O L S H A N

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February 3, 2020

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: **File Number S7-22-19 (Proxy Rules for Proxy Voting Advice)**
Comments to SEC Release No. 34-87457

Dear Ms. Countryman:

Olshan Frome Wolosky LLP ("Olshan") is pleased to submit its comments to the proposed amendments to the federal proxy rules described in Release No. 34-87457 published by the Securities and Exchange Commission ("SEC") on November 5, 2019 (the "Release") that would (i) condition the availability of certain existing exemptions from the information and filing requirements of the proxy rules for proxy voting advice businesses upon compliance with additional disclosure and procedural requirements, (ii) codify the SEC's interpretation that proxy voting advice generally constitutes a "solicitation" within the meaning of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (iii) amend the proxy rules to clarify when the failure to disclose certain information in proxy voting advice may be considered misleading.

Olshan's Shareholder Activism Practice Group is widely recognized as the nation's premier legal practice in representing activist investors in contested solicitations. We have vast experience counseling clients on a wide variety of activist strategies, from election contests, consent solicitations and hostile takeovers to letter writing campaigns and behind-the-scenes discussions with management and boards of directors. We are consistently ranked as the leading legal advisor to activist investors by various publications that cover shareholder activism, including Activist Insight Monthly, The Deal Activism League Table, FactSet SharkRepellent, The Legal 500 United States Guide and Refinitiv Global Shareholder Activism Scorecard. In 2019, our firm advised on 105 activist campaigns according to Activist Insight Monthly, and 140 activist engagements worldwide according to Bloomberg's inaugural Activism Advisory League Tables. We have been involved in hundreds of contested solicitations during which proxy advisory firms ("PAFs") issued proxy voting advice. Our position as the leading law firm in the shareholder activism arena gives us unique insight and perspective into the proxy process and the proposed legal, procedural and policy considerations underlying the proxy voting advice proposal.

Scope of Olshan Comments

We are not commenting on every aspect of the rule proposal. Indeed, other law firms, institutions, investment managers and practitioners have submitted exhaustive commentary to the SEC as to the highly technical legal issue of whether the definition of "solicitation" in the Exchange Act should include proxy voting advice rendered by PAFs. Similarly, the leading PAFs have made clear their deep concerns with the rule proposal.

Rather, the scope of our comments is limited to the dangers of the proposed review and feedback process in terms of how such a process would play out in the "real world" of a proxy contest. We have drawn upon our vast experience in this area to highlight the flaws inherent to the practical application of the proposed rules.

Our primary concern is that the proposed rules would be ripe for exploitation and manipulation by each of the company and the dissident in a proxy contest by giving each party opportunities to preview a full copy of the PAF's voting advice, in draft and final form, prior to such advice being disseminated to its clients. PAF voting recommendations have become a fundamental part of the proxy contest process as these reports represent an independent arbiter's views on how its clients should vote after sorting out and distilling the mix of competing and often voluminous information disseminated by the proxy participants. These highly anticipated reports, typically issued in the final stages of a proxy campaign, often represent a critical strategic turning point for the competing participants in the election contest. A PAF's conclusions and ultimate voting recommendation typically drive final key strategic decisions to be made by both sides in the home stretch of a campaign and could even alter the entire landscape of a contest by, for example, compelling eleventh hour pivots in strategy, shifting negotiating leverage in pending settlement discussions or leading to last-ditch preemptive litigation.

As discussed in further detail below, allowing the company and the dissident to preview the PAF's full recommendation and the underlying rationale for its conclusions would create various opportunities for the company and the dissident to take strategic reactionary measures designed to influence the PAF to alter its initial conclusions and to garner more votes. We are also skeptical that confidentiality agreements contemplated by the proposed rules would be sufficient to ensure the confidentiality of the PAF materials or their content prior to their publication. Any leakage of draft or final proxy voting advice would be highly prejudicial to the party on the losing end of a PAF recommendation. In addition, we are concerned that a process that allows companies and dissidents to have access to and provide input on the full voting recommendations of PAFs as they are being formulated in real time could jeopardize the objectivity and independence of PAFs. Furthermore, we find such "big brother" like intervention to be wholly unnecessary and an affront to the integrity of the independent analysis and ultimate product rendered by PAFs. Requiring the proposed review and feedback process seems to inappropriately suggest that PAFs are somehow incapable of arriving at cogent conclusions on their own without outside intervention.

