ALIGN CAPITAL

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The Hon. Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Rule: RIN 1210-AB91; Document Number 2020-19472

Dear Secretary Scalia:

This Department of Labor proposed rule[1] provides for important reforms necessary to ensure that pension plan fiduciaries only make proxy voting decisions based on financial objectives. This will safeguard the retirement savings of pension plan participants. A stain on the current pension investing landscape is the growing tendency of plan fiduciaries to consider in their investment selections, and subsequent voting, non-pecuniary cultural and societal issues. This is embodied most by the trend of environmental, social, and governance ("ESG") investing. I am very pleased to see the Department's Employee Benefits Security Administration (EBSA) address this issue in the realm of proxy advisory services. This is a critical next step on the heels of the Department's prior ruling on ESG investing. It is worrisome that pension plan fiduciaries, who are entrusted to maximize pensioners' financial interests, time and again promote the murky ESG ecosystem by automatically voting ("robo-voting") proxy resolutions. The EBSA's efforts to hold pension managers more accountable in this regard should be lauded.

For the better part of the past 40 years, I have been active in raising capital for both private and public companies. I am also the former founder and manager of four companies that were acquired by public companies and venture capital firms. Through my extensive network of qualified investors, moreover, I have been fortunate to unite smart and dedicated individuals with talented and promising companies. This experience has given me first-hand knowledge of how pension funds evaluate and make their investment decisions, as well as how these funds' utilization of automatic voting services provided by proxy advisors endangers plan beneficiaries.

Dr. Wayne Winegarden, senior fellow in business and economics at the Pacific Research Institute (PRI), has shown why automatically voting on ESG-related resolutions can accelerate plan underperformance. In an excellent report, Dr. Winegarden writes, "Of the 18 ESG funds examined that had a full 10-year track record,

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[1] Federal Register, Proposed Rule, Employee Benefits Security Administration, Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, September 4, 2020, accessed: https://www.federalregister.gov/documents/2020/09/04/2020-19472/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights.

a $10,000 ESG portfolio (equally divided across the funds including the impact from management fees) would be 43.9 percent smaller after 10-years compared to a $10,000 investment into an S&P 500 index fund."[2]

I was also encouraged by a recent statement from your colleague, Acting Assistant Secretary Wilson. She said, "The proposal would clarify Employee Retirement Income Security Act fiduciary duties for proxy voting and monitoring proxy advisory firms. The proposed rule would reduce plan expenses by giving fiduciaries clear directions to refrain from spending workers' retirement savings to research and vote on matters that are not expected to have an economic impact on the plan."[3]

As such, I strongly urge the Department to add the following language to its final rule:

- "ERISA fiduciaries cannot engage in the automatic voting of shares on behalf of their plan beneficiaries when the vote or resolution in question is contested, or of a non-pecuniary nature."

In conclusion, it is worth highlighting in the context of this rule a survey conducted by the Spectrem Group,[4] a wealth management and retirement market research and consulting firm. With 5,100 qualifying investors participating, the survey used a scale to score investment priorities from a range of 1 (meaning a "pure ESG" focus) to 100 (meaning "pure wealth creation"). The results are telling, and they certainly support the Department's regulatory intentions to curtail automatic voting:

- On the 1 – 100 scale, the median score was 76;
- 17% percent of respondents scored 100, while only 0.2% scored 1; and
- 91% of all respondents preferred pure wealth creation.

Increased scrutiny of automatic voting from the Department would make clear that pension plan fiduciaries must prioritize their participants' economic well-being and not pursue non-financial agendas. I appreciate your consideration of my comments.

Sincerely yours,

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Executive Chairman
Align Capital Holdings

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[2] Wayne Winegarden, "Environmental, Social, and Governance (ESG) Investing: An Evaluation of the Evidence", May 2019, accessed: https://www.pacificresearch.org/wp-content/uploads/2019/05/ESG_Funds_F_web.pdf.
[3] Jaclyn Diaz, "Newly Proposed DOL Rule Would Curb Fiduciaries' Proxy Power", Bloomberg Law, August 31, 2020, accessed: https://news.bloomberglaw.com/daily-labor-report/newly-proposed-dol-rule-would-curb-fiduciaries-proxy-power.
[4] Spectrem Group, "Spectrem Group Study Reveals Wide Retail Investor Support for Proposed SEC Amendments", Press statement, January 10, 2020, accessed: https://www.prnewswire.com/news-releases/spectrem-group-study-reveals-wide-retail-investor-support-for-proposed-sec-amendments--january-10-2020-300984956.html.