory, and reputational risks. And while ISS claims that it is apolitical, ISS characterizes all conservative proposals as "anti-ESG" proposals, and votes against nearly every one of them.

This opposition reveals inconsistent or insufficient due diligence and appears to violate a proxy advisor's duty of care. It also raises concerns about proxy advisors' duty of loyalty, particularly given their otherwise full-throated support of transparency on economic, social, and governance issues.

We seek written assurance that ISS and Glass Lewis will cease this activity and affirm their commitment to uphold their legal duties as proxy advisors.

This letter should not be necessary. Americans should not have to worry that they will be denied critical financial services because of their religious and political beliefs. Your promises to the public and your clients to be impartial and viewpoint-neutral extend to these fundamental characteristics of American identity. Accordingly, please provide all relevant information and respond fully to these inquiries by December 13, 2023:

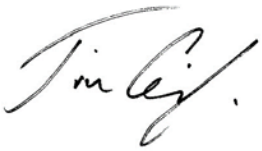
1. Provide us all your voting recommendations for debanking proposals for the 2022–2023 proxy season.
2. Explain your materiality analysis for recommending votes against shareholder proposals on debanking.
3. Explain why you have opposed debanking resolutions that focus on the civil rights of customers but have supported proposals asking for much broader civil rights audits.
4. Provide any analysis you conducted to determine whether to support debanking resolutions for the 2022–2023 proxy season.
5. Explain how you have categorized debanking proposals, why you have done so, and provide any analysis you made to make that determination or consider alternative categorizations.

Respectfully Submitted,

Brenna Bird
Attorney General of Iowa

Steve Marshall
Alabama Attorney General

Treg Taylor
Attorney General of Alaska



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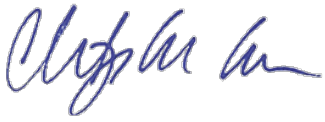

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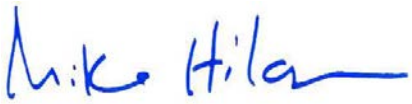

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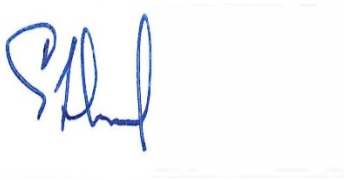

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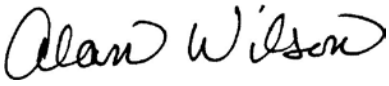

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