The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Comments Submitted by Dan K. Eberhart, CEO of Canary, LLC

Rule Number: RIN 1210-AB91

September 21, 2020

Dear Secretary Scalia:

As CEO of Canary, LLC, one of the largest independent oilfield services companies in the country, I have been concerned for some time with the detrimental effects of environmental, social and governance (ESG) investing in employee retirement plans. Attempts by activists to leverage nearly $11 trillion in private pension plans to force policy changes are not in the best interest of pensioners and investors and they certainly aren't in the best interest of the fossil fuel sector, a sector our nation will rely on to recover from the current pandemic.

As I explained in *Forbes* in July, ESG investors have consistently targeted the oil and gas sector under the belief that investment decisions will speed the perceived demise of fossil fuels. But this is a dangerous mistake. In fact, investors who discriminate against fossil fuel investments are missing out on a critical and profitable industry. Just consider the performance of Blackrock, a major ESG investor whose Clean Energy fund trailed its own S&P Fund Growth fund, including fossil fuel companies, by about 10 percentage points over the last five years. The firm's founder and CEO, Larry Fink, has gone to great lengths to force a sea change through ESG investing, only to come up short when compared to funds that focus on outcomes for investors rather than policy agendas.

Clearly reforms are needed. In a July 14 letter to you, I offered my support for important policy changes by the Department of Labor that would bring added accountability to ERISA-covered retirement plans with respect to ESG investing. I argued that political beliefs, no matter how earnestly held, should not drive investment strategies for public or private pension funds or other retirement plans. I have been encouraged by DOL's bold action in offering new regulations in this area and wish to commend department officials for pursuing measures that reflect the kind of accountability and financial responsibility President Trump has envisioned and articulated.

With this letter, I wish to comment on the latest proposed rule from DOL that addresses proxy voting with regard to ERISA. As you are aware, the current state of play for ESG investing relies heavily on proxy advisory firms. The two largest of these firms, Institutional Shareholder Services (ISS) and Glass Lewis, wield a great deal of influence on decisions made by ERISA-covered retirement plans due to their dominance on proxy voting. I wholeheartedly support DOL's proposal to further enhance accountability and transparency by reforming and correcting the proxy voting process.

The reality is that proxy voting, like ESG investing, is fraught with problems. The recommendations of proxy advisory firms often contain troubling errors, a fact made clear in a study by the American Council on Capital Formation. Today, it is unclear whether those investing their hard-earned money in ERISA-covered retirement plans can trust proxy advisory firms to give them accurate information on vote recommendations. A strong DOL rule should address this gap, creating greater assurance that proxy advisory firms are not misleading their investors, whether intentionally or otherwise.

Today, it's also the case that funds rarely if ever reveal the fees charged by proxy advisory firms or whether those firms have significant conflicts of interest. In the same way that auditors and credit-rating agencies are required to disclose such information, a new DOL rule should require the same of proxy advisory firms. Monitoring potential conflicts likely falls short of the kind of accountability investors deserve. A stronger solution would be to prohibit such conflicts of interest altogether and demand that funds reveal the fees and the charges they pay proxy advisory firms.

Another issue that deserves attention is automatic vote submission services, also known as robo-voting. Paul Rose, an Ohio State University Law Professor, found that a remarkable 400 investors automatically voted based on the recommendations of Institutional Shareholder Services (ISS) over 99.5% of the time. In general, he concluded that "institutional investors have become overly reliant on the recommendations of proxy advisors, often outsourcing analysis and voting decisions to the two largest firms in the market without adequate disclosure of that reliance."

Eradicating the dangers of robo-voting could include following the lead of the Securities and Exchange Commission, which requires fund managers to consider all information on an issue, not just the recommendations of proxy advisory firms, when making decisions. The new DOL rule could provide clear guidance to ERISA fiduciaries in this respect, taking power out of the hands of proxy advisory firms when it comes to important votes and returning that power to fund managers, where it belongs. There is a strong case to be made, too, that prohibiting robo-voting altogether is merited. With a complete abolition of robo-voting, especially on important and contested votes, pensioners and investors can rest easy knowing that those responsible for their fund's outcomes are the ones making decisions, as opposed to a proxy firm to whom the fund has given undeserved control.

Finally, DOL should reform proxy voting for one simple and compelling reason: it is an essential part of an ESG strategy that hurts pensioners and investors. In addition to the failure of Blackrock's Clean Energy fund to keep up with non-ESG funds, which I explained earlier, an abundance of research shows that the ESG is a financial loser compared with the S&P 500 benchmark. Dr. Wayne Winegarden of the Pacific Research Institute found, for example, that ESG investing produced 43.9 percent less than standard S&P 500 index funds. Without reform, Dr. Winegarden finds, retirees will see 10-percent lower returns on their nest eggs. This mirrors research by Bloomberg that iShares MSCI USA ESG Select Social Index Fund (SUSA), a major ESG player, trailed the S&P 500 index by 37 points over the course of a decade.

In its rulemaking, DOL should prohibit proxy votes from taking place if that vote doesn't financially benefit the fund. Requiring documentation that a proxy vote would have a positive economic impact is a solid start to returning the focus of ERISA-covered retirement plans to that of producing financial gains rather than producing public policy change.

The Labor Department under President Trump has done a commendable job of pursuing common sense regulation when it comes to investing, especially when it comes to reining in ESG investing and its negative financial consequences. The current proposed rule will be another step in the right direction for the millions of Americans who are depending on their ERISA-covered retirement plans to safeguard and grow their hard-earned money.

Best regards,

Dan K. Eberhart

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