Given these real world concerns, we believe the proposed rules go too far in requiring PAFs to preview their full proxy voting reports with the parties of a proxy contest. We believe

there are less disruptive and controversial ways to ensure the accuracy of the facts and assumptions underlying proxy voting advice rendered by PAFs that do not require them to share their full conclusions and ultimate recommendations with companies and dissidents ahead of time. Limiting the materials to the underlying data and/or research utilized by the PAFs for their voting recommendations could strike the right balance between improving the accuracy of their recommendations while minimizing the risk of abuse.

We also have fundamental concerns that the proposed rules are too simplistic and rigid to be applied in the context of the fast paced and highly fluid nature of a typical proxy contest, and their real world application could have the effect of:

- discouraging PAFs from changing their initial recommendations when a change would be warranted,
- resulting in protracted and time consuming negotiations regarding the form of confidentiality agreement to be used, and
- ultimately having a chilling effect on the number of proxy voting recommendations issued by PAFs in contested solicitations.

Finally, we believe the proposed rules fail to ensure a level playing field for the company and the dissident in a proxy contest by not specifically requiring PAFs to apply identical and simultaneous review periods and the same feedback deadlines to both parties.

The following is a more detailed discussion of these concerns that the SEC is invited to take into consideration.

Overview of Review and Feedback Process

In formulating the proposed rules, the SEC seeks to establish a process that would "foster enhanced engagement" between PAFs and companies and certain other soliciting persons in order to allow investors to have the "benefit of the input and views" of companies and other soliciting persons in considering and potentially acting upon voting advice rendered by PAFs. The proposed amendment to Rule 14a-2(b) aims to achieve the foregoing by requiring, as one of the conditions to the exemptions under Rules 14a-2(b)(1) and 14a-2(b)(3), a review and feedback process under which a PAF would provide a company and any other person who is conducting a non-exempt solicitation through the use of its own proxy statement and proxy card to which the proxy voting advice relates (for purposes of this letter of comment, a "dissident shareholder") a limited amount of time to review and provide feedback on the advice before it is disseminated by the PAF to its clients. The length of time allotted to the company or dissident shareholder would depend on how far in advance of the relevant shareholder meeting the company or the dissident shareholder has filed its respective definitive proxy statement with the SEC as set forth below:

- If the definitive proxy statement is filed at least 45 calendar days before the meeting date, the company or any dissident shareholder will be given at least five

business days to review a draft of the PAF's proxy voting advice and to provide any feedback to the PAF, or

- If the definitive proxy statement is filed less than 45 but at least 25 calendar days before the meeting date, the company or any dissident shareholder will be given at least three business days to review a draft of the PAF's proxy voting advice and to provide any feedback to the PAF, or

- If the definitive proxy statement is filed less than 25 calendar days before the date of the meeting, the PAF will not be required to provide its voting advice to the company or any dissident shareholder.

In addition, the PAF will be required to furnish to the company and/or any dissident shareholder a final copy of the proxy voting advice that it will deliver to its clients, including any revisions made in response to feedback from the company and/or dissident shareholder, no later than two business days prior to the delivery of the advice to its clients. The company and/or dissident shareholder will then have the opportunity to provide the PAF with a hyperlink to its written response to the final proxy voting advice for inclusion in the PAF's advice disseminated to clients. The PAF will have no further obligation to provide the company and/or dissident shareholder with additional opportunities to review the proxy voting advice following the expiration of the two-business day period.

