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RIVERWATER PARTNERS

September 30, 2020

Attention: Proxy Voting and Shareholder Rights NPRM
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Members,

Riverwater Partners LLC is an independent, employee-owned, registered investment advisory firm based in Milwaukee, Wisconsin, serving families, nonprofits, and institutions. As fiduciaries and active stewards, we represent the interests of our clients, which include superior financial returns and positive societal impact. It is our belief, and evidence shows, that companies that incorporate a sustainability lens into long-term corporate strategy offer all stakeholders, including our clients, the opportunity to achieve superior financial and social outcomes due to reduced risk and increased opportunity. We define sustainability as including environmental, social, and governance (ESG) factors. Our process incorporates Due Diligence, Engagement, and Collaboration with thought leaders to inform our practice. Engagement includes proxy voting.

We are writing to express our strong opposition to the Department of Labor's proposed rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (RIN 1210-AB91) (the "Proposal"). The Proposed Rule would impose significant analytical and documentation burdens on fiduciaries of benefit plans governed by the Employee Retirement Income Security Act ("ERISA") as they exercise their proxy voting right, one of the most visible and verifiable ways in which investors can practice responsible ownership. A key element of this right is to allow shareholders the opportunity to raise issues before a crisis that erodes shareholder value arises.

The Department's longstanding position is that the fiduciary act of managing plan assets includes the management of voting rights (as well as other shareholder rights) appurtenant to shares of stock, and that fiduciaries must carry out their duties relating to the exercise of such rights prudently and solely for the economic benefit of plan participants and beneficiaries. However, the proposed rule's "permitted practices" for ERISA plans to always vote with management or to refrain from voting may conflict with these fiduciary duties. Always voting with corporate management may violate the duty of loyalty and abstaining from proxy voting in some or all cases may violate the duty of prudence.

The proposed provisions will cause unnecessary burden on ERISA fiduciaries by requiring that their decisions whether or how to vote proxies on particular matters include reasonable investigation of the cost of voting, including opportunity costs; the type of proposal (*e.g.,* those relating to social or public policy agendas versus those dealing with issues that have a direct economic impact on the investment); voting recommendations of management; and an analysis of the particular shareholder proponents. In fact, the department has stated that fiduciaries must be prepared to articulate the anticipated economic benefit of proxy-vote decisions in the event they decide to vote.

The Department also states that its ' . . . concerns about plans' voting costs sometimes exceeding attendant benefits has been amplified by 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.' We find it curious that the proposed rule changes single out social and environmental proxy proposals as the meaningless culprits consuming ERISA managers' resources.

Many shareholders, including Riverwater Partners, believe that environmental and social proposals raised in proxy statements are those that may have the greatest impact – positive or negative – on the economic outcomes for companies; hence, their stock prices; and therefore, the beneficiaries of ERISA plans.

As an example, this shareholder proposal is taken from Exxon Mobil's 2010 Proxy Statement:

> ***ITEM 13 – PLANNING ASSUMPTIONS***
> *This proposal was submitted by Ms. Neva Rockefeller Goodwin, 30 Rockefeller Plaza, Room 5600, New York, NY 10112, as lead proponent of a filing group.*
>
> *"RESOLVED that shareholders of Exxon Mobil Corporation ('ExxonMobil') ask the board of directors to consider in its strategic planning process the risk that demand for fossil fuels in the next 20 years could be significantly lower than ExxonMobil has projected, and report to shareholders (at reasonable cost and omitting proprietary information), no later than November 30, 2010, on how such demand reduction would affect ExxonMobil's long-term strategic plan.*
>
> *SUPPORTING STATEMENT*
> *ExxonMobil has based its strategic direction, emphasizing oil and gas production, on the assumption that fossil fuel demand will rise substantially between now and 2030. ExxonMobil predicts that global energy demand will rise on average by 1.2% per year between now and 2030, propelled by demographics and economic growth. ExxonMobil counts on demand rising much more rapidly in the developing world, especially in the Asia Pacific region. (ExxonMobil, The Outlook for Energy: A View to 2030 5-7 (2008) (available at http://www.exxonmobil.com/corporate/files/news_pub_2008_energyoutlook.pdf)*
>
> *In the transportation sector, ExxonMobil assumes that energy demand will increase by 40% by 2030, and that oil will account for 94% of transportation energy use in 2030. In China, ExxonMobil predicts that transportation fuel demand is likely to triple by 2030, as*

economic growth will lead to an increase in the currently low rate of vehicle ownership. (Id. at 7-8, 10)

Under some scenarios, however, such as the International Energy Agency's ACT Map 2050 and BLUE Map 2050 scenarios, ExxonMobil's optimistic predictions will not hold. First, developing countries may seek to head off the effects of climate change by funding non-carbon-based energy technologies. China's announced plan to become the world leader in manufacturing electric and hybrid cars and buses, in order to reduce urban pollution and dependence on oil, illustrates this possibility. (See Keith Bradsher, 'China Vies to be World's Leader in Electric Cars,' New York Times, Apr. 1, 2009)

Second, the devastating physical and social effects of climate change could inhibit developing nations' economic growth, blunting energy demand. As stated by The Prince Of Wales Corporate Leaders Group on Climate Change in a November 30th, 2007 Communique: 'The economic and geopolitical costs of unabated climate change could be very severe and globally disruptive. All countries and economies will be affected, but it will be the poorest countries that will suffer earliest and the most'.

