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November 25, 2019

Honorable Jay Walter Clayton III
Chairman
United States Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Gary Retelny
President & CEO
Institutional Shareholders Services Inc.
1177 Avenue of Americas
2nd Floor
New York, NY 10036

Mr. Carl Icahn
Chairman
Icahn Enterprises LP
767 5th Avenue
47th Floor
New York, NY 10153

RE: Letter in Support of the Important Global Proxy Advisory Work of Institutional Shareholders Services Inc.

Dear Messrs. Clayton, Retelny and Icahn:

Last week, Carl Icahn opined to “Let Proxy Advisers Do Their Work” in a Wall Street Journal op-ed that strongly resonated with me and other corporate governance crusaders in Japan. Mr. Icahn’s op-ed was prompted by the SEC narrowly passing an “Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice.” See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5325 (August 21, 2019) (the “Guidance”). The Guidance was announced on August 21, 2019. Following the Guidance going into effect on September 10, 2019, the Institutional Shareholders Services Inc. (“ISS”) filed a lawsuit against the SEC on October 31, 2019 seeking declaratory and injunctive relief before the United States District Court for the District of Columbia to rescind the Guidance on various grounds, including that the SEC effectuated the Guidance without following public notice and comment and other administrative agency rulemaking protocols required by the Administrative Procedures Act.

Mr. Icahn's op-ed noted the salutary role that proxy advisors play in the capital markets, and some unintended consequences of the Guidance. He advised that "[h]olding boards and CEOs accountable -- and replacing them when necessary -- improves the economy, makes companies more competitive, increases employment, and adds to their shareholder value."

He also noted the huge advantages that "incumbent boards and CEOs can defend their lucrative positions with a virtually unlimited quantity of shareholders' money....This makes it extremely difficult to remove CEOs and boards, no matter how terrible a job they're doing." He then observed that:

Investors cast tens of thousands of votes as owners of public companies in any given year. For help with that formidable task, many institutional investors pay proxy advisory firms like Institutional Shareholder Services or Glass Lewis for independent advice. These research organizations publish reports with voting recommendations. More often than not, they end up taking the side of incumbent boards and CEOs. But sometimes proxy advisers have the temerity to criticize incumbents. Now their freedom to criticize is under threat [by the Guidance].

In a strong rebuke to the Guidance, Mr. Icahn stated:

On Aug. 21, the SEC passed new guidance by a 3-2 vote that would make proxy advisers legally liable under securities law. Before the new guidance, proxy advisory firms could effectively be sued only if they knowingly published false statements. Now any public company can claim any omission or fact in a proxy advisory report is "false" or "misleading," a much lower litigation standard. This is akin to newspapers facing liability for publishing articles critical of an incumbent politician. Even worse, on Nov. 5 the SEC proposed a new rule that would require proxy advisory firms to give a preview of their reports to the very companies that are the subjects of those reports -- this before investors can read the advice they purchased. This odd arrangement would allow corporations to interfere with advisers' research -- a recipe for disaster.

Turning back to Japan, I am legal counsel and on behalf of **Sekisui House Ltd.** ("Sekisui") shareholders, we are suing **Toshinori Abe** and **Shiro Inagaki**, two current **Sekisui** Board directors. **Sekisui** is an Osaka-based Japanese home builder listed on the Tokyo Stock Exchange and constituent company in the Nikkei 225 Index. We have filed a lawsuit in Osaka District Court and are seeking damages of 5.55 billion yen (US\$51.9 million) from **Abe** and **Inagaki** ("Defendants") the amount of **Sekisui's** loss in the Gotanda Land Scandal.¹ Defendants

¹ **Abe** was the catalyst for **Sekisui** buying the Gotanda Land Scandal property in Tokyo. The property was and is a prime Tokyo parcel with an old hotel on site that required demolition in order to be developed. **Abe** visited the property and pressed subordinates for **Sekisui** to purchase it. I have reviewed and possess a copy of the internal **Sekisui** document evidencing **Abe's** chop reflecting the

are the cause of **Sekisui's** significant financial debacle and continuing cover up of causing the Scandal and resulting loss that took place in the summer of 2017. Based upon discovery in the lawsuit, plaintiffs are adding two other current directors, **Yoshihiro Nakai** and **Takashi Uchida** as Defendants for also being responsible for the loss and cover up of Defendants' wrongdoing.²

ISS covers **Sekisui** and many of the Company's shareholders are U.S. institutional investors such as BlackRock, Vanguard, Fidelity and others. Japanese public companies like **Sekisui** typically send out proxy materials in a short time frame, e.g., two weeks, before the annual shareholders' meeting. This contrasts with U.S. public companies that send out their proxy materials well in advance of an annual meeting, e.g., two months prior. To ISS' great credit, ISS' research analysts had timely picked up **Abe's** wrongdoing in the Gotanda Land Scandal so that ISS subscribers could evaluate this matter and lodge a no vote against him at last year's annual meeting, which occurred in April 2018. Accordingly, while **Abe** did receive enough votes to secure re-election to **Sekisui's** Board, he received nowhere near the vast preponderance of votes that Japanese incumbent directors such as he would expect, and instead received a significant 31% vote against him. This was a huge vote of non-confidence, which can be attributed to the prompt and incisive work of ISS and Glass, Lewis & Co. ("Glass Lewis"), another prominent US-based proxy advisor. Since in Japan there are few proxy advisors as prompt and incisive as ISS and Glass Lewis, their work is becoming a more valuable basis for proxy voting decisions. Given the fact that Japanese public companies send out proxy materials in a short time frame, their prompt work should be even more valuable.

In light of the litigation against the incumbent **Sekisui** directors and expected continued research coverage by ISS and Glass Lewis on the upcoming board election, I fully expect that the incumbent "bad apple" directors will be removed in the next **Sekisui** annual shareholders meeting, which is anticipated to be scheduled in late April 2020. However, the ability for ISS and Glass Lewis to be prompt, nimble and outspoken for the benefit of their shareholder subscribers, is being significantly hampered and chilled by the Guidance and the SEC's proposed Nov. 5 company preview rights of proxy advisory recommendations. These SEC initiatives trample on the proxy advisors' first amendment rights with the latter regulatory proposal, if enacted, being a prior restraint or suppression of ISS and Glass Lewis' important ability to speak to their constituent shareholders on important proxy voting topics. Just as Mr. Icahn has foreshadowed, there is no doubt that the incumbent directors at **Sekisui** will do everything in their power to squelch the bad press on themselves if the SEC allows them the opportunity to stymie and ultimately silence the proxy advisors.

earliest date authorizing the property purchase followed by the later dated authorization chops of **Inagaki** (then CFO and Board director), **Nakai** (then managing executive officer and Board director) and **Uchida** (then senior managing executive officer and Board director). The document has a pencil erasure by **Abe's** chop that can still be read that "Abe had personally visited the property." The erasure appears to be a coverup of the fact that **Abe** had unduly impressed his subordinates to sign-off on the property purchase. Discovery in the lawsuit evidences that these incumbent Board directors were responsible for many supervisory failures and ignoring many red flags in causing **Sekisui's** major loss in the Scandal.

² To follow Japanese corporate governance matters as well as to track the **Sekisui** litigation, please go to Savesekisuihouse.com.

We find great merit in Mr. Icahn's astute commentary and support ISS' current litigation to overturn the Guidance and its unintended consequences on chilling proxy advisors ability to do their important job in the realm of bettering corporate governance in the U.S. and Japan.

Please do not hesitate to contact me if you have any comments or questions on my letter to you.

With utmost respect,

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Naoki Matsuoka, Esquire