

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

15th November, 2018

Re: File Number 4-725 Roundtable on the Proxy Process

Dear Mr. Fields,

At the outset, we thank you for the opportunity provided to submit our comments on the Proxy Process. **Stakeholders Empowerment Services** ('SES') is Not-for-Profit Proxy Advisory Company incorporated in year 2012 under the Indian Company Law. SES was the first Company in India to register under the Securities & Exchange Board of India ('SEBI') (Research Analysts) Regulations, 2014.

Brief Background

Before we proceed with the subject at hand, a brief about SES is warranted to establish our credentials as a competent organisation to provide comments on the subject.

- SES is a not for profit organisation based in Mumbai (India), founded by a former Securities Market Regulator (Executive Director -SEBI)
- It has no outside investor, hence not obligated to follow instructions of any investor/ company.
- It has no board interlock position, no influence of any person.
- Entire equity of SES is held by Promoter family. Promoter work *pro-bono*.
- It does not engage in any private advisory or to any Listed Entity.
- It is absolute transparent in its processes.
- It does not execute votes/ instructions of investors.
- It doesn't canvass for any proposal of companies/ investors.
- **In nut-shell, SES is a conflict free, fiercely independent, transparent and fair organisation.**
- And business wise, SES clients constitute more than 70% of AUM in Mutual Funds, more than 60% in Insurance AUM in India (excluding state-owned insurance companies which do not use Proxy services)

SES provides wide range of services to its clients comprising of Voting Recommendations (Proxy Reports), Topical Research Reports, Direct Voting Platform called 'E-Ballot Box', Corporate Governance Scores Report, Risk Reports, etc.

SES presently has clients which include Foreign Institutional Investors, Domestic Institutional Investors, Insurance Companies, Stock Exchanges, Banks, Mutual Funds and other Financial Investors.

Proxy Advisory in India

Proxy Advisory business in India is of recent origin and is less than a decade old. While the industry is young, yet India is probably the only jurisdiction where the industry is directly regulated by Securities market regulator SEBI, under SEBI (Research Analysts) Regulations, 2014. There are only three Proxy Advisory firms in India and SES is one of them.

Why SES is submitting its comments?

Since SES has absolutely no intention to go global and expand its operations beyond Indian market and become world leader in terms of business, ideally it should not be concerned with developments in USA. However, SES has a mission to become best in terms of its quality, policies and structure. Therefore, any positive development which would enhance quality of our work and increase acceptability of Proxy Advisors would be welcomed by SES.

As SES is also engaged in Proxy Advisory Services, concerns raised by the Securities and Exchange Commission and developments thereon, are of interest to SES.

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CIN: U74120MH2012NPL232154 | SEBI Registration Number: INH000000016 (Proxy Adviser)

SES does not claim to be proficient and well-versed with the US legislations, therefore, this communication would not touch points of law and focus only on logical points & arguments, which SES feels is foundation of all the laws. However, SES identifies itself with the issues raised, which have common thread with SES philosophy i.e. managing conflicts, remaining independent, objectivity and fairness.

Objective of this note is to analyse the issues at hand and how SES has managed to handle the same. And what are the risks that are likely to arise if the proposals are accepted as it is.

Our communication assumes importance as it is an independent analysis from an unaffected party. Though, US Regulations would not have any impact on operations or governance of SES, however, if SES feels that there is something in US regulations, which would enhance our quality or operations, SES would not shy away from adopting the same and recommending the same to SEBI to make necessary amendments to the Regulations.

Our issue wise comments are as follows:

1.0 PROXY VOTING MECHANICS AND TECHNOLOGY

SEC Agenda:

*“Panel One will focus on the **current proxy voting and solicitation process** for shareholder meetings and **recent concerns raised** about this process. How can the **accuracy, transparency, and efficiency** of the proxy voting and solicitation system be **improved** and what steps should regulators consider to facilitate such improvements? In addition, the panel will discuss how recent technological advances can be used to enhance the voting process and the ability of shareholders to exercise their voting rights.”*

Background:

US Senate vide its letters to two US based Proxy Advisors, viz., Glass Lewis and ISS has raised concerns on following issues:

- Voting process using Glass Lewis system specially auto vote system with a provision to override auto vote through manual intervention.
- Use of custom voting guidelines, to auto generate voting instructions.