To the extent that ExxonMobil's growth relies on the sale of hydrocarbon energy to emerging markets, it faces a painful paradox, and distances itself from its true legacy. Part of John D. Rockefeller's genius was in recognizing early on the need and opportunity for a transition to a better and cheaper fuel. Recognizing the risk that demand may not increase as projected will allow ExxonMobil's board to begin reframing the company's identity as an energy company, rather than an oil and gas company, and to become part of the solution to the climate and energy crisis.

We urge shareholders to vote for this proposal."

The Board recommends you vote AGAINST this proposal for the following reasons:

The Outlook for Energy – A View to 2030, released by ExxonMobil in December 2009, and available on our Web site at exxonmobil.com/energyoutlook, outlines the magnitude of the world's economic, energy, and environmental challenges. Growing populations and expanding prosperity will drive global energy demand almost 35 percent higher from 2005 to 2030 – even with substantial energy-efficiency gains. While all viable sources of energy should be pursued, the scale and nature of the outlook means that the Corporation's traditional business focus areas will remain indispensable for decades.

The methodology used to develop The Outlook for Energy includes a detailed assessment of energy trends, as well as a broad range of assumptions regarding future demand, sources of supply, and a wide variety of technologies. This ongoing assessment process takes advantage of decades of experience in conducting this analysis, and utilizes in-house expertise as well as input from a wide variety of third-party organizations. Preparing separate reports dealing with particular proponents' or advocates' beliefs would not be a productive use of our shareholders' investment. Therefore, the Board does not support this proposal.

Oil will remain the largest energy source through 2030, reflecting the fact that it remains the only fuel with the scale, infrastructure, and energy density needed to meet the *majority of the world's transportation demands. Natural gas will be the fastest growing major fuel, aided by new technologies that have unlocked supplies trapped in dense rock formations, and its properties as a clean-burning fuel for power generation that can serve economic progress while helping mitigate environmental impacts.*

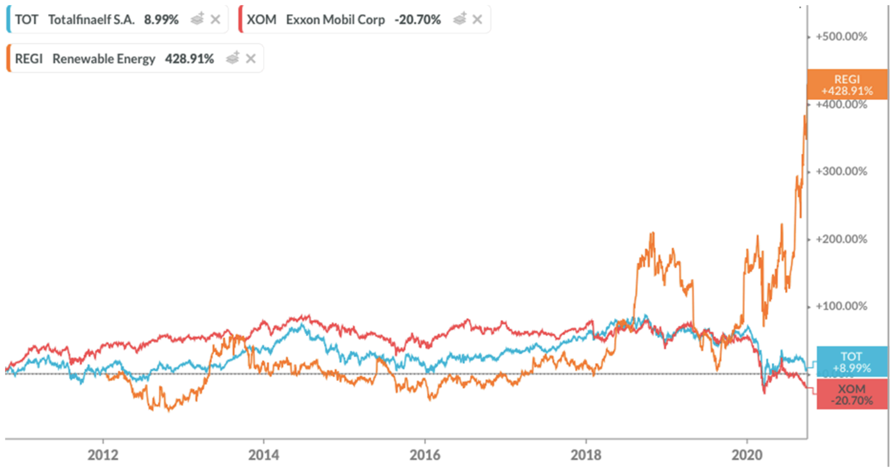
The International Energy Agency also recognizes the world's growing needs for oil and natural gas, and recently estimated that related supply investments will need to average about $480 billion a year over 2008 to 2030. This signals a significant call on the capabilities of the Corporation and the opportunity to provide tremendous value.
The Corporation is committed to providing sensible, broad-based solutions to help meet these challenges, consistent with long-term fundamentals and ExxonMobil's proven business approach. The Corporation's active involvement in research on alternative energy technologies enables it to readily assess new developments for possible commercialization and investment to improve shareholder value.

This proposal requested that Exxon Mobil consider the viability of its core business for the long-term; the management team at Exxon Mobil argued that there was no need to do so. Subsequently, each of Exxon Mobil's Proxy Statements since 2010 has contained a shareholder proposal asking the company to consider its carbon-emitting business practices, and in each year, management has argued against such proposals. Shareholders have expressed their no-confidence in the company's strategy and dividend, by casting the other right shareholders possess, which is to sell shares.

In contrast, Total, the French energy major, has spent the last several years transforming itself into a broad energy company by profitably growing energy production from LNG and electricity, allocating 20% of its capital investments to renewables and electricity. In addition, it is committed to replacing fossil fuels with biofuels. Today, the Board reaffirmed its confidence in Total's strategy and dividend. Shareholders have also begun voting with confidence.

In further contrast, Renewable Energy Group, a maker of biodiesel, is experiencing growing demand for its products, which has resulted in shareholders casting a strong vote of confidence.

The following chart captures what we believe is the meaningful impact on share value of a long-term strategy for sustainability, which ultimately impacts the beneficiaries of ERISA plans that own them respectively:



Because the right to vote proxies is considered a valuable asset, the DOL's longstanding interpretive guidance has encouraged ERISA plans to manage proxy voting subject to the fiduciary duties of loyalty and prudence. However, the proposed rule's "permitted practices" for ERISA plans to always vote with management or to refrain from voting may conflict with these fiduciary duties. Always voting with corporate management may violate the duty of loyalty and abstaining from proxy voting in some or all cases may violate the duty of prudence.

We respectfully request that the DOL withdraw this proposed rulemaking in its entirety. In addition to imposing a substantial regulatory burden, the proposed rulemaking will undermine the retirement security of working people by reducing proxy voting for good corporate governance by ERISA plans.

Thank you in advance for your consideration.

Kind regards,

Cindy Bohlen, CFA	Adam Peck, CFA	Greg Wait
Chief Mindfulness Officer	Founder & CIO	Partner