MORNINGSTAR®

Illinois 60602

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: RIN 1210-AB91; Annual Reporting and Disclosure, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210–AB91 Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

Ladies and Gentlemen:

Thank you for the opportunity to share our perspective on the proposed rule: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights. Morningstar believes that the rule is unnecessary and makes it more difficult for retirement plan sponsors to meet their fiduciary obligations to their participants. Fundamentally, we see the shareholder resolutions and voting as part of an ongoing conversation between corporate management and investors.

Voting on these resolutions is fundamental to institutional investors' roles as stewards. We believe the proposed rule will stifle an important investor voice because plan sponsors are well-positioned to be good long-term stewards. Furthermore, the provision that presumes voting with management as an acceptable blanket voting policy will discourage plan sponsors from taking their role as stewards as seriously. By discouraging retirement plan sponsors from exercising their rights to vote, the proposed rule would weaken plan sponsors' roles as stewards and lead to worse outcomes for investors in general and plan participants in particular.

If plans vote proxies less (which is the highly likely impact of this proposal), they effectively give a greater voice to other kinds of investors—activist investors, for instance—who don't necessarily represent participants' long-term interests. It is the fiduciary responsibility of plans to represent the interests of their beneficiaries—working Americans saving for their retirement, which may be decades away. Taking a long-term view of the financial interests of beneficiaries is entirely consistent with the fiduciary responsibility of plan trustees and others. To compromise long-term financial goals for short-term returns creates perverse outcomes in the financial system and allows systemic governance weaknesses to emerge—such as those that led to previous financial crises, resulting in financial reform legislation such as the Dodd-Frank and Sarbanes Oxley acts that introduced stronger shareholder voting rights.

The proposal is out of step with the realities of investor stewardship. Investors are continually learning how various risks, including those that become the subject of shareholder resolutions, impact their investment portfolios. Shareholders often need time to learn and educate their peers about risks.

The 2019 proxy season demonstrated that shareholders now are increasingly concerned about climate risk, along with human rights risks and corporate political activities that present reputational risk. New research and data impact shareholder voting and engagement. For instance, understanding around climate change and its materiality to investment performance has evolved over time. Just recently, BlackRock CEO Larry Fink acknowledged that "climate risk is investment risk" and that this is "a risk that markets to date have been slower to reflect. " He noted that "awareness is rapidly changing. . . evidence on climate risk is compelling investors to reassess core assumptions about modern finance. Research from a wide range of organizations—including the UN's Intergovernmental Panel on Climate Change, the BlackRock Investment Institute, and many others, including new studies from McKinsey on the socioeconomic implications of physical climate risk—is deepening our understanding of how climate risk will impact both our physical world and the global system that finances economic growth." This statement aptly demonstrates the dilemma for investors: They can only update their views about risks as new information from a variety of organizations becomes available. Therefore, it is critical that investors—including plan sponsors—engage on shareholder resolutions.

It is important to keep in mind that even proposals that have not received majority support can bring about change. Change often occurs through asset manager engagement with companies on environmental, social, and governance issues, or ESG. While asset managers may not always vote in favor of shareholder resolutions, their engagement efforts are influenced by the resolutions on the ballot. As we have previously written, asset manager engagement can often facilitate an opening for a dialogue with corporate management over corporate governance and other concerns. As acknowledged by a large asset manager, shareholder proposals act "as a tool to signal investor concern to companies about emerging issues or as a catalyst for engagement." Shareholder proposals enable the identification of issues, such as ESG concerns, that are material to the "long-term financial sustainability" of a company. Again, raising barriers so as to restrict plan sponsors from the opportunity to participate in these conversations reduces their ability to send these important signals to companies in which they invest.

Finally, the department has not provided evidence that voting on resolutions creates a major cost for plan sponsors. Given that the number of shareholder resolutions has been largely constant over the years, we think the costs to sponsors are not any higher than they have been for decades. The number of submitted shareholder proposals has fluctuated from a low of 745 in 2001 to a high of 1,136 in 2008.

To conclude, the proposed rule would be harmful to the interests of retirement plan participants and should be abandoned.

Very truly yours,

Aron Szapiro
Head of Policy Research
Morningstar, Inc.