Mr. Jason A. DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM.

Re: Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights
RIN 1210-AB91

October 1, 2020

Thank you for the opportunity to comment on this important rule. First, we would like to commend the Department of Labor for taking these important steps in clarifying that plans don't have to vote on proxy matters. Second, and in our view most importantly, we commend the Department of Labor for requiring plans to vote proxies based on financial considerations.

An investor should be allowed to make decisions based on any factors that they find relevant, but when someone is managing funds they should only have one goal and that is to maximize returns. This rule consolidates and clarifies previous guidance that has been made over three decades, and it adapts to a "financial marketplace and the world of shareholder engagement" that has changed over the same time.

Proxy advisors have been growing since 1988 and the opinion letter to Avon Products, called the "Avon Letter." That letter, which became the model for SEC guidance, stated that the fiduciary duty to manage plan assets of stock also "encompasses responsibility over the voting of proxies." But, the Avon Letter has been read by some as a presumption that ERISA fiduciaries should always vote. This has led to an explosion in proxy voting and the use of a few concentrated proxy advisory firms – changing the world of shareholder engagement.

Pensioners are best served when the role of their advisors is clearly defined. This helps both the advisor and pensioner. An advisor has many incentives to manage, and this helps them focus on what should be the primary incentive – returns. Sometimes fund leadership can attempt to drive an advisor into making political, environmental, or socially-driven investments instead of making the best fiduciary decisions. For instance; environmental, social, and governance (ESG) investments have been found to produce 43.9% less returns than standard S&P 500 index funds, according to the Pacific Research Institute, thereby significantly harming retirees that have funds that move in this direction. To that point, a Bloomberg analysis of iShares MSCI USA ESG Select Social Index Fund (SUSA), trailed the S&P 500 index by 37 points over 10 years. That makes this proposed rule an excellent companion to the June 23rd rule on ESG investing.

Furthermore, while the rule would apply only to private and employer-sponsored pension plans, Reuters points out, "Some state pension plans also follow the department's guidance." That makes this a win-win-win. In fact, when asked about pursuing profit-maximizing strategies over social priorities 91% of investors stated they prefer maximizing returns, as found by a Spectrem Group survey of retail investors.

It is possible for the Department of to go even further. The final rule should provide language that also makes it clear that ERISA fiduciaries should not use resources for proxy voting or shareholder activism if such activity does not strengthen the economic interests for pension beneficiaries. Additionally, the proposal states that plans can only vote on proxy questions if they "prudently determine" such matters have an economic impact. We believe that this is not nearly as strong as the requirements in the ESG proposed rule from June 23rd. Documentation of the input into these decisions should be made available.

Additionally, the final rule by the Department should be more specific regarding its restrictions on "robo-voting" when pension fund managers automatically vote for proposals based on the proxy advisory firms' recommendations. Many legal scholars such as Ohio State University's Paul Rose and George Mason Antonin Scalia Law School's J.W. Verret have pointed out the flagrant errors with proxy advisory firm's robo-voting work. Robo-voting has denied pension beneficiaries of the due diligence needed to evaluate shareholder proposals that affect their interests. Appropriately, the Department has proposed a cost-benefit analysis test for proxy votes and shareholder proposals; if such shareholder activity or proxy votes do not result in economic benefits, they would not be permitted to advance. To that end, the continuation of robo-voting whereby pension fund managers blindly vote for proposals would not be compliant with a fundamental cost-benefit analysis. My recommendation: the Department should not allow robo-voting to take place by fund managers if the proxy votes in question do not pass the cost-benefit analysis test. The Department's final rule should be more prescriptive on this issue.

Thanks again for your time, your consideration of our comments, and this important rule.

Charles Sauer
President
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