October 5, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Docket: RIN 1210-AB91

Dear Secretary Scalia:

Please accept this comment letter in support of the efforts underway by the Department of Labor to consider and adopt the proposed rule “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.” It is my belief that this proposal make significant strides to address the problem of proxy advisory firms pursuing goals in ERISA pension fund investments that do not stand up to strict fiduciary criteria, which has long been the cornerstone of responsible pension fund management.

I spent over twenty years serving with the Phoenix, Arizona Fire Department, I am very familiar with the everyday challenges facing our hardest-working public servants. These brave individuals took on a risky career in anticipation of a strong and stable retirement – a guarantee which they paid into knowing they would take on a reduced salary as a result. Unfortunately, there has been a trend in recent years of pension fund managers shirking their fiduciary obligations to their beneficiaries, relying instead on advice from unaccountable proxy advisory firms who have no obligation to seek out the best returns for their clients. In the face of such mismanagement, this proposed rule could pave a welcome path to a return to fiduciary accountability. While the scope of this proposed regulation is limited to ERISA-backed pension funds, I believe that it serves as an important step toward much-needed reforms across the board.

At the end of the day, political-based decision making has no place in pension fund investment. While individuals may be free to invest their money in whatever manner they see fit, the nature of pension funds is such that beneficiaries have little say in the specifics of how their money is managed. For this reason, it is imperative on fund managers to seek out investment strategies focused only on maximized returns with managed risk. Unfortunately, in recent years we have seen a trend toward alternative investment priorities, most notably in the form of Environmental, Social, and Governance (ESG) criteria.

This trend, which has been embraced by proxy advisory firms in recent years, ultimately sidelines the fiduciary standard of maximized returns with managed risk. If returns from ESG-focused investments were on par with more traditional investment strategies, the debate over fiduciary duty in investing would be less pressing. However, recent analysis has shown this to not be the case. Furthermore, as outlined in a recent report from the Institute for Pension Fund Integrity, ESG investments continue to lack a standard definition across the industry.

By implementing this proposed rule, the Department of Labor could significantly codify the principal of fiduciary responsibility into decision making by ERISA pension funds, especially as it concerns the recommendations of proxy advisory firms. Perhaps most significant is the new guideline that fiduciaries have an obligation not to vote on a proxy recommendation if they cannot demonstrate that the expenses and resources associated with it result in an economic benefit to the plan. For pension beneficiaries who have placed their trust in fiduciaries to make the best investment decisions with their money, this requirement is a much-needed step toward accountability.

While significant, there are still additional actions that the Department of Labor can take to enshrine these protections. The issue of “automatic” or “robo-voting,” a practice which has long allowed for the proxy advisory firm combination to pursue a personal agenda with limited scrutiny, is in need of additional regulation. Under this practice, many fund managers accept the voting recommendations of proxy advisors automatically, moving forward on them without considering the overall fiduciary impact on the fund.

This practice does a great disservice to beneficiaries, but unfortunately, it has also become widespread. According to a recent study from Ohio State University, 400 of the top institutional investors – including many pension funds – automatically voted in line with the recommendations of ISS and Glass Lewis at least 99.5% of the time. Proxy advisors are under no obligation to adhere to fiduciary duty, and as such have often made decisions based on their own interests or with an eye toward factors other than money. By allowing robo-voting to become this rampant, pensioners who have entrusted others with the management of their money have become disenfranchised.

Earlier this year, the SEC issued guidance on the practice of robo-voting to asset managers, setting a preliminary set of regulations that the Department should seek to build upon. The desire to implement sound cost-saving measures cannot be upheld if proxy voting is relied upon to determine the course of action on contested issues. In these instances, fiduciaries should end their reliance on robo-voting in order to ensure that all final decisions are in the best interest of beneficiaries.

Everything that can be done should be done to ensure that workers relying on pensions for a stable, secure, and fulfilled retirement are not left by the wayside in the face of unaccountable outside interests pursuing questionable investment practices for their own gain. For this reason, it is imperative that the Department of Labor adopt this proposed rule and continue to expand regulations that enshrine these protections.

Sincerely,

Kevin Roche
Phoenix, Arizona