THOMAS P. DiNAPOLI
STATE COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 9, 2021

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5655
Washington, DC 20210

Re: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, RIN 1210-AC03

I write as Trustee of the New York State Common Retirement Fund (Fund) with an estimated $267.8 billion in assets under management as of September 30, 2021. The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than 1.1 million members and beneficiaries and pays over $1 billion per month in benefits.
The Fund is not subject to Employee Retirement Income Security Act (ERISA) or the Department of Labor's rules. Accordingly, I submit this comment to the Department's proposed rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (Proposed Rule) not because it will directly impose obligations on the Fund, but because it has the potential to change market standards by impacting the common and prevailing market practices of ERISA fiduciaries, who are a meaningful segment of institutional investors. It also has the potential to affect the corporate governance of the companies in which the Fund invests and, therefore, the Fund's investments.

In that context, I wish to express my support for this Proposed Rule. For many years, ERISA fiduciaries have faced shifting standards from the Department about whether they can and should consider ESG factors in their role as investment stewards for retirement plan participants.
I hope that after the Department completes its review and analysis of these comments, and others that have been submitted, it adopts the Proposed Rule.

Importance of Proxy Voting

The Proposed Rule restores the importance of shareholders' rights and the prudent exercise of those rights to protect the interests of plan participants, and importantly, removes provisions that may have discouraged fiduciaries from exercising their ownership rights. On October 2020, I commented on the Department's proposed rule on Proxy Voting and Shareholder Rights.[1] I would refer the Department to that comment for the Fund's views on proxy voting and its importance in the investment process.

[1] https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00260.pdf

Importance of Environmental, Social, and Governance (ESG) Issues

The Fund has long considered ESG factors in its investment process because they can influence both risks and returns. Furthermore, we believe that taking ESG factors into account contributes to complete, integrated management of the full scope of investment risks and opportunities.

In 2020, I released the Fund's ESG Strategy that outlines our ESG beliefs, principles, practices, and expectations.[2]

The Fund's ESG strategy specifically mentions key ESG factors that it considers, including climate risks and opportunities, human capital management, and various governance-related issues. We believe the Proposed Rule accurately recognizes examples of key ESG factors that, depending on the facts and circumstances, may be material to the risk-return analysis. Integration of ESG factors advances our mission to provide our beneficiaries with a secure pension through prudent asset management.

There is a strong and growing case for investors to fully integrate climate change into their investment decisions. Climate change poses significant risks and opportunities for investors, markets, and the economy as a whole. In 2019, the Fund adopted a Climate Action Plan to create a framework for addressing climate risks and seizing investment opportunities, through a multifaceted strategy that includes prudent investment decision making, engagement, and advocacy. We continue to believe that these efforts are essential, because most of the CRF's investments are at some level of risk due to climate change, although the timing and severity of those risks varies.

I applaud the Department's efforts to strengthen and provide greater guidance on the appropriateness of the evaluation of ESG factors—especially climate change. There should be no doubt at this point that these factors can be material depending on the individual facts and circumstances, and that not only may fiduciaries properly consider them, but that in some instances, an evaluation of those factors may be required.

I appreciate the opportunity to submit comments on this important matter. I trust the Department will conduct the necessary analysis and review of my comments and others that have been submitted, and adopt the Proposed Rule. Thank you for your attention to my comments.

Sincerely,

Thomas P. DiNapoli
State Comptroller

---

[2] https://www.osc.state.ny.us/files/common-retirement-fund/2020/pdf/ESG-strategy-report-2020.pdf