Egan-Jones Proxy Services

September 24, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM

Re: RIN 1210-AB91

Dear Sirs:

Egan-Jones Proxy Services appreciates the opportunity to provide our comments to the Department's proposed regulation concerning Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (the "Proposal"). Established in 2002, the firm is a leading independent provider of proxy research, voting recommendations and voting services to a variety of institutional investors, including plans subject to the Employee Retirement Income Security Act of 1974, as amended (each, a "Plan"). Egan-Jones provides institutional investors with a reliable, attractive solution to fulfilling shareholder voting obligations. Accordingly, the firm has firsthand experience with the existing proxy voting framework, and we believe we have a unique and vital vantage point in commenting on some of the potential consequences of the Proposal.

We understand the need to evaluate practices in our industry and congratulate the Department's willingness to explore new options in the interest of protecting Plan investors. However, we believe that implementation of the Proposal in its current form could have several concerning aspects for good corporate governance. We believe that the Proposal should be re-examined in view of these concerns.

Unwarranted Deference to Management

The "permitted practice" to allow a Plan to follow the recommendations of a company's management, when viewed together with other aspects of the Proposal, provides an enormous incentive for Plans to simply defer to management, effectively silencing proponents of meaningful corporate changes. With many of a corporation's largest shareholders effectively coerced to vote with management, the Proposal has the effect of the federal government sanctioning management voting recommendations at U.S. public companies, which we believe is a dangerous and unwise course to be avoided due to both the known and unknown economic inefficiencies this is likely to create.

While reliance on corporate fiduciary duties is not unreasonable, doing so has the effect of silencing investor advocates and others seeking long-term social changes. Advocates of such issues as clean power, environmental responsibility and diversity have raised such concerns decade after decade—not only is it not clear that such issues are not in the best long-term interest of shareholders, but many such issues eventually become mainstream, accepted principles by once-resistant corporate management. Simply deferring to management votes unquestionably will result in these and future concerns never receiving the sort of consideration that the current proxy voting system demands, practically meaning that such advocates won't have an opportunity to even be listened to. As it stands, proxy advisory firms can help evaluate such proposals, focusing needed attention on issues and determining which proposals have merit. Under the Proposal, these concerns have no chance for a proper audience, destined to die with a "vote with management or else" de facto mandate from the federal government.

While executive compensation levels remain at the forefront of investor concerns, the Proposal serves to strip away one of the last speed bumps to align management with investor interests. If Plans simply defer to management or deem compensation unlikely to have an impact on the value of a Plan's investment, one can naturally expect ever-increasing management compensation plans and a further proliferation of stock buy-backs which benefit stock option plans given a company's top executives. In this sense, the Proposal serves to erode the natural give-and-take on issues which exists currently.

Prohibitive Oversight of Proxy Advisory Firms

Proxy advisory firms currently provide a fundamental benefit to Plans: proxy advisors can efficiently evaluate and recommend votes on a panoply of different issues across a Plan's entire investment holdings and do so based on criteria selected by the Plan. In other words, proxy advisors serve directly to implement the Plan's desired voting criteria but given economies of scale can do so more efficiently (from both a time and cost perspective) than an individual Plan.

While we have no objection to the Proposal's suggestion that Plan fiduciaries should select advisors with "prudence and diligence" and monitor an advisor's activities and recommendations and we concur that conflicts of interest present at proxy advisory firms—such as certain consulting arrangements—should be scrutinized, we believe the Proposal swings so far in the direction of oversight as to make most advisory services prohibitively expensive.

The Proposal's directive for supervision involving the need to document the rationale for a recommendation based on the financial interests of the Plan, including setting forth the economic benefit of a vote, ensures that trying to evaluate if a proposal is "worth" voting for a given Plan will cost much more than just voting in a manner consistent with that Plan's investment directives and time horizon. We project that if a Plan client were to require us to evaluate each proposal for economic viability and concern while matching that to the Plan's individual holdings, time horizon and investment guidelines, we would under the most optimistic conditions need to charge a rate of 10 to 20 times the firm's current rate and we would expect our competitors in many cases to go much higher. Of course, increased fees make the proposition of relying on the expertise of proxy advisory firms less tenable under the Proposal, given that Plans would need to justify the economic cost of each vote. Such a burdensome approach seems designed to drive fiduciaries either not to vote at all or to simply defer to management.

Proxy advisory firms have carefully designed voting policies meant to serve clients' interests and grant an ability to override any recommended votes, which has served Plans well. If the Department is concerned with conflicts or other issues with proxy advisory firms, we believe it would be better to address those concerns discretely, such as forbidding Plan fiduciaries to retain firms involved in consulting arrangements, rather than reworking the entire landscape and imposing substantial additional Plan-specific requirements which may in practice be nearly impossible to meet.

While the premise of the Proposal is to justify proxy voting in relation to the economic benefit to a Plan, the process of justifying the cost is so disproportionate as to virtually ensure that Plans do not vote in a substantial number of instances. We believe that the costs of the Proposal will result in disenfranchising investors and may well have the unintended long-term consequence of providing economic burdens to Plan investors who are unable to support items not clearly in the Plan's short-term pecuniary interest.

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In conclusion, while we recognize the Department's attempt to rationalize proxy voting, the Proposal is structured to undermine the very Plan investors that it seeks to serve. The magnitude of the resulting adverse impact on U.S. financial markets cannot be overstated.

Again, we appreciate the opportunity to provide comments to the Department. Should you have any questions or would like any additional information, please contact the undersigned.

Sincerely,

Kevin E. McManus
Director of Proxy Services