Stakeholders Empowerment Services
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Secretary,
United States Securities and Exchange Commission,
100 F Street, NE
Washington, DC 20549-1090

31st January, 2020

Sub: File Number S7-22-19 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Ms. Vanessa,

Greetings,

India is probably the only jurisdiction where Proxy Advisory industry is regulated. The Proxy Advisors are regulated under the Securities & Exchange Board of India ('SEBI') (Research Analysts) Regulations, 2014 (hereinafter referred to as SEBI RAR)**. These Regulations cover Research Analysts with separate provisions carved out for Proxy Advisors.**

Stakeholders Empowerment Services ('SES') is Not-for-Profit Proxy Advisory Company based in Mumbai, India incorporated in year 2012 and is regulated by SEBI.

Recently, the SEBI had constituted a Working Group (WG) in July 2019 with an aim to assess current regulations and address issues relating to Proxy Advisory in India. The WG had representatives from industry, media, institutional investors, legal fraternity and Proxy Advisory industry. The WG after extensive consultative process made its recommendation to strengthen the Proxy Advisory services in India. SEBI is yet to come out with its views on the recommendations.

As a matter of ethical conduct and disclosure, SES would like to disclose that Mr. JN Gupta, Managing Director of SES was a member of the above WG formed by SEBI.

Brief Background of SES

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), co-founded by a former Securities Market Regulator (Executive Director - SEBI)
- It has no outside investor, hence not obligated to follow instructions of any investor / Listed Company.
- It has no board interlock position, no influence of any person.
- Entire equity of SES is held by Promoter family. Promoter works *pro-bono*.
- SES does not engage in any private / one to one advisory to any Listed Entity.
- It is absolute transparent in its processes.
- SES does not directly 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**.
- Business wise, SES clients constitute more than 70% of AUM of Indian Mutual Funds and more than 90% in Insurance AUM in India.

SES provides vide 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, ESG Scores, 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.

Why SES is submitting its comments?

At the outset, SES would clarify that it has no intention to go global and expand its operations beyond Indian market. Having said that, SES recognises sharing its views on the present topic as a fiduciary responsibility in order to contribute to the development of the Global Proxy Advisory Industry. Ideally, it should not be concerned with developments in USA, however, any positive development which may enhance quality of our work and increase acceptability of Proxy Advisors is welcomed by SES. And any negative development, which hits at the core of independence of advisory function has to be opposed, even though it might not hurt our independence.

SES dos 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.

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.

SES has also made comments on file Number 4-725 - Roundtable on the Proxy Process *(Weblink: https://www.sec.gov/comments/4-725/4725-4649246-176493.pdf)*

Note:

Our amendments wise comments are as follows – We are only giving comments where we feel we can contribute meaningfully. We are refraining to comment on finer points of law.

A. Proposed Codification of the Commission's Interpretation of "Solicitation" Under Rule 14a-1(l) and Section 14(a)

Rule 14a-1(l). The proposed amendments would amend Exchange Act Rule 14a-1(l), which defines the terms "solicit" and "solicitation," to specify the circumstances when a person who furnishes proxy voting advice will be deemed to be engaged in a solicitation subject to the proxy rules. The proposed amendment would also codify the Commission's view that voting advice provided in response to an unprompted request would not constitute a solicitation."

QUESTION WISE COMMENTS:

1. Should we codify the Commission interpretation on proxy voting advice and the Commission view about unprompted requests for proxy voting advice? Would the proposed codification (adding paragraph (A) to Rule 14a-1(l)(iii) and paragraph (v) to Rule 14a-1(l)(2)) provide market participants with better notice as to the applicability of the federal proxy rules?

SES Comment: Yes, SES always welcomes transparency in the legislation. SES is of the view that such codification would lead to clarity for all the stakeholders, so that appropriate decisions could be taken by them.

2. Does the proposed amendment inadvertently include certain communications made by proxy voting advice businesses or other parties, such as investment advisers, that should not fall within the definition of "solicitation"? If so, which communications, and how? Are there any revisions that we should consider that would better address these concerns or provide greater clarity?

SES Comment: The proposed amendment prima-facie appears to be in order. However, since the present proposal is with respect to US Securities Laws, therefore, SES would refrain from commenting on technical aspect of the same.

3. For example, the proposed amendment seeks to distinguish proxy voting advice businesses from investment advisers who provide voting advice as part of a broader advisory business that already is subject to an array of investor protection regulations by referring to proxy voting advice that is marketed and sold separately from other forms of investment advice. Instead of the proposed approach, should we refer to proxy voting advice that is marketed as a "standalone service"? What would be the advantages and disadvantages of this approach? Would any further clarification of "standalone services" be required?

SES Comment: Proxy voting advice must be absolutely independent and separate from any other advisory. It must contain only voting advisory based on research and data. SES is of the view that the proposed amendment must specifically refer to communication related to proxy voting advice only which must be suitably reflected in the opening part of the definition of solicitation.

4. Is there a different, more appropriate way of distinguishing proxy voting advice from other forms of investment advice?

SES Comment: Please refer to SES Comments under point no. 3.

5. Should the proposed amendment be expanded to specify any other type of activity as constituting a solicitation?

SES Comment: No Comment

6. Should the proposed amendment clarifying that proxy voting advice provided by a person only in response to an unprompted request from his or her client be limited to persons who are registered broker-dealers or investment advisers? Should there be other limits on the types of persons who should fall outside the definition of a solicitation?

SES Comment: This involves technical analysis of the definition; therefore, SES prefers to refrain from commenting on this.

B. Proposed Amendments to Rule 14a-2(b)

1. Conflicts of Interest:

SES General Observations on conflict of interest:

SES firmly believes that sufficient disclosure of material conflicts may bring transparency among the proxy advisory firms and its clients. Such disclosure can be made on the Proxy Advisory Report itself, as well on the website of the proxy advisory firm. However, SES is of the view that any disclosure regarding specific amounts that Proxy Advisors receives from the relationships or interests covered, may have a negative impact on competition, as such disclosure may expose company's pricing strategies. Contrary, a threshold can be fixed (e.g. 10% of total revenue), if the amount is more than the threshold, brief transaction details can be disclosed.