A: Voting process

- the likelihood that broker-dealers are voting more shares or less shares than authorized (“over voting” and “under voting”) and ways to remedy the issue;
- challenges ensuring that an investor’s shares are voted as directed; and
- challenges providing investor communications to securities owners who hold their shares through a brokerage account (in “street name”).

SEC Public Statement

- As technology continues to evolve, whether it can be used to make the proxy process more efficient and effective for participants.
- The potential benefits and consequences that could result from further reliance on, and changes in, technology. For example, whether technology, such as “blockchain” or distributed ledger technology, could be used to streamline or create more accountability in the proxy process.

SES Comments

At outset, SES would state that none of the concerns raised are present in Indian system. The voting process in India has taken care of all the concerns.

SES will first highlight Indian system and then address issues for discussion by panel.

Indian Proxy voting system is as under:

- There is a twin voting system
 - Electronic voting- where an investor can vote directly on the E Voting platform and vote.
 - In person voting- This is allowed to all those who attend the meeting in person and have not voted electronically.
- A company convening the meeting appoints an authorised E Voting agency and also appoints a scrutinizer. E Voting rules are part of Companies Act 2013.
- For every shareholder meeting a unique event number is created by an authorised/ approved E- Voting Platform.
- A cut-off date is decided by the Company to determine eligible shareholders entitled to vote. The depository has connectivity with E Voting platforms for the purpose of determining eligibility.
- India has one share one vote system except in case of shares with differential voting rights. Only 3 Listed companies in India have issued DVR shares.
- Voting Platform creates a proxy form, listing out agenda items in the same sequence as is given in notice for the meeting.
- E-Voting is kept open until a day before proposed meeting. After E-voting period is over the E Voting event is frozen.
- Those who did not cast votes electronically, can cast their votes at the meeting.
- After the meeting, the scrutinizer appointed by the Company unlocks the E Votes, tabulates physical votes, prepares final votes tally.
- The outcome is announced within 48 hours after end of the meeting.
- There is an audit trail available to carry out audit in case regulator or any judicial authority demands.
- The advantage of the system is that there is an **immediate vote confirmation** for the investors.
- All those investors who have custodians appointed for their back-office work, votes through custodian in the same manner except the votes are cast by custodian.
- No other agency can cast vote on behalf of an investor.
- Entire voting process is encrypted and only scrutinizer appointed has encryption keys. Additionally, investors also have a two-step log in system to ensure integrity of the system.

Concerns and Resolution in Indian System

Accuracy, transparency, and efficiency: As evident above, the Indian system has a provision for instantaneous vote confirmation, therefore between the investor and the Company there is absolute transparency, while for third party the vote remains secret. The system is efficient not only because of vote confirmation but because of many features built into the E-Voting system. As Indian depositories do not allow holding securities in street names and brokers are not allowed to vote, 'excess voting' is practically ruled out.

Auto Vote:

Under the Indian system, there is no auto vote system. Each investor must take its own informed decision. Even investors who are using services of Proxy Advisors, must take a decision whether to follow the advice or not. After deciding their votes, the investor has to either log in to voting system and vote or vote through custodian.

Insurance Regulatory and Development Authority of India (IRDAI) had floated its consultation paper in 2017 for their draft Stewardship Code. Initially, they had proposed that insurance companies can outsource some of their activities relating to their voting to any third party. Since, ideally Proxy Advisory entities would be outsourced such activity, this move would have given tremendous power in the hands of companies like SES. Despite this, SES had objected to the proposal as there is a fiduciary duty of insurance company to its policy holder and fiduciary duty should not be transferred. Policy holders have trusted insurance company and not the firms like SES. Further it would have given undue influencing power to people like SES, which could have led to conflict situations. Thankfully, IRDAI deleted the provision.

