



September 28, 2020

Ms. Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights” – RIN 1210-AB91

Dear Assistant Secretary Wilson:

This Department of Labor initiative to strengthen its oversight of proxy advisory firms and the services they perform for the pension plans that the Department regulates under the Employee Retirement Income Security Act (ERISA) is both important and timely. I fully support the work of the Employee Benefits Security Administration and its staff as contained in this Proposed Rule.¹ Pension plan fiduciaries, who are charged with maximizing the financial gains of their plans’ participants, must not allow their reliance on proxy advisors to perpetuate non-pecuniary interests that would adversely affect their beneficiaries.

As an executive, investor, and board member, I have specialized in investment selection and analysis, due diligence, and financial engineering throughout my career. Along the way, I have become aware of not only the growing trend of environmental, social, and governance (ESG) investing, but also the undue influence proxy advisors – notably Institutional Shareholder Services (ISS) and Glass, Lewis & Co. – wield. Earlier this year, the Securities and Exchange Commission (SEC) similarly addressed the issue of investing based on non-economic objectives in a Proposed Rule regarding proxy voting advice.²

While there are many enhancements contained in this Proposed Rule, I believe it would be beneficial for the Department to further refine its position regarding “robo-voting”. Within your Department’s ruling, the SEC’s prior and relevant guidance and resulting amendments are only represented in citations.³ A better approach is to incorporate the Commission’s mandates directly

¹ U.S. Department of Labor, Employee Benefits Security Administration, Proposed Rule: “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”, RIN 1210-AB91, September 4, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf>.

² U.S. Securities and Exchange Commission, Proposed Rule: “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice”, S7-22-19, November 5, 2019, <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

³ Proposed Rule: “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”, RIN 1210-AB91, Footnotes 49, 58, 89, and 100, September 4, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf>.

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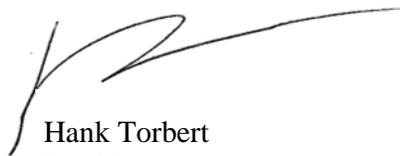
into this ruling. Plan fiduciaries under ERISA jurisdiction would benefit greatly from clearer guidelines pertaining to the due diligence required of them. This would be especially helpful when these pension managers consider using the robo-voting services of proxy advisory firms. In addition, if these managers do rely on robo-voting, pre-population services, or other vote submission services, it is well-advised that the Department properly provides the specific disclosures that are necessary. More importantly, beneficiaries of an ERISA-regulated pension plan have every right to know that their plan's managers have the appropriate protocols and procedures in place to consider all pertinent information prior to submitting a proxy vote. ERISA plans, moreover, should be subject to the same standards the SEC now requires of asset managers, namely, to consider all additional information made available post publication of a proxy advisory firm's voting recommendation.

As I wrote in a prior comment letter to your Department, "With many societal 'norms' being upended today, coupled with passionate debate on a variety of social and cultural topics across the nation, the Department's position in this ruling makes clear that the pecuniary interests of pensioners must come first and foremost."⁴ I, therefore, applaud the Department for this rulemaking, which will hopefully curtail the practice of robo-voting and thus, enhance the prospects for strong pension returns.

In sum, I echo a statement last month from Tom Quaadman, executive vice president for the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. He said, "This proposal will strengthen investor protection and promote the interests of retirees. Along with recent actions taken by the SEC, today's DOL proposal will ensure that proxy voting is directly tied to the economic return for retirees and follows a transparent and unconflicted process."⁵

Thank you for this opportunity to provide you my comments on this important Proposed Rule.

Sincerely,



Hank Torbert
President
Alta Max, LLC

⁴ Hank Torbert, Comment Letter, U.S. Department of Labor, July 30, 2020, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00541.pdf>.

⁵ U.S. Chamber of Commerce, "U.S. Chamber Applauds DOL Action on Long-Awaited Proxy Reform Proposal", August 31, 2020, <https://www.uschamber.com/press-release/us-chamber-applauds-dol-action-long-awaited-proxy-reform-proposal>.