Further, conflicts are rarely there in SES operations, 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 of a listed board sits on SES board. It doesn't have any investor except family members. None of SES staff does any private consultancy.

Further, to have complete transparency, SES in all its Proxy Advisory Reports from for Proxy Season 2019 onwards is providing a separate disclosure statement providing information on whether there is any material conflict of interest of SES / Analyst in the concerned company.

QUESTION WISE COMMENTS:

7. Is the text of proposed Rule 14a-2(b)(9)(i) sufficient to elicit appropriate disclosure of a proxy voting advice business's conflicts of interest to its clients? Are there other examples of conflicts of interest that the Commission should take into account in considering the text of proposed Rule 14a-2(b)(9)(i)? Is the principles-based requirement in Rule 14a-2(b)(9)(i)(C) sufficient to capture material information about conflicts of interest not otherwise included within the scope of paragraphs (9)(i)(A) and (B)? Is there additional material information that should be required?

SES Comment: While, on the face of it, the text of the proposed Rule appears quite wide to cover any potential conflict of interest within its ambit, however, it may be noted that the Rule does not specify as to what is considered as 'material' for the purpose of such disclosure. What is construed as material may differ from person to person, therefore, it is not clear as to whether SEC has deliberately left it open for the Proxy voting advice businesses to determine materiality or it is an inadvertent mistake.

Conflict of interest as identified by SES, can potentially be of the following kinds:

1. Cross Directorships
2. Cross Shareholding
3. Monetary Transactions

While, cross directorships and shareholding pattern of the Proxy voting advice businesses (including its affiliates) could be disclosed on the website of the Proxy voting advice businesses, however in case of Monetary transactions, certain benchmark need to be laid down.

In India, the working Group formed by SEBI on issues relating to Proxy Advisors, has recommended to set the threshold for monetary transaction at 10% of the total revenue of the Proxy voting advice businesses.

8. Would the proposed disclosures provide clients of proxy voting advice businesses with adequate and appropriate information about the businesses' conflicts of interest when making their voting determinations?

SES Comment: There is no doubt that the disclosures provided with an intent to enhance transparency would certainly enable the clients of Proxy voting advice businesses to take a well-informed decision.

9. To what extent do existing disclosures address the concerns discussed in this release? What additional information may be required to ensure that they provide clients with the information clients need?

SES Comment: Objective disclosure requirement as per SES comments in point No.7 above, will ensure that the clients get objective disclosures from the Proxy Advisors.

10. Is there specific information, whether qualitative or quantitative, about proxy voting advice businesses' conflicts of interest that they should be required to disclose? For example, should proxy voting advice businesses be required to disclose the specific amounts that they receive from the relationships or interests covered by the proposed conflicts of interests disclosures?

SES Comment: Please refer to point No 7.

11. Would requiring specific disclosure of this sort raise competitive or other concerns for proxy voting advice businesses? For example, would the proposed disclosures be incompatible with firewalls or other mechanisms used by proxy voting advice businesses to prevent conflicts of interest from affecting the advice these businesses provide?

SES Comment: SES firmly believes that proxy voting advice businesses must refrain from providing advisory services to its listed clients to whom proxy voting advices are provided in respect to the listed entity as it leads to potential conflict of interest situation. Any other non-company specific advisory can be provided.

12. What information would be most relevant to an investment adviser or other client of a proxy voting advice business in seeking to understand how the proxy voting advice business identifies and addresses conflicts of interest?

SES Comment: No Comments

13. Do proxy voting advice businesses consult on particular matters where their input influences the substance of the matter to be voted on (e.g., providing consulting services to a hedge fund with respect to transformative transactions, such as a proxy contest where the fund is presenting a competing slate of directors)? If so, what type of disclosure would help investors to understand the proxy voting advice business's role and potential conflicts of interest regarding these situations? Is the text of proposed Rule 14a-2(b)(9)(i) sufficient to elicit disclosure of material conflicts of interest of this type?

SES Comment: SES does not do any such activity, i.e. canvassing for any agenda or proposal. SES as a matter of policy believe that each investor must take its own considered decision. Proxy Advisory is just one more input/ factor.

14. Currently, Rule 14a-2(b)(3) requires disclosure to the recipient of the voting advice of "any significant relationship" with the registrants and other parties as well as "any material interests" of the advisor in the matter. By contrast, disclosure under proposed Rule 14a-2(b)(9)(i) would be required only to the extent that the information would be material to assessing the objectivity of the proxy voting advice. Is the terminology in each provision sufficiently clear with respect to the types of relationships or interests that are covered by each requirement? For example, is there sufficient clarity on how to assess whether a relationship is "material," or is additional guidance needed? Should we consider alternative thresholds or language for the proposed conflicts of interests disclosure requirement of Rule 14a-2(b)(9)(i)?

If so, what language should we consider? As an alternative, should we use the same terminology as Rule 14a-2(b)(3)? Should we look instead to Item 404 of Regulation S-K, which requires disclosure of a "direct or indirect material interest"? Is Item 5 of Schedule 14A, which requires disclosures of "any substantial interest" of the covered persons, an alternative that we should consider?

SES Comment: Please refer to point no 7.

15. Should proposed Rule 14a-2(b)(9)(i) limit the matters which a proxy voting advice business must disclose to those that occurred on or after a certain date, or is a more principles-based disclosure requirement preferable?

SES Comment: SES is of the opinion that such disclosures must be updated as and when there is any material change affecting the proxy voting advices. For other matters (non-material, disclosure may be made on periodical basis, e.g., on a half-yearly or yearly basis.

16. Proposed Rule 14a-2(b)(9)(i) is a principles-based requirement that does not specify the manner in which conflicts of interest should be disclosed, so long as the disclosure is included in the proxy voting advice business's voting advice and, if applicable, conveyed through any electronic medium that the proxy voting advice business uses in lieu of or in addition to a written report. Should proposed Rule 14a-2(b)(9)(i) be more prescriptive regarding the presentation of conflicts of interest disclosure, or is it preferable to let the proxy voting advice business and its client determine how this information will be presented to the client?

