Mr. Jason A. DeWitt
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: Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights
RIN 121

September 24, 2020

Dear Mr. DeWitt:

Recently, I wrote to congratulate the Department of Labor on its proposed rule involving ESG investing (RIN 1210-AB95). Now, I am happy to extend similar praise for the Department's proposed rule on proxy investing.[1] In both cases, you have clarified outdated guidance that was inadequate to deal with the rapid growth in interest in ESG and the increased role of pension plan advisors in corporate governance – and, indeed, corporate performance.

As the proposed rule states, in 1987, institutional investors owned fewer than half the shares of the 1,000 largest U.S. companies. Today, they own four-fifths. The rule also points out that, along with the rise in institutional ownership came "the belief that participating in [shareholder] activities was likely to enhance the value of a plan's investment in a particular security. Since that time, however, research regarding whether proxy voting has reliable positive effects on shareholder value and a plan's investment in the corporation has yielded mixed results." (The proposed rule has an impressively long footnote – number 39 -- listing sources on the "mixed results.")

A new American Enterprise Institute paper by Sanjai Bhagat, professor of finance at the University of Colorado, and Glenn Hubbard, Russell L. Carson Professor of Finance at Columbia University and former chairman of the Council of Economic Advisers, concludes that "little empirical evidence suggests positive effects of [an ESG] focus on shareholder value or on the achievement of other goals."[2] In other words, ESG investing and proxy-voting not only fails to increase shareholder value, it also does not even improve the environment, social justice, and governance.

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[1] https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights.pdf

[2] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3548293#:~:text=The%20modern%20corporation%20should%20maximize%20shareholder%20value.&text=Because%20public%20corporations%20are%20more,private%20or%20not%20go%20public

The Department lays down what I believe is a completely reasonable standard for proxies: only voting on questions that "are likely to have a significant impact on the value of a plan's investment." And, even if the question has a positive impact, that impact must not be outweighed by the costs of voting – for example, the research and the engagement of advisors. The proposed says explicitly that pension plans do not have to vote on proxy questions. In my view, in the vast majority of cases, there is no need to spend beneficiaries' money on the proxy-voting process, and, again, I commend the Department for this position.

I do believe, however, that the Department could have taken a stronger stand on robo-voting, defined by the SEC as a procedures where "the investment advisor uses a proxy advisory firm's electronic vote management system that 'pre-populates' the advisor's proxies with suggested voting recommendations and/or voting execution." The proposed rule refers to the eight-page SEC supplement on robo-voting[3] and states that the "Department believes that activities of proxy advisory firms have similar relevance for fiduciaries under ERISA."

The SEC supplement says that an investment advisor has to take "additional steps" in these cases, such as "assessing pre-populated votes" and "considering additional information that may become available before the relevant votes are cast."

My view is that this oversight is beside the point. The Department should say merely that robo-voting is unacceptable for pension fiduciaries. By its very nature, robo-voting means that those fiduciaries have not taken the care to ensure that proxy votes meet the standards that the Department lays out.

As I said in my previous letter: Make no mistake. I am an advocate of ESG myself. I am a senior advisor in the Energy Security and Climate Change Program at the Center for Strategic and International Studies, a Washington-based think tank. Prior to that, I was Administrator of the U.S. Energy Information Administration, and in 2018, I served as president of the U.S. Association for Energy Economics, a non-profit forum. I am devoted to sensible and strong environmental policy.

But the obligations of pension fiduciaries are very different from the self-interest of myself or any individual investor. An investor can decide on his own to vote her proxy to advance certain ideological or social values, even if that vote has a negative economic effect on assets he owns. But a fiduciary works for thousands of beneficiaries. A fiduciary must have an "eye single" toward maximizing returns.

Permit me to raise a few other concerns with the proposed rule.

I would like to see the Department require that the costs of voting (e.g., fees charged by proxy advisory firms) are publicly disclosed. The rule should prohibit conflicts of interest for proxy

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[3] https://www.sec.gov/rules/policy/2020/ia-5547.pdf

advisors entirely, and it should require validation by investment professionals, acting in a fiduciary capacity, that proxy votes have an economic impact that exceeds costs.

In closing, I congratulate the Department for its clear stand on proxy-voting. Adopting the changes that I recommend will make a strong rule even stronger, protecting retirement plan beneficiaries and improving the U.S. economy as a whole.

Sincerely

Guy Caruso
Former EIA Administrator (2002-08)