30 September 2020

Mr Jason DeWitt
Employee Benefits Security Administration
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210 United States

Re: Proposed Rule RIN 1210-AB91

Dear Mr DeWitt

As Dr Brad Cornell, professor emeritus at UCLA's Anderson School of Management, wrote in the *Financial Times* this past summer, "The environmental, social and governance bandwagon is rolling. Companies are becoming ESG advocates, tempted by promises that they will become more profitable and valuable if they follow the ESG script, say the right things and spend money improving their ESG ratings… We believe that the whole concept has been overhyped and oversold. Furthermore, it is backed by weak to non-existent evidence of promised pay-offs for either companies or investors, and fraught with internal inconsistencies that undercut its credibility." This temptation has often lured pension plan fiduciaries to the detriment of their plan participants. These fiduciaries also need to get off the automatic voting bandwagon.

I am writing, therefore, to offer my full support for the Department of Labor's proposed rule on fiduciary duties regarding proxy voting and shareholder rights. This ruling, with additional voting protections, will not only make pension plan managers more accountable to their legally bounded mandate of enhancing their beneficiaries' economic interests, but also bolster the confidence and returns of retirement savers by restricting the practice of automatic voting.

The proxy advisory ecosystem is dominated by unregulated third parties, namely two proxy advisory firms. This duopoly, comprised of Institutional Shareholder Services (Rockville, Md.) and Glass Lewis (San Francisco, Calif.), does not have fiduciary responsibility to those beneficiaries for whom they automatically cast votes. What is more, these proxy advisory firms have undisclosed conflicts of interest. Many times, these conflicts prevent them from offering sound advice to pension funds investors.

As detailed by Kyle Isakower of the American Council on Capital Formation in a similar comment letter to the US Securities and Exchange Commission, proxy recommendations provided by both firms have been shown to include considerable errors. Furthermore, this duopoly is inclined to both support a "one-size-fits-all" governance standard, as well as recommend favorably resolutions backed by impact or social investing agendas, rather than focusing on generating investor gains. Additionally, if fiduciaries of pension plans regulated by the Employee Retirement Income Security Act of 1974 (ERISA) employ the services of proxy advisors, your Department should ensure that these proxy advisory firms are able to provide their clients accurate voting recommendations; disclose their conflicts of interest; and fulfill the loyalty duties required of ERISA-regulated fiduciaries. These fiduciaries must also make available all relevant information to plan participants. This information sharing – which automatic voting almost certainly guarantees against – is vital so that pension plan investors know that their retirement savings are secure.

Thank you for this opportunity to offer my comments on this ruling. It is hoped that the Department finalizes it with increased protections for pension plan participants. In this light, I applaud the Department and its Employee Benefits Security Administration for standing up to quell the dangers automatic voting pose to ERISA retirement plans.

Sincerely,

James Stuart

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Managing Director
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