SES Comment: In order to address such a situation, the disclosure must be divided in two categories:

1. **Generic Disclosures:** SES believes that all generic based disclosures must be provided on the website of the proxy voting advice businesses, with a weblink in each of the proxy voting advice Report. These must include names and quantity of investment made by investors in the proxy voting advice businesses. Similarly, directorships of the directors / employees of the proxy voting advice businesses shall also be disclosed on the website of the proxy voting advice businesses.
2. **Specific Disclosures:** In case of specific disclosure such any material transaction (say 10% or above of the revenue) involving a particular client which is material, the proxy voting advice Report must categorically contain such information in the Report itself.

17. Is it important that the conflicts of interest disclosure required by proposed Rule 14a-2(b)(9)(i) be included in the proxy voting advice, or would providing it separately suffice?

SES Comment: Refer SES comment on point no 16.

18. To the extent that a proxy voting advice business uses a voting platform or other electronic medium to convey its voting advice, should we require that the conflicts of interest disclosure be conveyed in the same manner?

SES Comment: Refer SES comment on point no 16.

19. Should we require the conflicts of interest disclosure that a proxy voting advice business provides to its clients be made public? If public disclosure were required, when and in what manner should the disclosures be released to the public? Would this raise competitive or other concerns for proxy voting advice businesses?

SES Comment: General disclosures as mentioned in point no 16 be updated on a periodic basis (at least on an annual basis. While, specific disclosure must be made in the proxy voting advice report.

20. The proposed amendments are intended to promote consistency in the disclosures proxy voting advice businesses make about their conflicts of interest. Is the consistency of this information an important consideration?

SES Comment: SES agrees that there the disclosures made by the proxy voting advice businesses must be consistent and must be on comparable parameters. They must serve the purpose of providing relevant information to the clients of proxy voting advice businesses to take well-informed decisions.

21. Should we require proxy voting advice businesses to include in their disclosure to clients a discussion of the policies and procedures used to identify, as well as the steps taken to address, any conflicts of interest, as proposed? Do proxy voting advice businesses have sufficient incentive to include this disclosure on their own?

SES Comment: All Policy / Guidelines of the proxy voting advice businesses, must be hosted on the website of the proxy voting advice businesses. A weblink of the same shall be provided as a disclosure in the proxy voting advice Report.

22. What are the anticipated costs to proxy voting advice businesses and their clients associated with requiring additional conflicts of interest disclosure, as proposed? For example, what are the costs for proxy voting advice businesses to determine whether an entity is an affiliate of a registrant, another soliciting person, or shareholder proponent? Should we impose structural requirements (e.g., like the structural reforms in the global analyst research settlements) in addition to disclosure requirements?

SES Comment: Disclosure of information based on publicly available information may not be a challenge. However, the task of identifying potential conflict of interest with affiliates of registrants may be a difficult job in case information is not available in public domain.

The Cost would differ from entity to entity, depending on the business structure, number of clients and registrants and investors of the proxy voting advice businesses. Apparently, the incremental cost for identifying such transaction and disclosing the same may not be significant.

23. Are there existing regulatory models of conflicts of interest disclosure that would be useful for us to consider? If so, what are the alternatives that we should consider in lieu of proposed Rule 14a-2(b)(9)(i)? For example, should we require all proxy voting advice businesses to disclose conflicts to the same extent that their clients (e.g., an investment adviser) would be reasonably expected to disclose such conflicts to their own clients (e.g., the funds or retail investor clients to whom the investment adviser provides advice)?

SES Comment: Suggestions of SEBI Working Group (quoted below) in this regard can be taken as a starting point.

"CONCLUSION AND SUMMARY

94. The Working Group recommends that no further mandatory regulation is required, except for amending the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The amendment would provide that listed companies which are aggrieved by a view of a proxy advisor may approach SEBI for redressal of its grievance. It may further provide a mechanism for the same. SEBI may consider drafting a code of conduct for proxy advisors which may include the following on a 'comply or explain' basis:

a. *Disclosure of conflict of interest and how it is managed. The disclosures should appear on every specific document where they are giving their advice. A generic disclosure/disclaimer on the proxy advisor's website is inadequate and it should be extended to every place, including news quotes where a proxy advisor makes a statement. Disclosures should especially address possible areas of potential conflict and also the safeguards that have been put in place.*

b. *The proxy advisor should take appropriate steps to manage, mitigate and/or disclose any potential conflicts of interest resulting from ancillary business activities. Creation of 'Chinese Walls' between proxy firms and their consultancy firms. There should be clear procedures to handle conflicts of interest.*

c. *Disclosures regarding the business model e.g. types of services provided, revenue breakup from various services, categories of clients served and any specific prohibition on services provided.*

d. *The entity/business unit providing services to investors/shareholders should be different from the one providing advisory services to a corporate client.*

e. *Disclosure if consulting services are provided.*

f. *Codes that determine when not to provide a voting recommendation should be clearly disclosed.*

g. *Board of proxy advisors should be independent of its shareholders, where such a position creates a serious conflict of interest, real or apparent.*

h. *Disclosing the methodologies and processes they use in the development of their research and recommendations, so there is some stated process by which the proxy advisors act.*

i. *Setting parameters around the communications they have with the companies and other stakeholders. There should be a nudge towards making company disclosures speak for themselves rather than a bi-lateral discussion between a company and proxy advisors.*

j. *There should be disclosures regarding the provision of other services through subsidiaries, division or associates, and the total income earned by providing such services where it exceeds say 10% of revenues.*

k. *Communication between the proxy advisor and the company should be promptly made public by the company.*

l. *Conflict of interest where there is substantial shareholding or inter-locking boards can be addressed by full disclosure rather than banning proxy advisors from having a view on such connected companies.*

m. *Proxy advisors should make public on their website the following disclosures every year;*

i) Shareholding patter and changes during year, if any

ii) Audited Balance Sheet, Profit and loss Account and cash flow

iii) Board of Directors and changes during year, including shareholding of directors and relatives with changes during the year.

iv) Litigations if any"

2. Registrants' and Other Soliciting Persons' Review of Proxy Voting Advice and Response:

a. Need for Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

b. Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

c. Response to Proxy Voting Advice by Registrants and Other Soliciting Persons

SES General Observation: SES is strongly opposed to this amendment

SES has a review process through which all concerned companies are provided opportunity to review and comment on SES reports. However, the opportunity is given only after the report is released to clients and not before. SES, as a principle, does not share its report with issuer company prior to sending it to its clients for host of reasons which include:

- 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 viz.
    - 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 could 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 to the original report of SES, invariably contains *verbatim* communication (except the name of the recipient and the sender) from the company and SES's comments thereon alongwith justification, wherever required.
    - Addendum gets sent to all original recipients simultaneously. The above process followed by SES, not only gives the issuer company opportunity to review and feedback but also gives its client an original unbiased proxy voting advice.