Further in the Indian system, Mutual funds are mandated to vote and disclose on quarterly basis their voting decisions along with rationale for their decision. Insurance companies are required to disclose their stewardship policy and disclose voting decisions yearly.

Therefore, Auto Vote issue has been tackled in Indian system effectively.

Customised Voting guidelines:

Indian Proxy industry is less than a decade old. As far as SES is aware, there are no instances of customised voting guidelines. However, SES is of the view that if the customised voting guidelines are in public domain and Proxy Advisory services are just using the guidelines for preparing recommendations, there should not be any concern as long as there is no auto vote and investor has to decide on case by case basis its voting decision. The manual decision making is the key.

As far SES is concerned, it has a transparent voting guideline, which are based on Indian laws and global best practices and are reviewed annually by an Independent Advisory Board. The Board members of the Advisory board do not have any pecuniary relationship with SES. In addition, the report maker, takes into account facts of the case and applies guidelines. There is no auto recommendation. Further each report goes through a final review by seniors, thus ensuring impeccable quality.

SES Voting Portal:

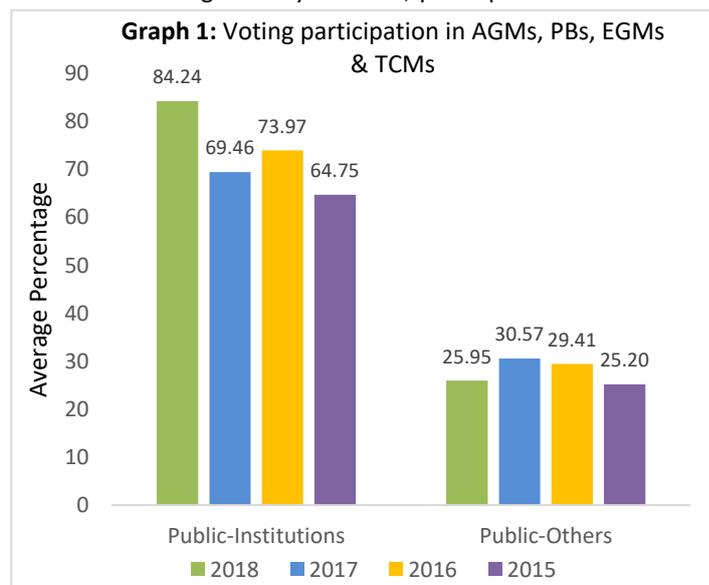
To facilitate voting by its clients, SES has created a voting portal. This only helps clients to manage its back office, serves as record keeper and is a tool to remind deadlines and generate management information reports. Although on Portal SES reports/ recommendations are available and it has connectivity with E Voting Platform / Custodians, an investor has to take a decision on vote before executing the same. In addition, it has a facility of maker and checker and vote decision process can be two steps, if desired by investors.

B: Retail shareholder participation

Statement from US SEC announcing Roundtable had following information (reference [weblink](#)):

“In the 2017 proxy season, retail shareholders voted approximately 29% of their shares, while institutional investors voted approximately 91% of their shares.”

In India the participation by Retail investor has been historically low. Before commencement of Companies Act 2013 and E Voting in the year 2014, participation of all shareholders including retail shareholders was abysmally



low. Historical reasons for low participation were mainly cost, time, lack of information and knowledge gap topped with a sense of helplessness in making an impact. With the advent of E Voting, participation has increased as cost and time for participation has come down drastically and has become almost free. New Regulations have also streamlined information flow. Increased participation has led to few noteworthy defeats of management proposals, thus changing attitude of investors as they feel that their votes do have impact. However, Retail participation has yet to catch up as retail investors do not have access to research and knowledge base to take a rational informed decision. **Graph 1** reflects

voting percentage by Public Institutional shareholders and Public Others, which include Retail as well. As data for retail only is not available on public domain, therefore, it is difficult to estimate actual retail participation.

