Secretary Eugene Scalia
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM.

Re: Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights
RIN 1210-AB91

Secretary Scalia,

I appreciate the opportunity to address you regarding the Labor Department's proposal to amend the "Investment duties" regulation issued in 1979 to address the application of the prudence and exclusive purpose duties under the Employee Retirement Income Security Act of 1974 (ERISA) to the exercise of shareholder rights, including proxy voting, the use of written proxy voting policies and guidelines, and the selection and monitoring of proxy advisory firms.

Below you will find an op-ed that I recently published at BizPacReview in support of the proposed rule change that I would like to also submit as comment. Thank you for your consideration.

Warmest Regards,

Dan Perkins
Florida-based Registered Investment Adviser with over 40 years of investments experience investing in all asset classes all over the world

Labor Department's New Proxy Voting Rule Protects Americans' Retirement Savings from Activist Proxy Advisors

Recent volatility in the stock market has underscored the need to implement solid investment strategies that focus on maximizing returns. The violent swings in the major indices over the last few months and sudden crash of several tech stocks have shown the dangers of chasing popular sentiment in lieu of crunching solid data and keeping a singular eye towards returns. Yet while many generally attribute this kind of behavior to small retail investors, many of the country's largest institutional investors have similarly leaned forward into a trend that has concerning implications for the long-term financial stability of America's retirees.

Environmental, social, and governance, or "ESG" investing, which prioritizes political objectives over financial gains saw inflows of $45.7 billion[1] in the first quarter of this year, even as the pandemic rattled markets. While previously a marginally utilized technique, ESG has quickly

[1] https://www.cnbc.com/2020/06/07/sustainable-investing-is-set-to-surge-in-the-wake-of-the-coronavirus-pandemic.html

evolved from a fledgling investment tactic into a mainstream strategy, with the number of funds claiming to consider ESG factors rising almost seven fold[2] from 2018 to 2019. Despite its growing popularity, studies have found that returns suffer[3] when investment strategies shift to supporting such causes rather than financial gains, and America's pensioners could be one of the main casualties.

Fortunately, the Trump Administration is taking steps to rein in this kind of investing and to reorient the focus of the fiduciaries that are responsible for administering the $10.7 trillion in private pension funds towards maximizing returns. As I have written previously[4], the Department of Labor (DOL) has already taken actions to prevent fiduciaries from weighing ESG factors when choosing companies to invest in. Now the department has announced a companion to this recently proposed rule that would similarly require fiduciaries to disregard more financially costly ESG factors when proxy voting.

The newly proposed DOL rule – titled Fiduciary Duties Regarding Proxy Voting and Shareholder Rights – makes it clear that the fiduciaries can make proxy decisions only based on economic considerations and not on "unrelated" (read ESG) objectives. In fact, it goes a step further and requires that fiduciaries have an obligation not to vote unless they can prove that the investment of time and resources associated with evaluating and casting a particular proxy vote would have an economic benefit for their clients.

If enacted, this rule could have a dramatic effect on proxy voting; significantly reducing the volume of proxy voting and the influence of politicized plans on areas such as corporate environmental policies. It would, in effect, remove another avenue that the extreme environmental movement has hijacked to advance their agenda at the expense of millions of pensioners and retail investors.

The rule would also greatly diminish the duopoly power of Institutional Shareholder Services (ISS) and Glass Lewis. These two proxy advisory firms that have increasingly incorporated ESG factors into their voting recommendations and have started making more frequent recommendations on principles that promote environmental and social causes, and subjective good governance guidelines, as opposed to maximizing returns.

Public officials and other stakeholders have also started questioning the impartiality of the advice they receive from third-party proxy advisors. According to the proposal: "In certain instances a proxy advisory firm may issue proxy voting recommendations while the company that is the subject of such recommendations is a client of the firm's consulting business." This is a clear conflict of interest and something that calls for greater reform.

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[2] https://www.morningstar.com/articles/972860/the-esg-fund-universe-is-rapidly-expanding
[3] https://www.pacificresearch.org/wp-content/uploads/2019/05/ESG_Funds_F_web.pdf
[4] https://www.newsmax.com/finance/danperkins/trump-making-retirement-great/2020/07/24/id/978929/

The DOL should therefore bolster the section in the proposal concerning robo-voting before approving any final rule. With the way robo-voting works today, fiduciaries almost always vote in line with the recommendations of their proxy advisors. This is one of the reasons why proxy advisory firms have become so powerful. Many institutional investors have become overly reliant on these proxy advisory firms and have essentially ceded them voting authority by automatically following their lead 99.5% of the time, according to one analysis.[5]

The current proposal with regards to this matter is too vague. The simplest solution would be to prohibit robo-voting, but at the very least additional restrictions and reforms should be implemented. The current system denies pension beneficiaries transparency into the proxy votes that affects them and simply cedes fiduciary power on proxy matters to third-party firms, two issues that need to be resolved.

This proposed rule is a good first step and while some changes will be necessary, the Department of Labor should be applauded for the strong start they have made. The department should seize the opportunity to, once and for all, finally require that our nation's pension plans both invest and vote proxies only based only on financial factors.

Source: https://www.bizpacreview.com/2020/09/22/labor-departments-new-proxy-voting-rule-protects-americans-retirement-savings-from-activist-proxy-advisors-975859

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[5] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3486322