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September 30, 2020

VIA ELECTRONIC FILING
Jeanne Klinefelter Wilson
Acting Assistant Secretary

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 Secretary Klinefelter Wilson,

The Vermont Pension Investment Committee (VPIC), which represent $5 billion in assets, writes in opposition of proposed rulemaking RIN 1210-AB91 regarding the application of fiduciary obligations under sections 403(c) and 404(a) of Employee Retirement Income Security Act of 1974 (ERISA): "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights". The VPIC has a long-term investment strategy consistent with the duration of retirement system liabilities and strives to be a thoughtful, analytical, and patient investor that believes portfolio risk management is a central fiduciary responsibility. As part of its risk management VPIC considers environmental, social, governance (ESG), financial, and other factors in its investment decisions while maintaining a duty of loyalty to the plan participants. VPIC is not regulated under ERISA; however, the Committee views the legislation as setting best practice standards for retirement plans and appreciates the opportunity to comment on this rulemaking proposal.

The VPIC interprets the proposal's amended definition of "investment duties" in ERISA, 29 CFR 2550.404a-1, as limiting the ability of fiduciaries of private pensions under ERISA to exercise shareholder rights. The VPIC has the following concerns regarding this proposal:

1) **A long-term benefit to plan participants is limited to those that can show a measurable economic impact.**

This proposal creates a limitation by requiring each ballot cast by a fiduciary to provide a measurable "economic impact on the plan after the costs of research and voting are taken into account"[1]. Requiring a measurable economic impact limits the shareholder rights a fiduciary can exercise to only those where the impact is quantifiable. There are externalities that add value to shares which are less easily measured. For example, there is compelling data that supports the conclusion that a diverse board creates shareholder value[2] [3]. Fiduciaries that exercise shareholder rights to engage a company on this topic have the potential to add long-term shareholder value, which meets the duty of loyalty but is difficult to show a measurable benefit in advance of voting a proxy ballot.

2) **It increases the expense to vote proxies**
The expense to run a cost/benefit analysis to document a measurable economic impact on each proxy resolution may be cost prohibitive to a plan and increase the expense associated with voting proxies. As noted by the Department, this recommended process of analysis is "likely inefficient use of plan resources," even with the safe harbors provided as alternatives. The VPIC encourages the Department to retain the existing interpretation of the use of a cost/benefit analysis from IB 2016-01, which recommends a cost/benefit analysis is not needed except in unusual circumstances to vote proxy ballots because there is no significant cost to exercise such rights.

3) **Shareholder options to communicate with company management is limited.**
As has been in place since the Department's 1988 Avon Letter, shareholder rights include proxy voting, proxy investment policies, and monitoring proxy advisory firms[4]. The rule as proposed reduces the voice of institutional investors in the activities of companies in which they invest. Proxy voting is an efficient way for shareholders to communicate their priorities to corporate issuers. Limiting shareholder rights creates the unintended consequence of promoting divestment as the most cost efficient communication tool for an investor. Divestment reduces the investable universe for a plan, which can have long-term costs[5] [6]. Corporate engagement is the free market alternative to divestment.

We urge the Department to withdraw, or in the alternative, substantially modify the proposed rule. Thank you for your time and consideration.

Sincerely,

Elizabeth A. Pearce
Vermont State Treasurer

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1 Fiduciary Duties Regarding Proxy Voting and Shareholder Rights
2 "The Bottom Line: Corporate Performance and Women's Representation on Boards", Lois Joy, Nancy Carter & Harvey Wagner
3 "Why Diversity Matters", Vivian Hunt, Dennis Layton, and Sara Prince
4 http://blog.bdti.stage4.t-mark.co.jp/en/avon-letter-historical-background/
5 "CalPERS Comprehensive Divestment Analysis", September 25, 2015
6 "Vermont Pension Investment Committee Climate Risk Divestment Discussion", Sarah Bernstein, February 8, 2017