In order to improve retail participation, it is vital that research is made available to retail participants. Since they cannot install seamless centralised information system like institutional investors, efforts must be made to provide centralised information to them. Being marginal holders, retail investors are reluctant to pay for research and it may not be cost effective to have a paid research. As active participation of investors in affairs of companies is a precursor for good governance, Regulators like SEC have to take a lead.

Future Model for Retail Vote

In India, SES is working on an internet-based model, which will provide a centralised information to retail shareholders who can register free of cost. The model will have connectivity with Stock Exchanges, Depositories, E Voting Platforms and Proxy Advisory companies. Once investors register and sets up his log-in and password, the app will capture his shareholding details from depository system, stock exchanges' information relevant to his portfolio will automatically come to him. Investor will have option to apply filters and receive only filtered information. It will alert them on forthcoming meetings, voting deadline etc. The E voting platform will send Voting material like Notices for meetings and proxy form. Participating proxy companies will give free access to their recommendations. All the investor would be required is to log-in and, after reading the relevant reports, can cast their votes by just a click of button. In the interest of maintaining independence and avoiding any conflict of interest situation such a facility must be ideally established under a trust, funded by agencies like SEC and other entities interested in furthering corporate governance. (SES can send its model and presentation in full, if required)

2.0 EXPLORING EFFECTIVE SHAREHOLDER ENGAGEMENT

SEC Agenda:

Panel Two will focus on **shareholder engagement** through the **shareholder proposal process**. The panellists will discuss, among other things, their experiences with shareholder proposals and the **related benefits and costs involved** for the company and shareholders. The panel also will consider the application of the shareholder proposal rule and related guidance.

SES Comments:

As SES doesn't have any first-hand experience on the issue, SES is not offering its comments. However, SES would urge that any limit that is decided by SEC for enabling shareholders to bring in their own agenda item must be decided to ensure that non-serious issues cannot be brought. At the same time, the provision must also not filter out serious issues due to stringent higher limit.

3.0 PROXY ADVISORY FIRMS – THE CURRENT AND FUTURE LANDSCAPE

SEC Agenda:

Panel Three will focus on the **role of proxy advisory firms** and their involvement in the proxy process. The panel will draw from a diverse array of perspectives from proxy advisory firms, institutional investors, the academic community, and corporate issuers. How has the role of proxy advisory firms evolved over time and are there ways in which their role and relationships with institutional investors and issuers can be improved?

Background:

US Senate vide its letters to two US based Proxy Advisors, viz., Glass Lewis and ISS has raised concerns on following issues:

- Report accuracy & Accuracy of factual data, incorrect assumptions.
- Review process by submitting the draft report to Company be extended to all Companies (not to S&P 500 only)

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- Policy disclosures
- Mistake correction
- Temporary staff
- Outsourcing of work
- Conflict of interest disclosure
- Outside information use
- Cross ownership / cross directorship
- Charges for courtesy copy
- Client relationships-volume/ amount

SEC Chairman announcement for Roundtable (Public Statement on 30th July 2018)

“Proxy advisory firms provide a number of services related to proxy voting, which include aggregating and standardizing information, providing platforms for managing votes, and providing voting recommendations. Areas that may warrant particular attention include:

- *Whether various factors, including legal requirements, have resulted in investment advisers to funds and other clients relying on proxy advisory firms for information aggregation and voting recommendations to a greater extent than they should, and whether the extent of reliance on these firms is in the best interests of investment advisers and their clients, including funds and fund shareholders.*
- *Whether issuers are being given an appropriate opportunity to raise concerns if they disagree with a proxy advisory firm’s recommendations, including, in particular, if the recommendation is based on erroneous, materially incomplete, or outdated information.*
- *Whether there is sufficient transparency about a proxy advisory firm’s voting policies and procedures so that companies, investors, and other market participants can understand how the advisory firm reached its voting recommendations on a particular matter, and whether comparisons of recommendations across similarly situated companies have value.*
- *Whether there are conflicts of interest, including with respect to related consulting services provided by proxy advisory firms, and, if so, whether those conflicts are adequately disclosed and mitigated.*
- *The appropriate regulatory regime for proxy advisory firms and whether prior staff guidance about investment advisers’ responsibilities in voting client proxies and retaining proxy advisory firms should be modified, rescinded, or supplemented.”*

