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Submitted via regulations.gov

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Office of Regulations and Interpretations
U.S. Department of Labor
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

RE: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB91)

To whom it may concern:

We write to provide comments in response to the Department of Labor (DOL)'s proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal"). The Proposal does not describe a problem that needs to be "fixed" and thus should be withdrawn.

Our firm works with clients who are focused on Sustainable, Responsible and Impact (SRI) investments. We serve over 100 households and multiple companies and organizations. Our clients are committed to SRI and Environmental, Social and Governance (ESG) investments because they desire their portfolios to be aligned with their values.

The Proposal's obligation on fiduciaries to document the calculations behind each proxy vote is onerous and unworkable. The Proposal will require fiduciaries to calculate the economic impact of every vote on the proxy ballot, including directors, independent auditors, say on pay and shareholder Proposals. This is a costly and imprudent use of plan assets – the exact thing DOL should be protecting against.

As with the Department's ESG Proposal announced June 23rd, the proxy voting Proposal relies on scant evidence and a fundamental misunderstanding of the importance fiduciaries and other investors place on voting proxies to communicate their preferences to company management. Without it, the investor voice is greatly diminished.

Owning shares comes with three primary rights: the right to sell the share, the right to a potential dividend and the right to vote a proxy. Disenfranchising fiduciaries from their right to vote a proxy is fundamentally inappropriate. Proxy voting is one of the most visible and verifiable ways in which investors can practice responsible ownership.

DOL states the rule is needed because of "the recent increase in the number of environmental and social shareholder proposals introduced. It is likely that many of these Proposals have little bearing on share value or other relation to plan interests…" Yet, no data is provided to support this. In reality, on average, only 13 percent of Russell 3000 companies received a shareholder Proposal in any one year between 2004 and 2017. In other words, the average Russell 3000 company can expect to receive a Proposal once every 7.7 years. (1)

The Proposal misses the materiality of longer-term systemic risks (like climate change, environmental protection, and good corporate governance) to investor returns by limiting voting rights to issues that are often only demonstrated to produce short-term value generation. Further, the focus on environmental and social proposals being a particular problem does not align with the direction of the financial markets where the practice of sustainable investment, including engaging in the shareholder process, is increasing rapidly. The following are clear examples of how SRI and ESG investments make a significant difference in shareholder value.

- According to the Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, "…U.S. financial regulators must recognize that climate change poses serious emerging risks to the U.S. financial system, and they should move urgently and decisively to measure, understand, and address these risks. Achieving this goal calls for strengthening regulators' capabilities, expertise, and data and tools to better monitor, analyze, and quantify climate risks. It calls for working closely with the private sector to ensure that financial institutions and market participants do the same." (2)
- A 2019 study conducted by the CFA Institute revealed that a high ESG Portfolio outperformed a low ESG Portfolio by 16 basis points (bps) per year, and the high ESG Portfolio adds value more often during stock market declines. (3)
- The Business Law Review paper titled, *Competing for Votes*, states: "Shareholder voting matters. It can directly shape a corporation's governance, operational and social policies. But voting by shareholders serves another important function—it produces a marketplace for votes where management and dissidents compete for the votes of the shareholder base. The competition over shareholder votes generates ex-ante incentives for management to perform better, to disclose information to shareholders in advance, and to engage with large institutional investors." (4)

We respectfully request that the Proposal be withdrawn for the above-mentioned reasons.

Thank you for your consideration of these comments.

Sincerely,

Jesse Eiynck, CERTIFIED FINANCIAL PLANNER™

Janice Fier, Financial Advisor, AIF®

(1) CII Letter to Senators Michael Crapo and Sherrod Brown (Dec. 4, 2018), available at https://www.cii.org/files/issues_and_advocacy/correspondence/2018/December%205%202018%20Letter%20to % 20Senate%20Banking.pdf

(2) Managing Climate Risk in the U.S. Financial System, Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission (September 2020).

(3) ESG Investing: Can You Have Your Cake and Eat It Too?, Gautam Dhingra, PhD, CFA, and Christopher J. Olson, CFA (September 2019)

(4) Competing for Votes, Nili, Yaron and Kastiel, Kobi, (August 26, 2020). 10 Harvard Business Law Review 287 (2020), Univ. of Wisconsin Legal Studies Research Paper No. 1605.