

November 27, 2018

Mr. Brent J. Fields  
Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

File Number 4-725

RE: Submission in Advance of Staff Roundtable on the Proxy Process (Fiduciary Duties of a Proxy Advisor in a Specific Fact Pattern)

Submitted By: Bernard S. Sharfman\*

Dear Mr. Fields,

The Securities and Exchange Commission's ("SEC") staff roundtable on the proxy process ("roundtable") is a great opportunity to explore the fiduciary duties of a proxy advisor under the Investment Advisers Act of 1940 ("Advisers Act"). This comment letter, my third to the roundtable (the first and second were dated October 8, 2018 and October 12, 2018, respectively), focuses on a very specific, but important, fact pattern where a proxy advisor may have breached its fiduciary duties because of a conflict of interest.

According to the SEC in its 2010 Concept Release on the Proxy Process System, the voting advice provided by a proxy advisor comes under the Advisers Act definition of an investment adviser. The fiduciary duties of an investment adviser were formally recognized by the United States Supreme Court in *SEC v. Capital Gains Research Bureau, Inc.* As an investment adviser, a proxy advisor owes fiduciary duties to its clients. As a fiduciary the proxy advisor should not be providing voting recommendations to its clients that are influenced by a conflict of interest, even if that conflict is publicly disclosed.

Given the fiduciary duties of a proxy advisor, what are we to make of a fact pattern where a major proxy advisor joins forces with a politically powerful trade organization that is a leader in the shareholder empowerment movement? Moreover, this alliance occurs at a time when a major piece of legislation on proxy advisors is making its way through Congress and the SEC is in the process of taking action that may lead to significant changes in the proxy advisor's business model or the level of its profitability? Doesn't such an alliance immediately raise a suspicion that whatever kind of political support the trade organization can provide is being exchanged for voting recommendations that move further in the direction of shareholder empowerment? That is, the alliance may represent a quid pro quo. If so, then this would be a breach in the proxy advisor's fiduciary duties to its clients.

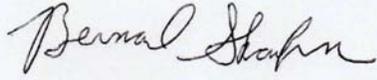
As one outcome of the roundtable, the SEC should provide guidance on whether such an alliance would be grounds for a SEC investigation and could potentially result in the finding that the proxy

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\* The opinions expressed here are the author's and do not represent the official position of any organization that he is affiliated with.

advisor has breached its fiduciary duties. Such guidance will help enhance a proxy advisor's understanding of how it should carry out its fiduciary duties under the Adviser's Act.

Very truly yours,

A handwritten signature in cursive script, reading "Bernard S. Sharfman", is displayed within a light blue rectangular background.

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Bernard S. Sharfman