Secretary Eugene Scalia
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

Dear Secretary Scalia,

Thank you for addressing the need for clarity around the Department of Labor's position pertaining to Environmental, Social, and Governance (ESG) investing. Enclosed is an op-ed I recently authored for Newsmax Finance in support of the proposed rule change.

I appreciate your consideration with regards to this matter.

Sincerely,

Dr. Michael Busler, Ph.D.: *public policy analyst, economics expert and a professor of finance at Stockton University in New Jersey*

<u>Rein in "Green" Investing to Strengthen American Retirement</u>

Many Americans are well aware of the looming private pension crisis facing our country. According to Cheiron, a full-service financial analysis and actuarial consulting firm, as many as 117 multiemployer pension plans covering 1.4 million participants could fail within the next 20 years.[1] While there are a variety of reasons why many of these plans are significantly underfunded, a new investing trend taking hold threatens to further destabilize the $10.7 trillion held in private pensions.

Environmental, social, governance investing – or ESG investing – is a relatively new phenomenon that has amassed significant funds under management in a short period of time. In 2016 and 2017 not more than a handful of funds contained ESG language in their prospectuses. That trend soon accelerated though and according to Morningstar's Sustainable Funds U.S. Landscape Report,[2] by the end of 2019 the number of ESG Consideration funds soared to 564 with a total of $933 billion in assets under management, demonstrating the breadth and width of this new "impact investing" trend.

While every American reserves the right to invest their values – and should be able to do so in a personal capacity – this kind of institutional shareholder activism comes with a cost. Data has shown that ESG funds consistently underperform long-term benchmarks. Over a 10-year period

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[1] https://www.reuters.com/article/column-miller-pensions/risk-of-pension-meltdown-grows-due-to-inaction-by-u-s-congress-idUSKBN1Z61IN
[2] https://www.morningstar.com/articles/973432/the-number-of-funds-considering-esg-explodes-in-2019

for example, one of the oldest and largest ESG ETFs on the market the iShares MSCI USA ESG Select Social Index Fund (SUSA) has lagged the S&P 500 index by 37%.[3] Given the already precarious position of many privately funded pension funds, such kind of money cannot be afforded to be left on the table.

The good news is that the Trump Administration has started taking steps to rein in ESG investing and reorient the fiduciary duties of those administering our nation's private pension plans towards a singular focus on guaranteeing returns. As I have previously written,[4] the Department of Labor's (DOL) proposed rule preventing fiduciaries from incorporating non-pecuniary factors into investment strategies was a good first step towards guaranteeing a secure financial future for American retirees.

A newly proposed companion piece to this regulation from the DOL, titled Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, will do even more to strengthen the investment strategies underpinning pension plans and will curtail the activities of a growing group of fringe activists that have hijacked the proxy voting process to the expense of the thousands of private pension beneficiaries across the U.S. If you share similar concerns regarding ESG and proxy voting, you can submit your comments here until October 5th.

Amending the "Investment duties" regulation of the Employee Retirement Income Security Act of 1974 (ERISA) to clarify that "fiduciaries must not vote in circumstances where plan assets would be expended on shareholder engagement activities that do not have an economic impact on the plan" will help ensure the long-term viability of America's private pensions by insulating plan holders from the types proxy shareholder activism that has negatively impacted their investments. Research from Harvard University's Joseph Kalt[5] has found that ESG-related shareholder activism does not enhance shareholder value. In fact, Professor Kalt noted that such ESG-focused shareholder activism can detract resources from other objectives besides generating shareholder returns and promoting good corporate governance.

But while the proposed rule as it is currently stands specifically prohibits ESG-driven proxy voting decisions, it sends mixed messages with regards to the compliance costs of proxy voting. Specifically, near the end of the proposed rule it is stipulated that compliance costs will rise only minimally because most plans are already documenting their proxy voting decisions properly, which would in effect make the impact of this rule relatively mild. But other language throughout the proposed rule gives the impression that onerous research and paperwork would be required to justify proxy votes – a standard that would be much more effective in changing the status quo. More clarification therefore should be required as to how precisely an ERISA-governed plan can determine whether a proxy vote will have a positive economic impact, and what proof is required.

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[3] https://www.bloomberg.com/opinion/articles/2020-01-27/esg-etfs-your-socially-conscious-fund-probably-has-some-holes

[4] https://www.bizpacreview.com/2020/07/25/green-investing-is-hurting-retirees-bottom-line-this-new-rule-would-fix-that-951206

[5] https://corpgov.law.harvard.edu/2018/06/17/political-social-and-environmental-shareholder-resolutions-do-they-create-or-destroy-shareholder-value/

While the rule as proposed could benefit from a few changes, the Department of Labor should be applauded for finally clarifying that ERISA governed plans do not need to vote on all proxy matters and for in one move codifying a requirement that fiduciaries must invest and vote shares only based financial considerations. Private investors – if properly informed of the risks – have every right to prioritize societal goals over maximizing returns should they prefer, but fiduciaries who are entrusted to maximize the returns of millions of pension holders do not have the right to pursue political or public policy goals with the money of other people.