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

Re: Proposed Rule: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights
RIN 1210-AB91

Dear Mr. DeWitt:

Thank you for this opportunity to comment on the proposed rule before the Department, Fiduciary Duties Regarding Proxy Voting and Shareholder Rights. In the 38 years that I have been in the executive search business, I have followed corporate governance developments closely. I cannot overemphasize the importance of the positive developments contained in this proposed rule. I believe, however, that the Department can build off the recent ruling from the Securities and Exchange Commission and be much stronger on a specific issue: robo voting (or automatic voting).

This practice is troubling, as many pension plan managers simply vote per their proxy advisor's recommendation, while at the same time sacrificing their own due diligence. In a piece for the Harvard Law School Forum on Corporate Governance, "Robovoting and Proxy Vote Disclosure", Paul Rose, professor at The Ohio State University Michael Moritz College of Law, writes, "The lack of diligence with which many managers use the services of the advisors is cause for concern, particularly when many of the governance recommendations of proxy advisors are based on thin (or no) empirical evidence."¹

This lack of evidence is also troublesome given the sheer volume of votes these proxy advisors effectively control on behalf of pension beneficiaries. Professor Rose points out in his subsequent research that there are dozens of investment managers who together cast millions of votes, too. These managers align their votes with their proxy advisor's recommendation either 100 percent of the time or very close to that rate. This is cause for the Department to be concerned. For example, Institutional Shareholder Services, the most prominent proxy advisor,

¹ Rose, Paul, "Robovoting and Proxy Vote Disclosure", Harvard Law School Forum on Corporate Governance, November 25, 2019, <https://corpgov.law.harvard.edu/2019/11/25/robovoting-and-proxy-vote-disclosure>.

alone casts 10.2 million ballots per year.² By casting millions of ballots per year, including those for hundreds of pension plans, proxy advisors' practice of robo voting is a real threat.

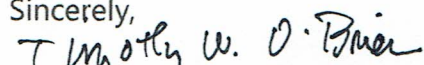
Ken Blackwell, my state's former treasurer, offered the following in a comment letter to this proposed rule that I support enthusiastically:

"Robo voting 'disenfranchises pensioners and should be curbed by the Labor Department. The duopoly of ISS and Glass Lewis wields enormous influence over the direction of publicly traded companies in the United States. Despite their influence, they are, unlike fund managers, under no obligation to uphold a fiduciary duty to the clients they represent, or to provide insight into whether their decisions are made based on the desire to maximize value for shareholders.'"³

Moreover, the actual outcomes of robo voting pensioners' shares should raise alarms for the Department. As American Council on Capital Formation General Counsel Timothy Doyle wrote, "Proxy firms are able to operate as quasi-regulators of America's public companies, despite lacking any statutory authority or regulatory oversight."⁴ With this reality in mind, the Labor Department must make clear, at the very least, that ERISA pension plan fiduciaries must provide justification for their voting recommendations based on their own fiduciary duty.

As the Department deliberates this ruling, I hope that strong safeguards proposed relative to automatic voting are included in its finalization. Furthermore, I appreciate the efforts put forth by the Department and its staff to right the wayward practice of automatic voting. If left unchecked, this practice will continue to harm pension plan participants.

Sincerely,


Timothy W. O'Brien

Former Partner

Heidrick & Struggles International

² Editorial Board, "The Proxy Protection Racket", The Wall Street Journal, November 10, 2019, <https://www.wsj.com/articles/the-proxy-protection-racket-11573417818>.

³ Ken Blackwell, Comment Letter, U.S. Department of Labor, RIN 1210-AB91, <http://ipfiusa.org/wp-content/uploads/2020/10/Ken-Blackwell-Proxy-Rule-Comment-Letter.pdf>.

⁴ Timothy Doyle, "The Realities of Robo-voting", Real Clear Policy, November 11, 2018, https://www.realclearpolicy.com/public_affairs/2018/11/11/the_realities_of_robo-voting_110905.html.