SES Observations on sharing draft Reports: SES understands that sharing draft Reports with the soliciting person and the registrant may reduce the possibility of any factual error in the Report, however, SES does not favour sharing draft Reports for the following stated reasons.

There are two parts in the above proposed Rule.

1. **Sharing Draft Report with the Soliciting person ('Client'):** Sharing draft Report with the clients assumes importance in cases where the proxy voting advice businesses are undertaking voting on behalf of the clients. In such a case, it is important that the soliciting person is aware of the voting recommendation made by the proxy voting advice businesses.
   However, in India, voting is by and large undertaken by the clients (soliciting persons) themselves and the voting advice provided by the proxy voting advice businesses only act as a recommendation. Therefore, there is no purpose in providing a draft Report to the soliciting person. Discuss
2. **Sharing Draft Report with the Registrant ('Company'):** Right from its inception**,** SES is not in favour of circulating draft Proxy voting advice Report to the Company (registrant) for the following reasons:
   - **Information asymmetry:** Response and additional information received from the registrant may not be available to the public/ shareholders at large who are casting their votes on the resolution. This leads to a situation of information asymmetry wherein certain information is available to the proxy voting advice businesses and its clients, but not to the other set of the shareholders. In such a case, the less -informed shareholders may not be able to take an informed decision.

- **Potential arena for undue-influence:** SES believes that sharing draft with the registrant may open avenues for the Company to cause undue influence or pressure on the Proxy voting advice businesses to provide advice in their favour. Since, the registrant would be privy to the Proxy voting advice Report before others, it may be used as a tool by the registrant to pressurise the Proxy voting advice businesses by luring or other unwarranted means.

Therefore, SES follows the Policy of issuing an Addendum to its Report to address, not only the concern of factual errors in the Report, but also circulating a difference of opinion, if any of the registrant to the clients. This process of SES includes:

- Release of final Proxy voting advice Report to the clients (soliciting person) and registrants (Company) simultaneously, generally 15 days before the voting deadline.
- Both the Companies and the soliciting person may provide their point of views on the Report to SES.
- In case of any factual error, SES acknowledges the same and issues an Addendum to the same set of clients and Company, correcting the same. If such error had resulted in wrong voting recommendation, the voting recommendation is revised in the Addendum.
- The entire communication between the registrant and SES is reproduced (verbatim) in the Addendum ensuring utmost transparency.
- Similarly, in case the registrant differs with the opinion or has a different point of view on a particular matter, the entire email communication between the SES and the registrant is reproduced in an Addendum for the benefit of the shareholders.
- SES leaves it up to the shareholders to take appropriate voting decision based on the Addendum.
- In case the additional information provided by the Company is not otherwise available in the public domain, SES may reproduce such information in the Addendum, but may refrain from considering the same for analysis as the same is not available to the public at large.

This way, SES addresses the issue of factual error and also circulates the registrant's point of view to all the clients.

24. How prevalent are factual errors or methodological weaknesses in proxy voting advice businesses' analyses? To what extent do those errors or weaknesses materially affect a proxy voting advice business's voting recommendations? To what extent are disputes between proxy voting advice businesses and registrants about issues that are factual in nature versus differences of opinion about methodology, assumptions, or analytical approaches?

SES Comment: SES does not have data to comment of factual errors by other proxy advisors. However, in its close to 8 years of operation SES has issued recommendations for over 30,000 resolutions. Only on two occasions it changed its recommendation due to factual material error. While, instances of typographical ot non-material errors, which have no bearing on recommendations do occur. SES as a policy issues addendum to report in case issuer points out any error, howsoever insignificant it may be. This acts as a quality check.

Factual errors are avoided at SES due to its robust system and also due to the fact that each report goes through at least two check points before release.

It may be noted that the entire process of SES proxy voting advisory involves the following steps:

- Data Collection
- Data Reviewing
- Organising Data for logical output
- Report making in line with the Proxy Advisory Guidelines
- Report review by Senior Analyst
- Report Review by Director
- Report finalisation for release

SES has a comprehensive system in place wherein each and every data entry is checked multiple times by different persons to eliminate possible chances of errors. Similarly, the proxy voting advice Report is also reviewed at least at 2 hierarchical levels.

25. As a condition to the exemptions in Rules 14a-2(b)(1) and 14a-2(b)(3), should registrants and certain other soliciting persons be permitted an opportunity to review proxy voting advice and provide feedback to the proxy voting advice businesses before the businesses provide the advice to clients, as proposed? If yes, how much time should be given to review and provide feedback on proxy voting advice? Are the timeframes set forth in proposed Rule 14a-2(b)(9)(ii) appropriate? What would the impact of these proposed timeframes be on registrants, proxy voting advice businesses, and their clients? Are there alternative timeframes that would be more appropriate? Should we allow a proxy voting advice business to provide its final notice of voting advice to the registrant at any time after the registrant has provided its comments during the review and feedback period, regardless of whether the review and feedback period has expired? Are there alternative conditions to the exemptions that the Commission should consider to address the concerns regarding inaccuracies and the ability for investors to get information that is accurate and complete in all material respects?