The proposed rules would also allow the PAF to require the company and/or dissident shareholder to enter into a confidentiality agreement to maintain the confidentiality of the materials furnished by the PAF during the review and feedback period and refrain from publicly commenting on these materials. These confidentiality agreements may not be more restrictive than similar types of agreements the PAF requires its clients to sign and must cease to apply once the PAF provides the proxy voting advice to one or more recipients.

Proposed Review and Feedback Process Would be Ripe for Exploitation and Manipulation

It is imperative that any proxy rules adopted by the SEC are immune from the risk of exploitation or manipulation in the context of a proxy contest involving a company and one or more dissident shareholders. In a typical proxy contest the proposed rules would be ripe for abuse by the company and the dissident shareholder by allowing each party to review a full copy of the PAF's draft and final voting advice prior to publication. Allowing the company and the dissident shareholder to preview the PAF's full recommendation and the underlying rationale for its conclusions would create various opportunities for the company and the dissident shareholder to exploit this information in order to gain a strategic advantage in the solicitation.

Company or Dissident Shareholder Could Take Strategic Reactionary Measures in Response to Draft Voting Advice

Allowing the company and the dissident shareholder to have a preview of the PAF's draft voting recommendation and the underlying rationale for its conclusions would create an

opportunity for either party to unfairly exploit this information in order to make key strategic decisions intended to influence the PAF's final voting recommendation and garner more votes.

For example, assume that in an election contest a key concern raised by the dissident shareholder seeking majority representation on the board of directors of the company is that the existing board has adopted abhorrent corporate governance provisions. Based on the definitive proxy statements filed by both the company and the dissident shareholder, the PAF prepares draft voting advice recommending shareholders vote in favor of a portion of the dissident slate (such that their election would only result in minority representation on the board) citing the company's corporate governance deficiencies as the primary driver of this recommendation. Once the PAF previews its draft report with the company and the dissident shareholder, the company would have an unfair opportunity to exploit this information by revising its strategy to address the concerns raised by the PAF (e.g., publicly announcing that it immediately intends to adopt sweeping corporate governance reform) in the hope that the PAF will reverse its recommendation in its final report. On the flip side, the dissident shareholder could exploit the draft report by reducing the size of its slate commensurate with the PAF's recommendation so that it has a better chance of electing as many of its nominees as possible.

Company or Dissident Shareholder Could Take Strategic Reactionary Measures in Response to Final Voting Advice

Allowing the company and the dissident shareholder to preview the PAF's final voting recommendation would also create an opportunity for either party to unfairly exploit this information in order to get ahead of an unfavorable recommendation.

Applying the same example as above where a dissident shareholder is attempting to replace a majority of the board of a company with questionable corporate governance practices, assume the PAF's final report recommends in favor of the dissident slate citing the company's poor corporate governance. Once the PAF previews this information with both sides, the company would have an unfair opportunity to pivot and announce that it now intends to adopt sweeping corporate governance reform. This would allow it to get ahead of the imminent release of the PAF's criticism from a shareholder relations standpoint and possibly persuade the PAF to reverse its recommendation.

Confidentiality Agreements May Not be Sufficient to Protect the Confidentiality of PAF Materials

Under the proposed rules, a PAF may require the company or the dissident shareholder to enter into a confidentiality agreement covering any materials it receives pursuant to the review and feedback process. Despite the significant amount of time and effort that will be devoted to negotiating these confidentiality agreements, as discussed in greater detail below, we do not believe they will be sufficient to ensure the confidentiality of the PAF materials or their content. To the contrary, we believe there is a high probability that draft and final proxy voting advice furnished to the company or the dissident shareholder will still find its way into the public domain prior to being released to PAF clients.

Since we would expect numerous individuals, including employees, proxy solicitation firms, investment banking firms, public relations firms and other advisors, will have access to the draft and final voting reports, the risk of these reports being leaked to the press is simply too great. If the review and feedback process is adopted in its current form, we think it would be a common occurrence during proxy contests to see headlines in the media to the effect of "ABC Proxy Advisor close to issuing recommendation in favor of XYZ Corp., based on anonymous sources close to the situation." Any such disclosure would be highly prejudicial to the party on the losing end of a PAF recommendation.