United Nations (Principles for Responsible Investment) ([weblink](#))

“Proxy advisory firms

- *the extent to which investors are excessively reliant on proxy advisory firms for voting recommendations;*
- *whether public corporations are being given a sufficient opportunity to raise concerns if they disagree with a proxy advisory firm’s recommendation;*
- *whether proxy advisory firms should be required to provide more public information about their voting policies and procedures;*
- *whether proxy advisory firms appropriately manage, mitigate and disclose potential conflicts of interest, such as those that arise from consulting services provided by proxy advisory firms; and*
- *the appropriate regulatory regime for proxy advisory firms.”*

SES Comments:

SES is proud to say that all the concerns raised by US Senate in its letters to Proxy advisors, issues raised in SEC Public statement and UN PRI document referred to above have been effectively handled by SES in its policy and day to day working. As can be seen from following:

Point by point response to issues raised by US Senate in their letter to Proxy Advisors is as under:

- **Report accuracy & Accuracy of factual data, incorrect assumptions.**

SES as a policy relies only on authentic public data available in Notice to shareholders, in Annual Reports, on Company's website and website of stock exchanges, Ministry of Company Affairs & SEBI. While SES cannot claim that there have been no instances of inaccurate data, however such instances have been far and few. Following data speaks for itself.

- SES has issued Report for approximately 3,100 meetings from 2016 to 2018, covering approximately 26,000 Resolutions from 2014 to 2018.
- SES has issued 170 addendums in last 3 years due to additional information, corrections and clarification provided by the Company after release of report. (see more on SES Addendum system given below)
- In last 3 years, SES changed its recommendation in only 2 proposals due to SES mistakes/errors. All other addendums were issued as additional information was provided.
- 2 errors in 26,000 resolutions, speak for its quality standards.

Incorrect Assumptions:

What is incorrect assumption or what is correct is a matter of interpretation and opinion. And SES does face such situations, where SES interpretation is different from what is interpretation of Company. In case of such situations SES issues an addendum. ([see more on SES Addendum system](#))

Most of the addendums issued were on account of additional data being provided or different interpretation.

- **Review process by submitting the draft report to Company be extended to all Companies (not to S&P 500 only)**

SES does have a review process through **which all companies are given opportunity** to review SES reports. However, the opportunity is given only after the report is released to clients and not before. After review by the Company, an addendum to report is issued based on feedback of company.

SES Addendum system:

Every report issued by SES in respect of any shareholders meeting/ proposal is firstly released to SES clients and simultaneously to the issuer Company. The mail to issuer company has following contents.

"Dear Sir/Madam,

SES has sent its Advisory Report for the upcoming AGM of your company to our Clients who may be investors in your company. As a Policy, a copy of the said Report is also simultaneously sent to you (the Company concerned). Accordingly, please find attached Proxy Advisory Report for the upcoming AGM of your company.

As per policy of SES, our reports are based on information in public domain through authentic sources only. At SES, we rely only on information in official documents released by company in its communication to shareholders, regulators, stock exchanges and website of the Company. SES as a policy believes that all the requisite information that is material and would enable a discerning investor to take an informed decision must be available. As a result, we do not seek any information from the company prior to release of our reports as we wish to place ourselves in place of discerning investor(s) and experience challenges, if any, while taking a decision based on information available. As a sense of duty, we also indicate what are the gaps in information and why shareholders would not be able to make an informed decision.

Further, we wish to emphasize that while legal framework is important, at SES, good governance is what matters most. And good governance is much beyond compliance.