26. Should the number of days for the review and feedback period be contingent on the date that the registrant files its definitive proxy statement? For example, should there be a longer period (e.g., five business days instead of three) if the registrant files its definitive proxy statement some minimum number of days before the shareholder meeting at which proxies will be voted, as proposed? Would registrants and other soliciting persons be likely to take advantage of the additional time by filing their definitive proxy statements early enough to qualify for this treatment?

27. What impact would the proposed review and feedback period and final notice of voting advice have on the ability of proxy voting advice businesses to complete the formulation of their voting advice and deliver such advice to their clients in a timely manner? Are there additional timing considerations or logistical challenges that we should take into account?

28. Should there generally be a review and feedback period and a final notice of voting advice, as proposed? Should we allow registrants (and certain other soliciting persons) more or fewer opportunities to review the voting advice than proposed? Should a proxy voting advice business be required to provide the final notice of voting advice only if the registrant (or certain other soliciting person) provides comments to the proxy voting advice business during the review and feedback period and the proxy voting advice business's revisions are pertinent to such comments? Should the period allotted for the final notice of voting advice be two business days, as proposed? Should it be longer or shorter?

29. Are there specific ways in which, if we allow the opportunity for registrants and certain other soliciting persons to review and provide feedback on the proxy voting advice, questions may arise about possible influencing of the proxy voting advice by the reviewing parties? How, if at all, could the independence of the advice be called into question if other parties reviewed and commented on it? How could we address such concerns? For example, would disclosure of the specific comments raised by the reviewing party and the proxy voting advice businesses' responses to this feedback help alleviate concerns about the independence of the advice?

(25-26-27-28-29) SES Comment: SES is strongly opposed to allowing first preview of the report to issuers/ businesses.

- **Information asymmetry:** Unless mandated, response and additional information received from the registrant may not be available to the public at large who are casting votes on the resolution. This leads to a situation of information asymmetry wherein certain information is available to the proxy voting advice businesses and its clients, but not to the other section of the shareholders. This process if permitted will not allow disclosure standards to improve and lack of proper disclosure may hamper minority investors who do not use proxy advisors.

- **Potential arena for undue-influence:** SES believes that sharing draft with the registrant may open avenues for the Company to cause undue influence or pressure on the Proxy voting advice businesses to provide advice in their favour. Since, the registrant would be privy to the Proxy voting advice Report before others, it may be used as a tool by the registrant to pressurise the Proxy voting advice businesses by luring or otherwise.

The matter relating to possible influencing of proxy voting advices as enumerated by SEC by issuers/ businesses is real and is appreciated. **Such a mandate will impact independence of proxy advisors, thus hitting the core of ethical standards expected from Proxy Advisors.** Therefore, the issuers shall be able to view Proxy Reports only after it is released to investors or at the same time.

Further, it is the investor who pays for the report, not the issuer. Therefore, for commercial reasons also investors must get to see the report first.

The risk of untrue statements in a report is real, however the same can be handled and addressed by adopting procedure being followed by SES.

According to SES, first preview by investors, leads to effectiveness in the entire system. Contrary to belief that first release of draft Proxy voting advice Report to the Investors and issuers simultaneously and then seeking feedback from issuers on the contents of report.

- If any issuer provides its point of views on the Report in writing, an addendum is issued and is sent to all the recipients of first report.
- The addendum takes care of any factual error or typographical mistakes. In case the feedback from issuer necessitates change of recommendation, same is done.
- SES even goes one step further by reproducing counter point of view advanced by issuer. This makes investor aware of the view point of issuer, enabling investor to take a considered decision.

The system has numerous advantages

- It improves quality of report as investors have trail of mistakes made by proxy advisors. Mistakes will be hidden in case issuers view the report prior to investors and any mistake made by Proxy Advisor will become private.
- No pressure tactics will work as investors have original report and any change by Proxy Advisors will have to be explained
- Complete audit trail of process, without any need for post facto audit.
- No delay in reports being made available to investors.

As a matter of fact, the 3rd Schedule to the SEBI RAR provide as under:

> **"Confidentiality**
>
> *Research analyst or research entity or its employees shall maintain confidentiality of report till the report is made public."*

Therefore, SEBI RAR indirectly prohibit sharing of report with issuers before it is issued, unless a confidentiality agreement is signed with each issuer.

This way, the concerns as identified by SEC can be addressed without opening up any avenue of influence.

30. What effect will the proposals, if adopted, have on proxy voting advice businesses' ability to provide timely voting advice to their clients? What are the anticipated compliance burdens and corresponding costs that proxy voting advice businesses are expected to incur as a result of the proposed new conditions? What impact will these burdens and costs have on proxy voting advice businesses' clients?

SES Comment: There is no doubt that the proposed Rules would have an incremental impact on the cost and timeline of the proxy voting advice businesses in serving its clients. While, it would be tough to precisely estimate the cost aspect presently, however, on the face of it, this would certainly affect the timelines for release of the proxy voting advice report. Therefore, SES reiterates that the issuer must not be allowed first preview of report.

Issuance of Addendum wherever necessitated, as discussed under point no. 29 above is an effective and efficient solution.

31. Should the proposed amendments allow a proxy voting advice business to seek reimbursement from registrants and other soliciting persons of reasonable expenses associated with the review and feedback period and final notice of voting advice in proposed Rule 14a-2(b)(9)(ii)? If so, what would constitute reasonable expenses and how should these amounts be calculated? Should the calculation of these amounts be dependent on the size or other attributes of the proxy voting advice business, or on the size of the registrant, or number of recommendations? Should there be limits on the amount beyond reasonable expenses for which a proxy voting advice business can seek to be reimbursed?

32. We proposed to limit the review and feedback period and final notice of voting advice requirements to only registrants and soliciting persons conducting non-exempt solicitations. Should the opportunity to review and provide feedback and receive final notice of voting advice also be given to other parties, such as shareholder proponents or persons engaged in exempt solicitations, such as in "vote no" or withhold campaigns?

(31-32) SES Comment: SES reiterates that it does not agree with the concept of circulating the draft proxy voting advice report in advance.