Review and Feedback Process Does Not Contemplate Fast Paced, Highly Fluid Nature of Proxy Contests

Another significant concern we have with the proposed rules is they do not appear to contemplate the fast paced and highly fluid nature of most proxy contests. Business proposals and director slates advanced by companies and dissident shareholders as well as their platforms often change throughout the solicitation process as a result of evolving strategies and other changes in the relevant facts and circumstances. Even after a company or dissident shareholder has filed its definitive proxy materials, business proposals up for consideration by shareholders may be added, removed or revised. Similarly, the composition of director slates up for election may also change for strategic or other reasons. In addition, other developments or changes in circumstances that are material to an investor's voting decisions could arise after definitive proxy materials have been filed, which could compel a PAF to change a previously-rendered voting recommendation. Unfortunately, the proposed review and feedback process does not contemplate the twists and turns that are typical in most proxy contests and the rigid and simplistic nature of the proposed process could prevent it from being fairly and effectively implemented in real world situations.

Review and Feedback Process Does Not Take Into Account Fact That PAFs Sometimes Need to Change Their Advice and May Discourage PAFs From Changing Advice When Warranted

Under the proposed rules, it is contemplated that the PAF will share only two iterations of its proxy voting advice to the company and the dissident shareholder – one draft copy and one final copy. However, as discussed above, the proposed rules do not address circumstances, such as subsequent additions, deletions or changes to the relevant business proposals or revisions to a director slate, where the PAF would need to revise its draft or final voting advice to address such changes and sharing a new set of draft or final advice to both sides would be appropriate.

Applying the same example as above where a dissident shareholder is attempting to replace a majority of the board of a company with questionable corporate governance practices, assume the PAF agrees with the dissident shareholder's views on the company's corporate governance deficiencies and as a result issues draft voting advice to both sides recommending a vote in favor of the dissident slate. In response to the draft advice, the company immediately announces that it will add proposals for consideration by the shareholders at the shareholders meeting to amend its charter and bylaws to allow shareholders to act by written consent in lieu of a meeting and to call special meetings and amends its definitive proxy statement to add these proposals. The PAF will now need to amend its advice to provide analysis on, and make

recommendations with respect to, these new proposals and may even reverse its initial recommendation in favor of the dissident slate in light of the company's shareholder friendly initiatives. Shouldn't the company and the dissident each have another opportunity to review and provide feedback on a new set of draft advice reflecting these developments? If the SEC agrees that the answer is yes, the proposed rules do not contemplate a second look at revised draft voting advice.

What if in the same example the company waits until after it receives the PAF's final voting advice recommending a vote in favor of the dissident slate before switching gears and announcing the corporate governance initiatives? The PAF will need to amend and re-issue its final voting advice to clients to address these changed circumstances. Assuming the SEC agrees that as a matter of fairness both sides should have another opportunity to review the revised final voting advice, the proposed rules do not contemplate a second look at revisions to final voting advice. The proposed rules also do not specifically allow the company or the dissident shareholder to provide the PAF with a new statement setting forth its views on any revised final advice rendered by the PAF for inclusion as a hyperlink in the new advice.

Numerous other developments within or outside the control of the company or the dissident shareholder could occur that may compel the PAF to change its previously-shared draft or final advice – announcements of earnings, strategic reviews, M&A transactions or other material corporate developments; announcements of lawsuits, investigations or other material legal or regulatory proceedings; disclosures of bad acts by director nominees; significant changes in share price performance; etc. If changed circumstances were to compel a PAF to change its proxy voting advice in any material way, the proposed rules simply do not provide the flexibility to allow the company and the dissident shareholder to review revised draft or final advice, as applicable, when such a second look may be warranted or to provide a hyperlink to a new statement corresponding to the revised final advice. In addition, the absence of procedures addressing such changed circumstances may discourage PAFs from changing their advice when they would otherwise do so.

