



Secretary Eugene Scalia
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM.

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

September 24, 2020

Dear Secretary Scalia:

Thank you for the opportunity to comment on the Department of Labor's proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91), which is a logical extension of your excellent proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95).

Both of these rules tackle a growing problem: the tendency of fiduciaries to make decisions based on extraneous matters – often related to ESG – rather than focusing with an “eye single” on maximizing shareholder returns.

I am very familiar with the obligations of pension plans to current and future retirees. I was the Regional Representative for the Northeast (Region 1) for the Department of Labor from 2002 to 2006. Prior to that, I helped manage the 401(k) program, including oversight of asset managers, for InterSystems, a Boston-based vendor of software systems and technology for high-performance database management. I am currently managing partner of Dirigo Partners, a consulting firm based in Portland, Maine.

I commend the DOL for addressing this issue now, before it gets completely out of hand and harms not only pension beneficiaries but the U.S. economy as a whole. It is no accident that the business community supports the Department's efforts in this regard. The National Association of Manufacturers and the U.S. Chamber of Commerce, among other business groups, have long been concerned that their workplace retirement plans are being co-opted by the allies of activists with an agenda opposed to strong economic growth.

This concern is bipartisan. For example, Alicia Munnell, an economist who served as Assistant Secretary of Treasury for economic policy under former President Bill Clinton and who now heads the Center for Retirement Research at Boston College, last month applauded the DOL rule on ESG investing. “This country faces a lot of challenges,” she wrote, “but thinking that we are



going to solve our problems by changing the investment portfolio of pension plans is both foolhardy and detrimental to the retirement security of public and private workers.”¹ Addressing fiduciaries who stray from their sole purpose to maximize financial returns is urgent. In some regulatory areas, I believe that the Department should go further, as I will explain.

For too long, two proxy advisory firms – Institutional Shareholder Services (ISS) and Glass Lewis, which together control roughly 97% of the sector – have been the dominant force in corporate governance in the United States. Their current status has emerged mainly because of interpretations of the DOL and SEC regulations that appeared to require pension plans and mutual funds to vote on all proxy matters, no matter whether they increased the economic value of a portfolio and whether the expense of preparing those votes exceeded that value. Some plans and funds felt they were obliged to cast tens of thousands of individual votes per year.

Because the logistics and analysis of such a volume of questions is impossible to handle for pension plan staffs alone, they have had to outsource proxy decision-making to advisors that do not necessarily have the interests of beneficiaries at heart. This proposed regulation finally clarifies that “fiduciaries must not vote in circumstances where plan assets would be expended on shareholder engagement activities that do not have an economic impact on the plan, whether by themselves or after the costs of engagement are taken into account.”² That is an essential change.

Proxy advisors have been in a powerful position to pressure U.S. businesses to adopt the views of environmental and social justice activists by using a system meant to be immune to considerations that are outside the realm of good economics. Your proposed rule will go a long way toward fixing this affliction. ERISA, as the rule states, mandates that pension fiduciaries act solely in the interest and “for the exclusive purpose” of providing benefits to participants and their beneficiaries.

I would, however, like to see the Department go further, in several areas:

1. You should flat-out prohibit robo-voting specifically for controversial and contested issues. This practice takes place when advisory firms pre-populate proxies with their own recommendations for automatic voting. According to a study by the American Council for Capital Formation, 175 entities with \$5 trillion in assets under management vote with proxy-advisor recommendations at least 95% of the time, and half of these vote in line 99% of the time.³ The proposed DOL rule demands diligence and serious analysis of the

¹ <https://www.marketwatch.com/story/department-of-labor-comes-down-hard-on-social-investing-11596556010>

² <https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights.pdf>

³ https://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf



benefits and costs of each vote, so how can a plan fiduciary pretend to comply with these requirements through robo-voting? The existence of robo-voting, by its automatic nature, cannot adhere to the DOL's requirement for a cost-benefit analysis for all proxy votes especially since due diligence is needed.

2. Similarly, the proposed rule warns of the dangers of proxy-advisor conflicts of interest. It states: "For example, in certain instances a proxy advisory firm may issue proxy voting recommendations while the company that is the subject of such recommendations is a client of the firm's consulting business." Such conflicts are intolerable, yet the proposed rule says merely that "fiduciaries must be aware that conflicts of interest can arise at proxy advisory firms that could affect vote recommendations." But vigilance is a mild remedy. I believe that plans should be barred from engaging a proxy advisor with conflicts of interest, period.

These changes would improve a proposed rule which, overall, is a major improvement on the current situation. The sound retirements of millions of Americans and the health of the overall economy hang in the balance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathie Summers-Grice', written in a cursive style.

Kathie Summers-Grice
Former Regional Representative (Region 1), Department of Labor
Managing Partner
Dirigo Partners
Portland, Maine