To: The Honorable Eugene Scalia, Secretary
U.S. Department of Labor, Employee Benefits Security Administration
Office of Regulations and Interpretations
Room N-5655
200 Constitution Avenue NW, Washington, DC 20210

From: Steve Loren, CFA, FRM, MBA
Former Chair, Sustainable Investing Committee
CFANY

Subject: Response to the Department of Labor Fiduciary Duties Regarding Proxy Voting and Shareholder Rights Proposed Rule: RIN 1210-AB95 Comment letter

Dear Secretary Scalia,

I write this letter in good faith and must be forthright. I usually expect the opportunity to have a comment period regarding proposed regulatory rules to be a forum for the public to have ample opportunity to be informed of rulemaking and have the time necessary to research the matter thoroughly. I must admit that a mere 30 day comment period after introducing the proposed rule gave me, and I suspect many other interested parties, neither proper notification nor ample time to research the critical issues addressed.
I was not informed of this proposed rule until relatively recently, and I have not had the opportunity to do the research I would have liked to respond adequately.
Under these circumstances and given the adverse effect of this rulemaking on the exercise of fundamental shareholder rights, it appears to me that, unfortunately, *this rule is arbitrary and capricious in both substance and process.*

Nonetheless, I have had some opportunity to read the proposed rule and comment letters of other interested parties and will include relevant remarks in this letter by way of reference. However, the time available to me, and I suspect others, has been insufficient to address all the matters of importance addressed in this rule.

I agree substantially with the text of the comment letter submitted by the Council of Institutional Investors (CII), and I highlight the following points from that letter (emphasis added):

A) This rule effectively limits if not eliminates, in certain instances, the exercise of central property rights of shareholders. From the CII response letter:

> "the Proposed Rule demonstrates an unwarranted prejudice against fiduciaries' exercise of shareholder rights and would impose such burdensome obligations on fiduciaries that ***ERISA plans would be effectively disenfranchised. As that would negatively impact plan participants and beneficiaries***, CII opposes the Proposed Rule and respectfully urges DOL to withdraw it."

B) There is substantial evidence of the economic value of exercising ownership rights of proxy voting. The DOL proposed rule appears to lack an evidentiary basis for holding otherwise and seems not to emphasize a portfolio approach to ascertaining investment plan value. Again from the CII letter:

> "over the past three decades in particular, shareholder votes on proposals – including proposals seeking majority voting for directors, declassified boards and proxy access – ***led to widespread voluntary adoption of these measures across a large swath of the market.***"
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> "Shareholders at a few companies, for example, cast ballots for majority voting, and declassifying boards, and proxy access, ***and it led to widespread and voluntary adoption of these measures across a large swath of the market [and so] . . . the value of a vote goes well beyond that particular contest and that particular company, in ways that can broadly impact a portfolio***."

C)The DOL appears to use an unwarranted justification for the proposed rule based on changing proxy voting practices and provides no empirical evidence that these changes are in any way detrimental to plan beneficiaries. The DOL rule states that:

> "[t]he financial marketplace and the world of shareholder engagement have changed considerably" because there has been (i) an increase in the plan assets managed by institutional investors, (ii) broader diversification of plan assets, and (iii) changes in proxy voting behavior." (85 Fed.Reg. at 55,221)

D) I agree with the CII reasoning on this issue that none of these assertions referenced above (85 Fed. Reg. at 55,221) are relevant for the proposed rule. Changes in proxy voting behavior do not indicate any problem with proxy voting that needs to be solved but may instead provide evidence of how exercising ownership rights leads to more optimal capital market outcomes. From the CII comment letter:

> [Rather, any changes in proxy voting behavior] "are a clear indication that rational private actors in the marketplace are learning from experience and ***taking action to enhance the value of their investments.*** If profit-seeking investors have adopted more complex proxy voting policies, they have done so based on a rational decision ***that such policies are necessary and appropriate to protect their investments. DOL has provided no evidence to the contrary.***"

In conclusion, I would urge the DOL to withdraw this rule and engage in a good-faith dialogue with relevant stakeholders to address any perceived concerns that motivated the rulemaking. As it stands now, adequate evidence and facts were not considered in this rulemaking, and therefore the rule is unreasonable. The truncated time frame provided for comments also indicates abuse of discretion in the rulemaking process in question. Respectfully,

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