STATE OF WASHINGTON
STATE INVESTMENT BOARD
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October 1, 2020

Submitted via Electronic Filing

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)

Dear Assistant Secretary Wilson,

I am writing regarding the Department of Labor's (DOL) proposed rule related to proxy voting, Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91).

The Washington State Investment Board (WSIB) represents $145 billion in invested assets on behalf of more than 780,000 retirement plan beneficiaries and fund stakeholders. In 2019, the WSIB voted in 3,058 shareholder meetings and cast votes on 26,832 individual proxy proposals dealing primarily with:

- Election of directors
- Ratification of auditors
- Advisory votes on executive compensation
- Frequency of say on pay (say when on pay)
- Shareholder proposals and corporate issues, including mergers and acquisitions

The WSIB is concerned and frankly puzzled by this proposed rule. It challenges decades of precedent that appropriately outlines and emphasizes the inherent fiduciary responsibilities related to proxy voting. In addition, the notion of providing a brief 30-day window for commentary on such a major change in approach is on its face unworkable and ill-advised for any agency that is genuinely interested in responsibly shaping its rules. Most importantly, given the overall effectiveness of proxy voting practices for both investors and investee companies, we see scant evidence as to any realistic need for the review of this guidance in the first place.

The WSIB has adopted a Global Proxy Voting Policy that states that the "proxy is an asset of the WSIB and, as with all assets of the Board, must be managed prudently for the exclusive benefit of the beneficiaries." The DOL's proposed rule suggests that Employee Retirement Income Security Act (ERISA) fiduciaries should only vote proxies when the issue brought to a vote may have an economic impact on the plan. While the WSIB is a government plan and exempt from ERISA, we are subject to fiduciary standards of conduct modeled after ERISA, and we rely on guidance from the Department.

In this context, we view all issues that come to an investor vote as having meaningful potential for financial materiality. At corporate annual meetings, shareholders are provided opportunity to support or withhold support from board directors, consider the ratification of the auditor, and assess executive compensation. Voting on these fundamental issues are core duties and responsibilities of public company investors. Considerations involving the quality of the board, audit practices, and how executives are compensated are often critical to how companies drive strategy, manage risk, and therefore determine financial outcomes.

Further, we are perplexed by the suggestion that ERISA fiduciaries should only vote when they have sufficient clout or a meaningful stake at a company. Public companies' charters and constitutions outline the share structures and associated voting rights. The WSIB generally supports structures that enable one share = one vote, but even when dual class share structures are in place, we believe all shareholders have a right to vote in proportion to their holdings – however large or small – in accordance with core ownership rights principles. Indeed, a small number of votes can become the tipping point for important agenda items. Asset size and clout should not become a prescriptive determinant for ideas and the ability to voice those ideas in a responsible manner.

Finally, the cost/benefit analysis for this concept appears to be weak or lacking. Most professional investors have in place thoughtful proxy policies and efficient processes for implementing those policies. Replacing a consistent, policy-driven process with complex variables and indeterminable assessments related to financial impacts would essentially suppress the responsible input of shareholders.

I appreciate this opportunity to express the WSIB's views on this proposal.

Theresa Whitmarsh
Executive Director