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Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

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General Comment

The Department of Labor's proposed rule, changing the guidelines for proxy voting (RIN 1210-AB91) are problematic for a number of reasons. The proposed rule limiting voting a proxy only insofar as a fiduciary "prudently determines that the matters being voted upon would have an economic impact on the plan", represents governmental over-reach in markets and the investment management profession; unnecessarily weakens shareholder rights, and raises concerns on the grounds of religious freedom.

As a socially responsible investment RIA, we file many shareholder resolutions with the SEC that address material issues and issues of public policy concern. Most of the time these matters overlap, as public policy and social and ethical issues also impact a company's brand and reputation and pose regulatory and legislative risk to the company. Many times, these issues are not evidenced by past performance, revenue or previous risk, but impact the company over the course of many years, which may make it hard for a fiduciary to make the case that there might be an economic impact of the resolution, depending on how the federal government chooses to define the standard and impose it. This over-reach into the practice of investment management is cumbersome, unnecessary and counter to our role to represent a client's best interests.

An example of multiple generation material risk is climate change. The generation and burning of fossil fuels is directly related to causing climate change, and in the west for the last decade, it has had a material adverse economic and health impact upon the lives of millions of people. I know personally, because I and my family lost everything the Wine Country Fires of 2017, and there is no greater evidence of the material adverse economic impact of climate change than the recent wildfires of 2020.

However the federal government chooses to limit fiduciaries from voting the proxies of their

clients, the government will be infringing on the voting rights shareholders, likely on issues that are of ethical concern to them. Investors indeed choose their investment advisors and investments based on many factors, like consumers; preferences, which embody intangible factors, material concerns, and importantly, their values. It is our job as fiduciaries to uphold those preferences in their investments and exercise their shareholder rights, and this rule represents an impediment to our being able to do so.

Importantly, the historical foundation of socially responsible investing in this country came from religious roots with religious organizations screening out investments in what they believed were immoral activities that conflicted with their core religious beliefs and principles and later, religious organizations raising moral issues to the board's attention as shareholders, expressing the importance of higher ethical values. Thus, this rule represents curtailing a practice that is part of a long history of religious organizations investing by their values and voicing their shares in accordance with their shareholder rights and long practiced religious and political freedoms. Pursuant to law, fiduciary duty is a moral duty.

One adverse consequence of this poorly designed and ill-considered rule change may be inadvertently migrating investment out of companies, that are not completely free of public policy or social concerns. By prohibiting voting on public policy and social and environmental matters, shareholders are unable to exercise their shareholder rights to raise concerns that corporate boards may not be aware of or may be willing to change. If shareholders cannot exercise their rights, which they paid for and are embedded in their share's price, they might be less likely to hold these stocks, creating the unintended consequence of divestment from companies whose practices shareholders might have been able to change if the company saw fit, as these resolutions are only precatory and are not binding in any way to implement.

In summary, this change represents a weakening in shareholder rights which is a violation of shareholder agreements and client adversary contracts; it is governmental overreach into the territory of religious freedom and general principles of market access for all legal goods and services, namely, investment products and vehicles and financial services that meet the varied demands of clients. There is no sound evidence that this rule need exist, given the matching- and out-performance of investments with high ESG marks, and it should be withdrawn summarily.