October 2, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
An agency within the U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights Amending "Investment duties" Regulation at 29 CFR 2550.404a-1 (the "Proposed Rule")

Dear Director Canary,

Thank you for the opportunity to provide feedback on the Proposed Rule, which seeks to clarify guidance to ERISA plan fiduciaries on their exercise of shareholder rights, particularly designing and executing a proxy voting strategy. We are concerned that this rule underestimates the importance of the exercise of shareholder rights to protect long-term portfolio value of pension plans and maintain free market self-regulation.

Legal & General Investment Management America, Inc. ("LGIMA") is a U.S. registered investment adviser with $227 billion in assets under management ("AUM")[1]. We are the U.S.-based affiliate of Legal & General Investment Management Limited ("LGIM"), a subsidiary of Legal & General Group, a multinational financial services company that is the 4th largest institutional global asset manager[2], with over $1.5 trillion in AUM[3]. In the U.S., approximately 79% of our assets are from pension plan clients; globally that figure is approximately 82%.

It is our belief that the protection and intentional exercise of shareholder rights is a requisite component of the prudent exercise of fiduciary duties. Our global Stewardship Team has carefully designed proxy voting and corporate engagement policies to tackle difficult and inter-connected issues that could materially impact the value of our clients' assets. In 2019 alone, LGIM engaged globally with 493 companies and voted on more than 115,000 corporate resolutions spanning 12,000 companies. Our proxy voting and engagement strategies focus on corporate governance risks that are clearly linked to long-term value: director appointments (e.g., conflicts of interest, time commitment, diversity); company operations (e.g., CEO pay, M&A, auditor appointment) and shareholder resolutions (e.g., environmental disclosure, employee health and safety). While our clients, investment holdings and strategies are diverse, we seek to vote in a globally consistent manner where we have discretion, sending one message to companies. This allows our smaller clients, including small pension plans, that may not have concentrated voting positions to benefit from the scale of our entire portfolio and research efforts. *The overarching principle of our Stewardship effort is to enhance the long-term economic value of our clients' assets, with an intentional appreciation of company value in the context of societal trends.*

On its face, the Proposed Rule's requirement that shareholder engagement activities be undertaken only if they have an economic impact on the relevant pension plan is not entirely at odds with our Stewardship principle. However, we disagree with EBSA's statements within the proposal that present a view of ESG shareholder engagement as devoid of impact on share value or economic interests. First, the practice of exercising voting rights, even on ESG matters, (a) ensures the appropriate division of control between the owners of a company (shareholders) and the agents appointed to manage the company in their interests (directors) and (b) serves as a fundamental tool to signal support or concern with management actions that could impact portfolios in the long-term. In the absence of shareholder engagement by long-term investors like pension plans, the voting void will be filled by investors with shorter investment time horizons, who may invest for immediate returns at the expense of long-term value, and who will now have an outsized impact on corporate matters. Yet it is unclear how one would quantify such a critical value under the Proposed Rule. *Proxy voting is a right of an equity holder and plan fiduciaries and regulators should tread cautiously when impeding private rights of action. Our biggest concern with the Proposed Rule is that, its practical effect, will likely be to chill all or most shareholder proxy voting and engagement by pension plans, effectively stripping pension plans (and, indirectly, beneficiaries) of their private rights as equity holders, to the long-term detriment of investment portfolios.*

Second, assessing the impact of shareholder proposals on a pension plan's portfolio is the duty of the plan fiduciary, who is best positioned to balance the short-, medium- and long-term goals of the investments in the fiduciary's designated portfolio. It is not uncommon for two highly sophisticated fiduciaries to look at an identical ESG shareholder proposal and come to different conclusions based on differing portfolio goals or differing views on the investment's long-term value proposition. This potential for differing investment opinions is particularly acute with ESG proposals because they tend to address long-term systematic issues that may be difficult to quantify in the short-term or they produce success that is difficult to measure because it is reflected in overall market value. Assessing the impact of complex factors on investment portfolios is precisely the nature of investing and why pension plans delegate investment decisions to professional asset managers. *EBSA's statements on ESG shareholder proposals are particularly concerning as they appear to supplant a fiduciary's investment analysis with a blanket view of ESG shareholder proposals as inherently problematic and suspect.*

We do agree with EBSA's assertion that the nature of proxy proposals and the investment landscape has changed. However, we believe that some of those changes have created market efficiencies by promoting free-market self-regulation. We believe this is primarily due to two salient trends that should be considered, together, in connection with the Proposed Rule:

- The growth of index-based strategies in recent years has had a profound impact on retirement solutions and market ownership. Individual retirement savers are now exposed to a greater number of companies than they have been in the past. Plan fiduciaries with discretion over these assets now have the obligation to vote at hundreds or thousands of individual companies. In practice, this has meant that, to be able to routinely assess shareholder rights and proxy voting on holdings, the primary investment consideration has had to evolve to a 'rules based' approach rather than individualized analysis. For example, based on historical investment analysis, a plan fiduciary might take the view that companies with a shared CEO/Chairman role underperform on average when compared to companies with a split CEO and Chairman, and therefore the fiduciary will opt to vote for all proxy proposals that seek to split CEO and Chairman roles, regardless of which company is presenting the matter to vote.

- As EBSA itself noted, there has also been a growth in ESG shareholder proposals that seek to reduce risk or enhance disclosures. We view these types of ESG shareholder proposals as the ultimate free market-based solution to test the complex link between company value and society – each individual private owner seeks to provide oversight and transparency that other owners and the market as a whole can leverage. For example, a shareholder resolution that seeks to limit facial recognition technology or calls for plans to address climate change risk spur public scrutiny and accelerate individual engagements.

Taken together, these two trends have brought some critical self-regulating features to the market. For example, if companies which are part of a broad market index display governance failures (e.g., excessive CEO pay, leadership misalignment or covert lobbying practices) or social or environmental lapses (e.g., pay discrimination or lack of environmental disclosure), then action will most likely be taken through an ESG shareholder proposal, which will then allow plan fiduciaries to execute on their rules-based proxy voting policies, without expending significant pension plan assets in actively pursuing material changes across companies. This keeps both the specific company and broader system in check. *If voting on ESG proposals is discouraged, or indeed weakened, the resiliency of the self-regulating* *system is undermined and there will be a detrimental impact on the ability to effectively and efficiently deliver long-term value to investors (including pension plans) via shareholder actions.*

In our view, pension plans have realized that the exercise of shareholder rights does alter investment performance for individual companies and protects the long-term stability of the markets at large. Pension plans have increasingly looked at the historical proxy voting track record of asset managers in their due diligence and evaluation processes. As with any other investment analysis, pension plans are assessing the philosophy, process, consistency and results of asset managers' stewardship and proxy voting work and deciding if the overall value proposition from the investment manager is sound and worth the fees. We support and encourage pension plans' ongoing efforts to obtain further transparency and disclosure regarding their asset managers' proxy voting and stewardship activities and also the ability of those selected asset managers to exercise their discretion and expertise in connection with all shareholder rights and proxy voting decisions. The Proposed Rule's discouragement of this activity underestimates the value that the exercise of shareholder rights brings to investment portfolios and to efficient and effective free market self-regulation.

For these reasons, we respectfully urge the EBSA to reconsider the Proposed Rule in its totality. Thank you for considering our views and should you wish to discuss this letter further, please do not hesitate to contact us.

Yours sincerely,

Aaron Meder
CEO LGIMA

1 As of August 31, 2020.
2 P&I Largest Money Managers as of December 31, 2019.
3 As of June 30, 2020.

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