33. Should the voting advice formulated under the custom policies established by clients whose specialized needs are not addressed by a proxy voting advice business's benchmark or specialty policies be subject to the proposed review and feedback period and final notice of voting advice requirements? Are there any confidentiality concerns, such as the revelation of the client's investment strategies, which would arise from the ability of registrants or others to review the advice formulated under these customized policies? If so, is there a need for a method for distinguishing voting advice formulated under a proxy voting advice business's benchmark or specialty policy from advice formulated under a client's custom policy, and what would be the appropriate method for making this distinction? We note, for example, at least one major proxy voting advice business asserts that it is not the "norm" for its clients to adopt all or some of the business's benchmark policy, with the "vast majority of institutional investors" opting for "increasingly more detailed policies with specific views" on the issues presented for a vote in the proxy materials.

SES Comment: SES believes that as a matter of principle independence of a proxy advisor means independence of policy as well as interpretation or view. If proxy advisor has to only report based on policy made by an investor, independence of policy making seems to be compromised. In this role, the Proxy Voting Advisors as an institution fail as they are no longer advocates of good Corporate Governance practices but only provider of logistical support to the client. SES believes that the proxy voting advice must be based on a uniform proxy advisory guideline comprising of best governance practice. Such Guideline must serve as a base for providing proxy voting advices.

34. Should the review and feedback period and final notice of voting advice requirements be a condition to the exemptions in all cases, as proposed, or should they be required only where a proxy voting advice business's voting recommendations are adverse to the reviewing party? In a proxy contest, should we require the review and feedback period and final notice of voting advice requirements only if voting recommendations are adverse to the reviewing party? In the case of a split vote recommendation, who should have the right to review the voting advice?

SES Comment: SES reiterates that it does not agree with the concept of circulating the draft Proxy Voting Advice Report in advance. Proxy advisors are not agents of any party, hence process followed must be agnostic to recommendation or entity. The moment Proxy Advisors behaviour is determined by outcome/ recommendations or the entity involves, Proxy Advisors lose independence and are in conflict, and thereby become interested party.

35. Would the proposed review and feedback period and final notice of voting advice requirements work effectively in the context of a contested solicitation? Are there unique challenges or specific issues with the parties' compliance with these proposed requirements that are foreseeable in contested solicitations?

SES Comment: SES reiterates that it does not agree with the concept of circulating the draft proxy voting advice report in advance.

36. Should we require the entirety of the proxy voting advice, including separate specialty reports, to be provided to the reviewing party or only excerpts or certain reports? If the latter, which excerpts or reports? How should the scope of any such excerpts or reports be determined? Should only the portions of the voting advice that are adverse to the registrant or certain other soliciting persons be subject to the review and feedback period and final notice of voting advice requirements? Should we require only the factual information and/or data underlying the advice to be provided to the reviewing party?

SES Comment: Full report needs to be provided, however, SES reiterates that it does not agree with the concept of circulating the draft proxy voting advice report in advance.

37. Should proxy voting advice on certain topics or kinds of proposals be excluded from the proposed review and feedback period and final notice of voting advice requirements? If so, which ones? If some are excluded, are there topics or kinds of proposals for which proxy voting advice should always be subject to the proposed requirements?

SES Comment: SES reiterates that it does not agree with the concept of circulating the draft proxy voting advice report in advance.

38. Are there any risks raised by proxy voting advice businesses providing advance copies of voting advice (e.g., misuse of material, nonpublic information, or misappropriation of proprietary information), and if so, how can such risks be managed?

SES Comment: These risks are real. These risks can be mitigated or managed by following the process of issuing the Addendum as elaborated under point No. 29.

39. Should we allow proxy voting advice businesses to require registrants and other soliciting persons to enter into confidentiality agreements prior to providing their proxy voting advice? If so, should we specify any terms or parameters of the required confidentiality agreement? For example should the rule stipulate that the terms of the confidentiality agreement may be no more restrictive than similar types of confidentiality agreements the proxy voting advice business uses with its clients, as proposed? Should we stipulate in the rule that a proxy voting advice business is not required to comply with the proposed review and feedback period and final notice of voting advice requirements unless the reviewing party has entered into an agreement to keep the information received confidential? Are there similar types of confidentiality agreements between proxy voting advice businesses and their clients? If so, what are the terms of those agreements? Is it appropriate for the rule to address the nature of a private contract between two parties?

SES Comment: This would make the business and process cumbersome without any tangible benefit, as each issuer would have to sign a confidentiality agreement with each Proxy Advisor world over. This will increase costs and will be unproductive. SES reiterates that it does not agree with the concept of circulating the draft proxy voting advice report in advance.

40. Can the confidentiality of information that a proxy voting advice business would provide to registrants and other soliciting persons under the proposal be effectively safeguarded? Would it be feasible for a proxy voting advice business to obtain a confidentiality agreement from the numerous registrants or soliciting persons with whom it interacts? Could confidentiality be assured through other means?

SES Comment: SES covers more than 750 Companies during its Proxy season (Annual General Meetings alone) every year for making voting recommendations. ISS covers many time more than SES. It is nearly an impossible task to contact all such Companies (registrants) and enter into a confidentiality agreement with each of them. Additionally, this will result in additional cost for the proxy voting advice businesses.

41. Should proxy voting advice businesses be required to include in their voting advice to clients a hyperlink (or other analogous electronic medium) to the response by the registrant and certain other soliciting persons, as a condition to the exemptions in Rules 14a-2(b)(1) and 14a-2(b)(3)? Are there better methods of making the response available to the clients of proxy voting advice businesses? Should the proposed rule provide certain guidelines or limitations on the responses (e.g., responses may cover only certain topics, such as disagreements on facts used to formulate the proxy voting advice)?

SES Comment: Without going into the legalities of Rules 14a-2(b)(1) and 14a-2(b)(3), SES is of the opinion that every communication between the proxy voting advice businesses and the registrant must be disclosed to the relevant stakeholders such as the clients / soliciting person. Since, the soliciting person is ultimately responsible for casting the votes, they must have all the relevant information to take a well-informed decision. See SES comment on Point no **(25-26-27-28-29).**

42. Would the proposed condition that proxy voting advice businesses include a hyperlink (or other analogous electronic medium) directing their clients to the registrant's (or certain other soliciting person's) statement impact clients of proxy voting advice businesses, such as investment advisers? If so, how?

