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Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

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General Comment

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM.

Rule Number: RIN 1210-AB91

October 3, 2020

Dear Secretary Scalia:

For three terms, it was my great privilege to represent Louisiana's 3rd Congressional District in the U.S. House of Representatives. The district enjoys some of the nations richest ecological and natural resources, as well as thriving petrochemical, manufacturing, and tech industries. The blue collar nature of the 3rd District is just one reason why Ive always maintained close relationships with American workers through policies that protect and ensure their livelihoods.

People in communities like mine work very hard for their money, meaning federal rules should do everything possible to safeguard their earnings. Thats why I support the Labor Departments current efforts to ensure third party proxy advisory firms, as non-fiduciaries, do not have outsized influence over pension funds investments and decision-making. Without a strong and well-designed rule, pensioners and other investors could see their earnings jeopardized by agendas aimed more at public policy changes than at financial integrity.

It is well documented that proxy advisory firms have become heavily involved in the environmental, social, and governance (ESG) agenda for investment and corporate governance. To be clear, there is nothing wrong with the principles of ESG investing. I am a strong believer in individuals using their voice and platform to express their preferences and people should retain the prerogative to take part in political or social investing for their own personal reasons. What they do with their own money is their choice; however I believe strongly that it is inappropriate for pension fund managers to take any actions not intended to maximize returns on investment.

Pension plans, unlike personal investing, do not allow plan participants to move money out of a fund because of its actions or performance, which is the reason why all fund managers must adhere to their fiduciary duty. This extends to others, like proxy advisory firms, who are making recommendations to fund managers on behalf of the money of fund participants.

Robo-voting or automatic vote submission services and the effects of this process on retirement savings must also be curtailed. This practice allows proxy advisors to automatically vote their recommendations without review or confirmation that the recommendation meets the funds priorities and maintains their fiduciary responsibility. This practice short-circuits the level of accountability pensioners and investors expect from the firms controlling their retirement nest eggs.

The Labor Department should consider extending restrictions on this practice with the final rule to address robo-voting with regard to ERISA beneficiaries. In doing so, the Department could consider either prohibiting robo-voting altogether or at least requiring a greater degree of due diligence from fund managers when it comes to proxy voting recommendations. The Securities and Exchange Commission (SEC) has in place provisions, for example, that require fund managers to consider a range of information from all sides involved before making a final decision. That includes consideration of counterarguments from the issuer in addition to the proxy firm, adding a layer of transparency and human judgment to what otherwise could be an automatic process with a one-sided viewpoint. When a vote is contested, fund managers should not be allowed to hand control to a proxy advisory firm.

I encourage the Department of Labor to consider the specific concerns outlined here and echoed by numerous voices across party lines. Millions of Americans are counting on their government to protect their retirement nest eggs and to pass rules that give them peace of mind that fund managers are pursuing higher returns and not just political preferences.

Sincerely,

Charlie Melancon

Former Member of Congress
Louisianas Third Congressional District