North Berkeley
WEALTH MANAGEMENT

Submitted via regulations.gov

October 5, 2020

Office of Regulations and Interpretations
US Department of Labor Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

RE: Proposed rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)

To whom it may concern:

We write to provide comments in response to the Department of Labor's proposed rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (RIN 1210-AB91) (the "Proposal"). The Proposal does not describe a problem that needs to be "fixed" and thus should be withdrawn.

We are an independent registered investment advisory firm in Berkeley, CA representing more than $400 million in client assets. We manage investments and provide financial planning for our clients at all cycles of life with a strong emphasis on creating a sense of calm. Our work centers on client wellbeing, from personal financial planning to development of investment strategy. We offer clients a range of investment strategies representing full market exposure to a low carbon portfolio that includes screening of companies based on environmental, social and governance considerations. We have seen an increase in client requests over the last several years for investments that strengthen the markets toward a more sustainable and inclusive economy, and reduce participation in companies that contribute to climate change.

We wrote to you recently regarding RIN 1210-AB95 and the proposed rule on Financial Factors in Selecting Plan Investments. Like nearly 85% of respondents, we opposed the proposed rule. As with RIN 1210-AB95, this proxy voting Proposal relies on scant evidence and a fundamental misunderstanding of the importance our clients, fiduciaries, and other investors place on voting proxies in order to communicate their preferences to company management. **Without functioning proxy voting, the investor voice is greatly diminished**.

DOL states the rule is needed because of "the recent increase in the number of environmental and social shareholder proposals introduced." Yet, no data is provided to support this. In reality, on average, only 13 percent of Russell 3000 companies received a shareholder Proposal in any one year between 2004 and 2017. In other words, the average Russell 3000 company can expect to receive a Proposal once every 7.7 years. [1]

Further, many of our clients increasingly self-select to measure value in terms of environmental impact and social impact. Our clients are breathing the impacts of climate change from years of draught and record breaking heat and winds. Here in California, many of

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our children choose between N95 masks and COVID masks depending on the situation, often prepared for both. We urge you to stand in solidarity with the worker and participant who wants a vote in the board room with their share ownership that expresses their own support for corporate practices and governance – ones that that are safe and equitable.

- Rejecting this Proposal allows tools to work that are already in place.

- Rejecting this proposal allows investors to vote their minds on any number of issues including diverse boards and safe working environments.

The Proposal misses the materiality of longer-term systemic risks to investor returns and limits voting rights to issues that can be demonstrated to produce short-term value. The proposal is dismissive of environmental and social issues on the proxy ballot stating, "It is likely that many of these proposals have little bearing on share value or other relation to plan interests."

It is wrong for the Department to tell a fiduciary they should not exercise their right to vote. Owning shares comes with three primary rights: the right to sell the share, the right to a dividend and the right to vote a proxy. Proxy voting is a right of every shareholder. Proxy voting is one of the most visible and verifiable ways in which investors can practice responsible ownership. Disenfranchising fiduciaries from their right to vote a proxy is fundamentally inappropriate.

A key element of proxy voting is to allow shareholders to raise issues before a crisis arises that erodes shareholder value.

The Proposal ignores the value of collective voting among like-minded shareholders. Proxy voting not only allows shareholders to communicate their views with management; it also allows them to communicate with fellow shareholders. DOL denies the opportunities for smaller voters to join like-minded shareholders to earn a significant vote level to get management's attention.

Moreover, the Proposal presumes that management is always right and that investors are either insignificant or disruptive to the prosperity of the business rather than a strengthening measure in support of the business. When shareholder interest diverges from management, democratic checks and balances ought to be in place for the smaller investor as well as the large institutions with larger investment commitments to be heard.

The Proposal will lead to an extreme concentration of voting power among a few very large firms whose proxy votes are large enough to "make an economic impact on the plan's investment." The onerous requirements to justify proxy votes and the threat of a regulatory investigation into voting practices will likely dissuade many plans from voting. This will leave the fiduciaries of the largest plans with outsized influence. Such concentration is not good for healthy markets.

The DOL presents no data that shows plan fiduciaries are using excessive plan resources to research and vote proxies. The Proposal relies on the Business Roundtable's comment letter to the SEC's Rule 14a-8 rulemaking and the Washington Legal Foundation. Neither of these can be considered independent sources of research or data.

The absence of a cost-benefit analysis should disqualify the proposed rule. The DOL provides no data to quantify the purported benefits: "The societal resources freed for other uses due to voting fewer proxies (minus potential upfront transition costs) would represent benefits of the rule."

The Proposal's obligation on fiduciaries to document the calculations behind each vote is onerous and unworkable. The Proposal will require fiduciaries to calculate the economic impact of every vote on the proxy ballot, including directors, independent auditors, say on pay and shareholder proposals. This is costly and imprudent use of plan assets – the exact thing DOL should be protecting against.

The Proposal states that blanket voting policies are not cost-justified unless they favor management. DOL states that the 2016 guidance allowed blanket voting policies leading some plans to vote on too many proposals and thus expended assets unnecessarily. However, the Proposal's "permitted practices" allow for three scenarios where fiduciaries can set blanket voting policies and avoid the arduous economic analysis if they agree to vote in favor of management. This directly contradicts the Proposal's core premise that fiduciaries must not vote on matters not economically relevant to the plan. AS previously stated, it also assumes blindly that management is always right.

We respectfully request that the Proposal be withdrawn.

Thank you for your consideration of these comments.

Sincerely,

North Berkeley Wealth Management

[1] CII Letter to Senators Michael Crapo and Sherrod Brown (Dec. 4, 2018), available at https://www.cii.org/files/issues_and_advocacy/correspondence/2018/December%205%202018%20Letter%20to%20Senate%20Banking.pdf