SES Comment: if procedure followed by SES as given in para 29 is implemented this is automatically taken care of.

43. In our view, proxy voting advice businesses would not be liable for the content of the registrant's (or certain other soliciting person's) statement solely due to inclusion of a hyperlink (or other analogous electronic medium) to such a statement in their voting advice. Should we codify this view in the text of proposed Rule 14a-2(b)(9)?

SES Comment: Proxy voting advice businesses cannot not be held responsible for the content of the registrant's statement. Codification will certainly increase clarity therefore, such codification would be in the interest of all stakeholders.

44. In instances where proxy voting advice businesses provide voting execution services (prepopulation and automatic submission) to clients, are clients likely to review a registrant's response to voting advice? Should we amend Rules 14a-2(b)(1) and 14a-2(b)(3) so that the availability of the exemptions is conditioned on a proxy voting advice business structuring its electronic voting platform to disable the automatic submission of votes in instances where a registrant has submitted a response to the voting advice? Should we require proxy voting advice businesses to disable the automatic submission of votes unless a client clicks on the hyperlink and/or accesses the registrant's (or certain other soliciting persons') response, or otherwise confirms any pre-populated voting choices before the proxy advisor submits the votes to be counted? What would be the impact and costs to clients of proxy voting advice businesses of disabling pre-population or automatic submission of votes? Could there be effects on registrants? For example, if a proxy voting advice business were to disable the automatic submission of clients' votes, could that deter some clients from submitting votes at all, thereby affecting a registrant's ability to achieve quorum for an annual meeting? If we were to adopt such a condition, what transitional challenges or logistical issues would disabling pre-population or automatic submission of votes present for proxy voting advice businesses, and how could those challenges or issues be mitigated?

SES Comment: SES is principally against auto voting. SES is of the opinion that pre-population of votes defeats the role of investor in furtherance of corporate democracy. It is the fiduciary responsibility of the investors to review the recommendation of proxy voting advice businesses and cast their votes according to their own judgement.

45. Should we permit proxy voting advice businesses to cure any unintentional or immaterial failure to comply with the proposed conditions so long as they make a good faith and reasonable effort, as proposed? We have proposed that the determination of whether a good faith and reasonable effort has been made should depend on the particular facts and circumstances. Is there a need for further clarity on the actions that may be needed to satisfy this standard? If so, what would be appropriate to consider in satisfying this standard?

SES Comment: Determining good faith and reasonable efforts would depend on the information based on which the voting advice have been provided as also the circumstances concerning each case. Therefore, this can only be principle based and is difficult to codify.

46. Should we prescribe a more detailed framework or establish procedural guidelines to help proxy voting advice businesses manage their interactions with registrants and certain other soliciting persons under proposed Rules 14a-2(b)(9)(ii) and (iii)? If so, what would be the appropriate framework?

SES Comment: SES as a matter of policy does not support interaction with issuer (Registrant) during black out period (from issue of notice to shareholders upto issue of report), as SES believes notice must be self contained enabling investors to take an informed decision. Such interaction will place users of proxy reports in advantageous position. The framework must be principle based rather than rule based, in order to avoid rigidity. The intent of the framework should be to cast an obligation on the proxy voting advice businesses to disclose the interaction particularly with registrants as proxy voting advice businesses provide advice that may impact their business.

47. What steps would proxy voting advice businesses need to take to update their systems and procedures such that they would reasonably be able to comply with the new conditions of proposed Rule 14a-2(b)(9)? Are there other steps that proxy voting advice businesses would need to take, such as re-negotiating contracts with their clients? What are the associated costs that proxy voting advice businesses would be anticipated to incur as a result? If the proposal is adopted, how much preparatory time would a proxy voting advice business require following adoption of the proposed amendments, to ensure that its systems and procedures are equipped to facilitate the business's compliance with the new rules?

SES Comment: Please refer to point no. 16.

48. Should proxy voting advice businesses be required to disclose the nature (e.g., frequency, format, substance, etc.) of their communication with registrants (and certain other soliciting persons) to their clients or publicly?

SES Comment: The communication itself must be disclosed in the report, to which it pertains. This can be done either by reproducing the entire communication in the Report, or by means of a weblink.

49. What factors and/or conditions are primarily responsible for the incidence of factual errors and methodological weaknesses in proxy voting advice businesses' analyses? How effective would our proposal for standardized review and feedback and opportunity to include responses to the proxy voting advice be in addressing these factual errors and methodological weaknesses?

SES Comment: It would not be possible to have an exhaustive list of factors that may lead to a factual error. Having said that, an error may be caused due to either human judgement or may be a systematic error. In order to manage such errors, the process of issuance of Addendum as suggested earlier under point no. 29, could be followed.

50. Are there better approaches for addressing factual errors and methodological weaknesses in proxy voting advice businesses' analyses?

SES Comment: This would depend upon the organisational structure of various proxy voting advice businesses. A multiple staged review can certainly enhance the level of accuracy in the content of the Report. Please refer to comment under point no. 24.

51. To what extent have factual errors or methodological weaknesses in proxy voting advice businesses' analyses resulted in impaired voting advice or adversely affected the ability of proxy voting advice businesses' clients to vote securities effectively?

SES Comment: In case of SES, factual error leading to an incorrect voting recommendation has occurred only twice in the past 6 years.

C. Proposed Amendments to Rule 14a-9: False or misleading statements

"Rule 14a-9. The proposed amendments would modify Rule 14a-9 to include examples of when the failure to disclose certain information in the proxy voting advice could, depending upon the particular facts and circumstances, be considered misleading within the meaning of the rule."

> *"e. Failure to disclose material information regarding proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A), such as the proxy voting advice business's methodology, sources of information, conflicts of interest or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves."*

SES General Observations: Clerical error or omission on the part of the proxy voting advice businesses must not be construed as false or misleading unless such an act is done with an intent to misguide the client. As a matter of practice, methodology, details regarding sources of information, conflicts of interest or use of standards must be provided on the website of the proxy voting advice businesses. A brief of the same can also be provided in the Report with a weblink to the website.

