GRAHAM L. COPLEY

Houston, Texas

September 28, 2020

Mr. Jason DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1210-AB91

Dear Mr. DeWitt:

Thank you for this opportunity to offer my thoughts on the Department's proposed rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights". The Employee Benefits Security Administration (EBSA) should be commended for this important and powerful change aimed at addressing the application of the prudence and exclusive purpose duties under the Employee Retirement Income Security Act of 1974 (ERISA) to the exercise of shareholder rights, including proxy voting.

Pension fund fiduciaries, more than ever, need the flexibility to be able to vote independently from proxy advisors or not vote at all, depending on the resolution, rather than simply delegating a blanket authority to a proxy. The increased need comes because of the increased number of less tangible resolutions that are being brought by shareholders who might have very different agendas and responsibilities. These resolutions might not have maximizing financial returns as a primary objective, and pension fund fiduciaries need the flexibility to vote against resolutions that they are certain do not meet their fund return obligations or step aside and refrain from voting where a cost/benefit analysis in unclear on the outcome.

Socially responsible investing, environmental, social, and governance (ESG), and climate change activism present all investors, including pension fund fiduciaries, with "noise" that is orders of magnitude louder than it was a mere five or six years ago. Activist investors are not new; they have targeted underperforming companies and have generally sought to change governance and management. Indeed, a number of public pension funds have been active in this area for decades. Their moves were always grounded in sound theory around value creation and improving returns for their funds.

Today the activism and rhetoric around ESG and climate change does not have that "let's fix an underperformer" backdrop. Often companies that are being targeted as unattractive ESG

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investments are at the top of their game and are generating great returns and often pay significant dividends. There is certainly risk that their profitability may change because of legislation or regulation geared toward improving sustainability and lowering carbon footprints, but it is also possible that the bills and regulations chosen, and incentives put in place, can allow the companies to meet tougher environmental goals without sacrificing shareholder returns. For example, a chemicals company who is also a good strategic and financial planner, may be able to adjust output or raw materials and capitalize on incentives such that they can raise profits. The same may happen through technology breakthrough. It is a credible scenario that the investment community becomes more interested in companies that have a strong path to a lower carbon or more sustainable future than those that just have a good ESG score today. A high ESG score is not a "catch-all" measure of financial strength and potential financial returns. Indeed, a high ESG score may lead to management complacency and subsequent underperformance.

This needs to be considered against a backdrop of a system of ESG measurement that is still grossly flawed, with too many index and ESG "score" or "ranking" providers and a lack of consistency between methodology. If you allow a proxy advisor to vote on a resolution that is related to improving an ESG score, how do you know that all involved are using the appropriate measures for the company involved, and how do you know that the goal will not have a material negative impact on near-term returns? You do not, unless you do the work to satisfy yourself that the approach is correct.

We should reach a point where there is significantly greater standardization between ESG measures and far fewer providers, all with more robust methodology. But we are not there yet. Even when we are, that still does not mean that a corporate goal driven by ESG pressure is in the best interest of shareholders short or medium term. Moreover, history shows us that when thinking about the longer-term with issues like these, public opinion and legislation and regulation can change to move goal posts mid-strategy. Consequently, any longer-term goal that a corporate may be relying on to improve returns after an initial dip may never materialize.

The cost of using a proxy advisor and proxy ("robo") voting is not immaterial for any fiduciary, but the cost of delving into every resolution at every company is likely much higher for most pension funds. This is one of the reasons why the proxy companies have such a strong position today. As the Department of Labor is suggesting, with the current market and all its extraneous factors, a hybrid system would be more appropriate. Fiduciaries need the capacity to be able to decide where it is still in their clients' best interest to work through proxies and where it is not. At a minimum, fiduciaries should have the ability to screen through the resolutions put forth by the companies that they own, and identify where there is a

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potential conflict of interest between what the proxy company is proposing and what is best for their pension fund owners. The fiduciary should then have the flexibility to opt-out of the proxy and vote independently – and in some cases not to vote at all.

As a former board member, chief executive of a publicly traded company, and global head of research for a multi-national financial institution, I know too well the need for not only proxy voting reform generally, but also greater robo-voting scrutiny specifically. As such, I applaud the Department's efforts contained within this ruling to protect pension beneficiaries and strengthen shareholder rights.

Sincerely,

Graham L. Copley
Former Board Member
Macquarie Securities USA

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