Proposed Rules May Lead to Protracted and Time Consuming Negotiations of Form of Confidentiality Agreement

Under the proposed rules, a PAF may require the company or the dissident shareholder to enter into a confidentiality agreement covering any materials it receives pursuant to the review and feedback process, provided that the terms of such agreement "shall be no more restrictive than similar types of confidentiality agreements the proxy voting advice business requires of the recipient of the proxy voting advice" and that it will cease to apply once the PAF provides its advice to its clients. The rationale for allowing the PAF to take measures to protect its materials prior to dissemination to its clients are obvious. However, absent more detailed guidelines on how these agreements should be formulated or the introduction of a form agreement that is blessed by the SEC, we believe the parties to any such agreements will be hamstrung by protracted, time consuming and expensive negotiations of their terms and conditions.

Before discussing the effort and expense that will go into negotiating these confidentiality agreements, we note that the proposed rules do not specifically require the agreements with the

company and the dissident shareholder in the context of a proxy contest to be identical. Failure to enact a set of rules that ensures that both agreements are identical could give one side a strategic advantage over the other side and compromise the fairness of the solicitation. For example, if the confidentiality agreement with the company has a carve out allowing it to share the PAF materials with its proxy solicitation firm and the agreement with the dissident shareholder does not contain such a carve out, the company would have the strategic advantage of being able to share the draft and final proxy voting advice with its proxy solicitation firm and obtain the benefit of the firm's expertise and guidance on how to respond to or adjust its strategy in light of the advice.

Based on our vast experience negotiating confidentiality agreements between companies and dissident shareholders covering stockholder list materials typically furnished by the company to the dissident during proxy contests pursuant to state law, we believe the SEC may be underestimating the significant amount of time and expense that will need to be allocated to the negotiation of the confidentiality agreements contemplated by the proposed rules. We foresee various sticking points both parties will seek to heavily negotiate, including (i) the scope of the definition of "Representatives" with whom the company or dissident shareholder (the "receiving party") is permitted to share the PAF materials (the receiving party will push hard to have the broadest definition possible in order to allow it to share the materials with as many people in its camp as possible while the PAF will seek to limit the scope of this definition in order to minimize the risk of the materials being leaked), (ii) the scope of any indemnification or "prevailing party" provisions (the PAF will seek to have broad indemnification and "prevailing party" provisions requiring the receiving party to fully indemnify and hold the PAF harmless from any unauthorized disclosure by it or its representatives and to reimburse the PAF for its costs and expenses of enforcing the terms of the agreement while the receiving party will attempt to limit the scope of these provisions), and (iii) the strength of "most favored nation" provisions that each of the company and the dissident shareholder will likely insist upon to ensure that the other side's confidentiality agreement with the PAF does not contain more favorable provisions to the receiving party (these provisions can be tricky and could be the subject of long and tedious negotiations).

Proposed Rules Would Ultimately Have a Chilling Effect on the Number of Proxy Voting Recommendations Issued by PAFs in Contested Solicitations

The SEC states in the first sentence of the Release that it is proposing these new rules to help ensure that investors who rely on PAFs receive more accurate and complete information "in a manner that does not impose undue costs or delays that could adversely affect the timely provision of proxy voting advice." We believe the new rules, as proposed, would actually be highly disruptive and costly to PAFs, which in turn would ultimately have a chilling effect on the number of voting recommendations they issue with respect to contested solicitations.