Additionally, in case of any material transaction between the proxy voting advice businesses and the registrant constituting more than 10% of the total income of the proxy voting advice businesses, such declaration must be provided in the proxy voting advice Report itself.

QUESTION WISE COMMENTS:

52. Is the proposal to amend the list of examples in Rule 14a-9 necessary in light of the Commission's recent guidance specifically underscoring the applicability of Rule 14a-9 to proxy voting advice? Should the proposal to amend Rule 14a-9 list different or additional examples and, if so, which examples?

SES Comment: No comment as the point is relating to law.

53. To what extent do proxy voting advice businesses currently apply their own standards or criteria that materially differ from those set or approved by the Commission, and how well do they alert clients to these differences when it may impact their voting advice?

SES Comment: This can best be answered by the proxy voting advice businesses working in US. However, in India, SES makes recommendation based not only on Regulations framed by the SEBI (the Regulator) but also on best global practices in the field of corporate governance. SES has framed a comprehensive Proxy Advisory Guidelines comprising of legal provisions and best governance practices. Every recommendation is made based on the Guideline.

In case of every recommendation, SES provides adequate rationale in the Report in support of such recommendation.

54. Should the proposed amendment refer only to standards or requirements that the Commission sets or approves or is a wider scope (i.e., rules of other legal or regulatory bodies) more appropriate? If a wider scope is preferable, should the regulatory standards of state or foreign regulatory bodies also be referenced?

55. Alternatively, instead of amending Rule 14a-9 as proposed, should we require, as an additional condition under proposed Rule 14a-2(b)(9), that a proxy voting advice business include in its voting advice (and in any electronic medium used to deliver the proxy voting advice) disclosure of its use or application, in connection with such proxy voting advice, of standards that materially differ from standards or requirements that the Commission sets or approves?

(54-55) SES Comment: Every advisor must be allowed to set its own standards; domestic laws are the lowest benchmarks that needs to be followed. Any stricter benchmark can be set by proxy advisors. However, the same needs to be disclosed along with rationale. The benchmarks could be based on benchmarks followed in other jurisdictions, prescribed by international agencies like OECD, UNPRI etc or could be based on advisors' own policies. Advisors must disclose their policy and benchmarks publicly.

56. Are there any challenges that proxy voting advice businesses, their clients, or registrants anticipate in undertaking to develop systems and processes to implement the proposed amendments? If so, what are those challenges, and how could they be mitigated?

SES Comment: SES would once again reiterate that if SES procedure as elaborated in point 29 is followed by advisory industry most of issues will be handled. The challenges would be known only after final law is in place. SEC must be conscious of the fact that Proxy advisory business is not a very lucrative business and costs are extremely important. Additionally, dominant nature of any player acts against other advisors, who cannot sustain increased costs as investors have no reason to compensate increased costs to advisors.

57. Is the proposed transition period appropriate? If not, how long should the transition period be and why? Please be specific.

SES Comment: SES is not in a position to comment on the adequacy of the transition period of one year, as proposed.

58. Are there any other accommodations that we should consider for particular types of proxy voting advice businesses, registrants, or circumstances? Are there other transition issues or accommodations that we should consider?

SES Comment: US based proxy voting advice businesses, their clients, or registrants would be better placed to answer this.

59. How effective would the proposed amendments be in facilitating the ability of proxy voting advice businesses' clients to obtain the information they need to make informed voting determinations, including for investment advisers that are exercising voting authority on behalf of clients?

SES Comment: The proposal relating to material conflict of interest will certainly help the clients in taking an informed decision. As far as the proposal relating to sharing of draft proxy voting advice is concerned, SES has its reservations for reasons stated under point no. 27.

60. Are there any other conditions that should apply to proxy voting advice businesses seeking to rely on the exemptions in Rules 14a-2(b)(1) and (b)(3)? If so, what are these conditions?

SES Comment: US based proxy voting advice businesses, their clients, or registrants would be better placed to answer.

61. Are there other approaches that are better suited to accomplish the Commission's objectives? For example, should proxy voting advice businesses be required to develop policies and procedures to help ensure that conflicts of interest are dealt with appropriately and to improve the accuracy of the information on which their proxy voting advice is based?

SES Comment: It is imperative that every institution must have a comprehensive policy/ guideline inter alia relating to management of conflict of interest situation. Please refer to SES Comments under point no. 16 & 24 in this regard.

62. What effect would these proposals, if adopted, have on competition in the proxy advisory industry? Would adoption of the proposals increase barriers to entry into the market for potential competitors or lead to unhealthy market concentration within the proxy advisory industry or, ultimately, lead to decline in the quality of proxy voting advice provided to investors?

SES Comment: Based on our understanding, it would certainly add barriers. History is supporting this, even after three decades or more there is almost a duopoly in USA and other jurisdiction. See point 56 also.

63. To the extent that adoption of the proposed amendments would limit the ability of smaller proxy voting advice businesses or potential new market entrants to operate and compete in the market for these services, should they be subject to the additional conditions in proposed Rule 14a-2(b)(9) in order to rely on the exemptions in Rules 14a-2(b)(1) and (b)(3)? If not, what should the criteria be for determining who is not subject to Rule 14a-2(b)(9)? For example, should we base the availability of an accommodation for smaller proxy voting advice businesses on annual revenues, number of clients or market share? Would investment advisers or other institutional investors be less likely to hire proxy voting advice businesses that take advantage of such an accommodation? Are there other accommodations we should consider in lieu of or in addition to this exemption for certain proxy voting advice businesses?

SES Comment: SES as a matter of policy does not support any differential treatment. If SEC believes that any regulation it makes, is good for industry, it is good for small or big equally. If a differential treatment is given to smaller players, clients using the services may not get the same quality reports, if one believes that SES regulations are intended to improve quality. US based proxy voting advice businesses, their clients, or registrants would be better placed to answer.