Investor Advocates for Social Justice

October 5, 2020

Ms. Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
Room N-5655 U.S.
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Proxy Voting and Shareholder Rights NPRM Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210- AB91)

Dear Acting Assistant Secretary Wilson:

Investor Advocates for Social Justice (IASJ) is writing regarding the Department of Labor (DOL) Proxy Voting and Shareholder Rights NPRM Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, Regulatory Identifier Number (RIN) number 1210-AB91. Thank you for the opportunity to comment on the proposed rule. IASJ, formerly the Tri-State Coalition for Responsible Investment, is a 501(c)(3) non-profit that represents 35 faith-based institutional investors. IASJ and its investor Affiliates are concerned that the proposed rule would dissuade investors from carrying out proxy voting responsibilities which are essential to active ownership and the consideration of material environmental, social, governance (ESG) risks in long-term investing strategies. IASJ strongly opposes the proposed rule and urges the DOL to withdraw it.

IASJ carries out proxy voting on behalf of faith-based and responsible institutional investors. IASJ and our partners recognize that proxy voting if part of an investor's fiduciary responsibility. While the faith-based investors in our community are generally classified as church plans exempt from Employee Retirement Income Security Act (ERISA), IASJ believes proxy voting is an important active ownership strategy that benefits all investors. The proposed rule creates unnecessary constraints for ERISA funds seeking to carry out informed proxy voting, which presents threats to shareholder rights.

Amidst the COVID-19 pandemic, ongoing racial justice protests, economic inequality, and climate crises, it is unwise for responsible fiduciaries to refrain from voting on proxies or to begin reflexively voting in support of company management on issues with distinct and systemic impacts on our economy, environment, and society. The DOL's proposed rule appears to view shareholder

40 S Fullerton Ave, Montclair, NJ 07042 ◊ 973-509-8800 ◊ info@iasj.org ◊ www.iasj.org

proposals as having no benefits or importance to ERISA participants and beneficiaries, focusing only on whether one can identify short-term economic gain with respect to the company or item being voted. ESG issues raised in shareholder proposals often address cross-industry risks that impact the broader market. Many of these risks may manifest over the long term. For example, the costs of failing to address climate change are significant and estimated to have an average value at risk of $224 billion per year in the US alone.[1]

IASJ faith-based institutional investor Affiliates file shareholder proposals with portfolio companies on important corporate risks and impacts related to human rights in the supply chain, labor rights, and racial justice which would be affected by this rule. These proposals aim to address not only significant risks to companies such as litigation, reputational harm, or stranded assets, but also business activities that cause adverse impacts to individuals, employees, and communities. The DOL's proposed rules will either prevent ERISA plans from proxy voting altogether, or encourage reflexive votes with management to avoid costly and potentially confusing analysis. Proxy voting also allows investors to weigh in on key management proposals to promote good governance. The ability to vote against company management in the face of poor risk management, excessive executive compensation, or risky auditing practices serve as an important accountability tool for investors. This voting activity would be constrained by the proposed rule, which "prohibits fiduciaries from voting any proxy unless the fiduciary prudently determines that the matter has an economic impact on the plan." Effective corporate governance is important for sustainable long-term value creation, and it is in investors' best interest to engage in active ownership activities, including proxy voting, that promote good governance.

If this proposed rule is adopted, ERISA plans that do not vote according to corporate management's recommendations or will be subject to a burdensome and costly economic analysis requirement. The cost of conducting such an economic analysis will likely exceed the actual costs of voting, and may cause institutions to refrain from proxy voting altogether. The DOL estimates that the new rule could cost ERISA plan service providers $535 million annually. While the faith-based institutions represented by IASJ are generally not subject to ERISA due to the exemption for church plans, many church plans consider the ERISA rules as they exercise their fiduciary duty. Creating substantial burdens on proxy voting on a selective set of issues would have a chilling effect on other institutions that look to ERISA rules as best practice. The proposed rule ignores or downplays that institutional investors already approach their proxy voting methodically and professionally, as ERISA funds have been prudently voting under the DOL's Interpretive Bulletin 2016-01 guidance for three decades.

In conclusion, proxy voting is a critical tool for fiduciaries to address ESG risks and to encourage corporate accountability around issues with distinct impacts on long-term value. Not only this, but ESG-related proxy votes can enhance the value of companies, and bring material risks to the

[1] https://yaleclimateconnections.org/2019/04/climate-change-could-cost-u-s-economy-billions/

attention of company boards and management. IASJ is concerned that the DOL has provided no evidence that it has considered research and data that supports the value of proxy voting. The proposed rule introduces needless confusion and will require heavy costs that will discourage fiduciaries from engaging in proxy voting as an exercise of their shareholder rights and responsibilities. IASJ urges the DOL to withdraw the proposed rule. At minimum, the DOL should schedule a public hearing on the proposed rulemaking and substantially modify the rule in accordance with the above facts, evidence and considerations. Finally, IASJ requests that the Department extend the comment period from 30 to 120 days to allow investors and other stakeholders enough time to provide thoughtful input into the proposal.

Sincerely,

Mary Beth Gallagher
Executive Director
Investor Advocates for Social Justice