

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

Attention: Proxy Voting and Shareholder Rights NPRM.

U.S. Department of Labor Request for Public Comment on amendment to the Department's Fiduciary Duties Regarding Proxy Voting and Shareholder Rights. 29 CFR Parts 2509 and 2550. RIN 1210-AB91.

Dear Mr. DeWitt:

FCLTGlobal is a 501(c)3 not-for-profit research organization that develops research and tools that encourage long-term business and investment decision-making across the global investment value chain. Focusing Capital on the Long Term began in 2013 as an initiative of the CPP Investments McKinsey & Company, which together with BlackRock, Dow, and Tata Sons founded FCLTGlobal in July 2016. In addition to our Founders, today our 50+ Member organizations span the investment value chain, including asset owners, asset managers and corporations, and are committed to accomplishing long-term tangible actions to lengthen the timeframe of capital allocation decisions.

The Department of Labor ("The Department") is inviting public comments on a proposal to clarify Employee Retirement Income Security Act (ERISA) fiduciary duties for proxy voting and monitoring proxy advisory firms. The Department has voiced the desire to "reduce plan expenses by giving fiduciaries clear directions to refrain from spending workers' retirement savings to research and vote on matters that are not expected to have an economic impact on the plan".¹

The proposal includes a provision that would "prohibit fiduciaries from voting any proxy unless the fiduciary prudently determines that the matter has an economic impact on the plan".²

Based on FCLTGlobal's review of existing academic evidence, our own analysis, and research informed by our multi-year conversations with our Members and other experts, we suggest the Department carefully consider the following points:

1. *Engagement, including voting, is important for long-term value creation*
2. *While we agree that investors should have discretion when it comes to voting, this proposal may discourage voting by creating too high of a hurdle*
3. *The proposal could give way to undesirable unintended consequences*

¹ U.S. Department of Labor Proposes Rule on Employee Benefit Plan Proxy Voting and Exercises of Other Shareholder Rights, US Department of Labor, August 31, 2020.

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20200831>

² U.S. Department of Labor Proposes Rule on Employee Benefit Plan Proxy Voting and Exercises of Other Shareholder Rights, US Department of Labor, August 31, 2020.

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20200831>

Engagement, including voting, is important for long-term value creation

Constructive engagement between investors and companies is to be encouraged. Our work on long-term roadmaps³ shows that investor/corporate engagement makes a meaningful contribution to fostering an environment conducive to long-term value creation, and proxy voting could be the sole means by which investors can have a say in the business of their companies.

We also found, from the company’s perspective, that understanding one’s shareholders is necessary to begin a productive dialogue and understand the various shareholder perspective. In our 2019 whitepaper *Predicting Long-Term Success for Corporations and Investors Worldwide*⁴ we establish the importance of long-term shareholders, who demonstratively contribute to long-term value creation for their portfolio companies, often through voting.

This proposal may discourage engagement

FCLTGlobal agrees with the Department’s decision to encourage investors to “not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without appropriate supervision and a determination that the service provider’s proxy voting guidelines are consistent with the economic interests of the plan and beneficiaries”⁵. However, we also recognize that prohibiting fiduciaries from voting any proxy unless the fiduciary determines an economic impact on the plan may discourage voting altogether by creating too big of a hurdle.

Finding a balance is key, and while allowing fiduciaries to have discretion in voting – or not voting on non-material matters – is a step in the right direction, the Department may unintentionally discourage an important component of engagement by requiring documentation of likely economic impact.

Unintended consequences

This proposed rule has no influence on the corporate engagement or voting behaviors of plans not subject to ERISA, including foreign investors, non-ERISA retirement plans, or non-retirement investors. By constraining US investors subject to ERISA from engaging with their portfolio companies via regular voting, the influence of unconstrained investors at US companies could be amplified.

Conclusion

FCLTGlobal is pleased with the Department’s desire to reduce plan expenses by allowing investors to refrain from voting on non-materials matters. However, prohibiting investors from voting any proxy “unless the fiduciary prudently determines that the matter has an economic impact on the plan”⁶ may discourage engagement and bring about unintended consequences.

We appreciate the opportunity to submit these remarks for consideration. Should anyone at the Department have questions about the research or our remarks, we would welcome the prospect of further discussion.

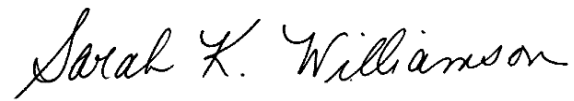
³ Babcock, He, Tellez, “Driving the Conversation: Long-Term Roadmaps for Long-Term Success,” February 2019, <https://www.fcltglobal.org/resource/driving-the-conversation-long-term-roadmaps-for-long-term-success/>

⁴ Mirchandani, et al, “Predicting Long-Term Success for Corporations and Investors Worldwide,” September 2019, <https://www.fcltglobal.org/resource/predicting-long-term-success-for-corporations-and-investors-worldwide/>

⁵ Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, Proposed Rule, Employee Benefits Security Administration, US Department of Labor, <https://www.regulations.gov/document?D=EBSA-2020-0008-0001>

⁶ Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, Proposed Rule, Employee Benefits Security Administration, US Department of Labor, <https://www.regulations.gov/document?D=EBSA-2020-0008-0001>

Most Sincerely,



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