However, should you have a point of view which is different, despite our explanation, you may get in touch with us and SES would analyse the same and if required, issue an amendment giving your viewpoint and explanation by SES, if so required.

Please feel free to write back to us at info@sesgovernance.com for further queries or suggestions.”

Explanation:

- SES gives opportunity to all companies without any discrimination and without fail
- Issues addendum to its report as and when any company writes to SES on SES Reports
- Most of the times company makes additional disclosures. In case the disclosure is in public domain and available to shareholders at large, such additional information is taken into account and recommendations are reviewed. In case the additional information is not in public domain and same is available to SES only, in that case the information is just reproduced in addendum, without impacting SES analysis, as information is not publicly available.
- In case, any SES mistake is pointed out, it is acknowledged. Mistakes are generally three types: Typographical, Information missed by SES, incorrect interpretation. SES changes its recommendation only in case SES interpretation is incorrect or a material information is omitted which has bearing on its recommendation. Most of the times there is no change in recommendation.
- In case the interpretation of the Company is different from SES interpretation, in such cases SES publishes both interpretation with comments why SES is not in agreement with the Company.

SES addendum religiously reproduces its correspondence with the Company in verbatim without any editing except contact details and name and deleting any objectionable / unparliamentary comments (if any). SES maintains full audit trail of its correspondence.

- SES as a principle does not share its report with issuer company prior to sending it to its clients for host of reasons.
 - Firstly, SES believes that privity of contract is between SES and its client. The issuer Company is the subject of our research. Clients have first right to see our initial opinion.
 - Secondly, if SES was to send reports to company first, SES runs various risks
 - ❖ Delay, as the company can engage in dialogue and extend the process
 - ❖ Company may try to bring influence and to defame SES
 - ❖ Both Company as well as SES would have an opportunity to black mail/ influence/ get influenced
 - ❖ Client would never know what was the original recommendation of SES.
 - ❖ In our current process by letting our clients know what our initial opinion was, SES reduces all potential pressure points and client can see sequence of events in case addendum is issued.
 - ❖ Addendum gets sent to all original recipients

- **Policy disclosures:**

SES discloses its policy guidelines on its website. Almost all SES recommendation flows from policy disclosed, in exceptional cases based on facts at hand a departure is made from stated policy. However, a full explanation is given as to why a departure is made in larger interest of shareholders.

- **Mistake correction**

As explained, SES is absolute open to mistake correction.

- **Temporary staff/ Outsourcing of work**

SES as a policy does not have any temporary staff, nor it out source its work. Further to maintain its quality SES has robust review system.

- **Conflict of interest disclosure**

Conflicts are rarely there in SES system, as SES doesn't do any private advisory, it doesn't do any advisory to listed companies on how to comply issues, none of its staff sit on listed boards. No listed board director sits on SES board. It doesn't have any investor except family members. None of SES staff does any private consultancy. The only conflict is that there is a small shareholding in the company being analysed. Although it is minor shareholding, it is still disclosed on website of SES. As a matter of principle and to ensure highest degree of ethical standards, SES also discloses past affiliations of its staff with issuer companies. SES does not hesitate in making any disclosure that may be warranted.

- **Outside information use**

The only outside information that SES uses is data that is aggregated by data suppliers from various authentic sources. However most often, SES verifies the data from other sources as a matter of abundant caution, if available.

- **Cross ownership / cross directorship**

SES doesn't have any cross ownership nor cross directorship.

- **Charges for courtesy copy**

The concerned company is anyway sent SES **report free of cost**. Further SES as a goodwill gesture doesn't charge any money if a company requests additional copy of its reports.

- **Client relationships-volume/ amount**

Since SES doesn't have any client other than clients for its specific reports, no disclosure is made. All SES revenues come from its subscription model and none from one to one business consultancy.

Final Comments:

We believe that the role of Proxy Advisory is very important for providing independent unbiased conflict free opinion to foster good governance.