Even under the currently proposed regime where only one set of draft proxy voting advice and one set of final advice would be shared by PAFs, we believe PAFs would need to spend a significant amount of time, money and resources to develop or modify their current systems and practices in order to allow them to comply with the rules, including:

- Setting up infrastructure and procedures for tracking the timing associated with these new requirements,
- Setting up infrastructure and procedures for sharing the proxy voting advice with the company and dissident shareholder,
- Setting up infrastructure and procedures for accepting feedback from the company and dissident shareholder,
- Reviewing and analyzing any feedback from the company and the dissident shareholder on the draft advice and making any revisions to the final advice in response to such feedback,
- Coordinating with the company and dissident shareholder the simultaneous release of the final advice to PAF clients and activation of the hyperlinked response statements, and
- Negotiating the confidentiality agreements.

Of course, the timeframe of the entire process would be further compressed and costs to the PAFs would be further compounded to the extent the proposed rules were revised to accommodate multiple review and feedback opportunities to the company and the dissident shareholder whenever previously-reviewed draft or final advice is modified by the PAF in response to real time developments throughout the solicitation. We believe any such iteration of the proposed regime would ultimately have a chilling effect on the number of voting recommendations PAFs issue with respect to contested solicitations. This would be a truly unfortunate outcome based on one's assumption that it is during these contested solicitations when investors rely on PAFs most.

Review and Feedback Procedures Do Not Ensure a "Level Playing Field" in a Proxy Contest

It is imperative that any proxy rules adopted by the SEC are carefully designed to ensure a level playing field during a proxy contest involving a company and one or more dissident shareholders. We believe the proposed rules fail to ensure such a level playing field by not specifically requiring PAFs to apply identical and simultaneous review periods and the same feedback deadlines to the company and the dissident shareholder.[1]

[1] It is difficult to glean from the Release the extent to which the SEC intended, if at all, to require PAFs to apply identical and simultaneous review periods and the same feedback deadlines to the company and the dissident shareholder. The vagueness of the SEC's assertion in the Release that comes closest to addressing this ("Providing such [dissident shareholders] with the same opportunity to review and provide feedback on proxy voting advice that is afforded to registrants would ensure equality of treatment among contesting parties . . .", page 51 of Release) calls for greater clarification in this area within the actual text of the statute.

No Requirement That the PAF Must Provide Draft Advice to Company and Dissident at the Same Time

Based on a strict reading of the proposed rules, in the context of a proxy contest, there appears to be no requirement that the PAF provide a draft of its proxy voting advice to the company and to the dissident shareholder at the same time. The rules only require the PAF to provide the draft advice to each of the company and the dissident shareholder at some point in time, at the PAF's discretion, after each party has filed its definitive proxy statement with the SEC. Therefore, even if the company and the dissident shareholder file their respective definitive proxy statements on the same day, it appears the PAF would still have the ability to provide its draft advice to each party at different times. A framework that could result in one party receiving draft proxy voting advice from a PAF before the other party in a contested solicitation would be inequitable.

Applying the same example as above where a dissident shareholder is attempting to replace a majority of the board of a company with questionable corporate governance practices, assume the PAF prepares draft voting advice recommending shareholders vote in favor of a portion of the dissident slate (such that their election would only result in minority representation on the board) citing the company's corporate governance deficiencies as the primary driver of this recommendation. If the PAF delivers the draft advice to the company before it delivers the same draft advice to the dissident shareholder, the company would have an unfair advantage over the dissident shareholder by giving the company head starts in providing its feedback to the PAF.

No Requirement That the PAF Allot to Company and Dissident Same Amount of Time to Review and Provide Feedback

In addition, in the context of a proxy contest, there appears to be no requirement that the PAF allot to the company and the dissident shareholder an equal amount of time to review and provide feedback on the draft proxy voting advice. The proposed rules only require that the company and the dissident shareholder be allotted *at least* five business days or three business days (depending on how far in advance of the shareholder meeting their respective definitive proxy statements were filed) to review and provide feedback on the draft advice. As a result, assuming both the company and the dissident shareholder file their respective definitive proxy statements at least 45 days before the meeting date, the PAF appears to have the ability to give one party more time to review and comment on the draft advice than the other party, as long as both parties are given at least five business days to complete the process. Giving one party more time to analyze the draft advice, conduct research and draft its rebuttal that could potentially persuade the PAF to materially alter its advice would clearly be prejudicial to the other party and potentially compromise the integrity of the solicitation process.

No Requirement That the PAF Must Provide Identical Draft of Advice to Both Company and Dissident

As discussed above, there appears to be no requirement for the PAF to provide its draft voting advice to the company and the dissident shareholder at the same time or to allot each of them an identical amount of time to review the advice and provide feedback. While it may have

been the intent of the drafters that the company and the dissident shareholder must receive an identical copy of the initial draft proxy voting advice, the absence of specific requirements that draft advice be given to both sides in lock step could be interpreted to mean that a PAF would be permitted to share an initial draft of the advice with only one side and obtain its comments, revise the initial draft advice based on these comments, and subsequently share for the first time the revised draft advice with the other side. Any ability of a PAF to allow one party to have a first look at the initial draft advice and only allow the other party to view a second draft that already contains the first party's comments would be inequitable and highly prejudicial.

No Requirement That the PAF Must Provide Final Advice to Company and Dissident at the Same Time

Based on a strict reading of the proposed rules, in the context of a proxy contest, there appears to be no requirement that the PAF provide a copy of its final proxy voting advice to the company and to the dissident shareholder at the same time. The rules only require the PAF to provide the final advice to each of the company and the dissident shareholder at some point in time, at the PAF's discretion, no later than two business days prior to the PAF's delivery of the final advice to its clients. Therefore, there appears to be nothing in the proposed rules that would prevent the PAF from providing the final advice to one side before it is provided to the other, as long as both sides receive the advice at least two business days prior to publication of the advice.

Applying the same example as above, assume the PAF plans on releasing its final proxy voting advice to its clients on April 15, 2020. Assume further that the PAF's final advice contains a recommendation in favor of the dissident slate citing the company's poor corporate governance. Under the proposed rules, the PAF would be permitted to give the company a first look at the final advice several days or even weeks in advance of the April 15 release date and only provide a copy of the final advice to the dissident shareholder just two business days before the April 15 release date (in this case April 13). In this example, the company would gain a significant strategic advantage over the dissident shareholder by having more time than the dissident shareholder to review and analyze the final advice with its advisors and to prepare its rebuttal statement regarding the advice.

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In conclusion, we have serious concerns that the proposed rules would be ripe for exploitation and manipulation by the parties in a proxy contest and go too far in requiring the PAF to share a full copy of its voting advice to both sides of a contest prior to dissemination. We also believe the proposed rules are too simplistic and rigid to be applied in the context of a real world proxy contest without inviting unfair gamesmanship. As drafted, they also fail to ensure a level playing field for either side in a contested solicitation. Finally, the time burden and corresponding costs to PAFs of implementing these rules would have a chilling effect on the number of proxy contests covered by PAFs and could jeopardize the objectivity and independence of PAFs.

As the SEC discusses in the Release, one of the leading PAFs already has a program in place that allows participating companies to review a "data-only" version of its proxy voting

advice prior to dissemination to clients and implemented a pilot program for the 2019 proxy season that gave companies and other shareholder proponents an opportunity to review and comment on the PAF's research. Requiring all PAFs to implement similar programs limiting the materials they allow companies and dissident shareholders to review to the underlying data and/or research utilized by the PAFs for their voting recommendations could strike the right balance between improving the accuracy and integrity of their recommendations while minimizing the risk of abuse and costs inherent in the proposed process.

It is now well established that shareholder activism is a legitimate, widely recognized asset class. For these reasons, we are hopeful the SEC will give strong consideration to the widespread concerns with the proposed rules expressed in this letter of comment.

Please feel free to contact Steve Wolosky, Andrew Freedman or Ron S. Berenblat at (212) 451-2300 if you would like to discuss any of the foregoing in further detail.

Very truly yours,

Olshan Shareholder Activism Group