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Darien, CT

October 1, 2020

Mr. Jason DeWitt
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

RE: RIN 1210-AB91 | EBSA, Department of Labor

Mr. DeWitt:

In this proposed ruling, the Provisions of the Rule (Section C) state, “ERISA requires fiduciaries to monitor proxy voting decisions made by their investment managers to ensure such entities are voting, or refraining from voting, in a manner that maximizes investment returns and does not sacrifice economic benefits for non-pecuniary objectives.” Unfortunately, today there are many pension plan managers who are automatically voting beneficiaries’ shares to their economic detriment. Additionally, this rule is right to mandate that fiduciaries can elect not to vote if the vote pertains to unrelated or non-economic matters. Given that automatic voting is not always loyal to pension beneficiaries’ financial interests, I believe additional – indeed stronger – oversight from the Labor Department is needed. I, therefore, enthusiastically support this rulemaking, “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”, and its intention to both curtail the influence of proxy advisory firms that provide automatic voting services and strengthen the future savings of plan participants.

An attorney by training, I have served as general counsel for both domestic and international companies. Additionally, my work consistently focuses on the rapid speed of information sharing, as well as demystifying complex disclosures. Regarding proxy voting, the Department surely has cause to provide further guidance on disclosures and, importantly, conflicts of interest. This proposed rule rightly shines light on proxy advisors’ conflicts of interest. But sadly, the ruling simply instructs fiduciaries to monitor for these conflicts. In the interest of pensioners, the Department should go further and prohibit these conflicts. Credit rating agencies and auditors are already bound to similar bans on conflicts of interests. Proxy advisory firms should be no different.

On the issue of disclosures, moreover, another enhancement to this rule would be requiring pension plans to make available publicly the costs incurred for using proxy voting services. More importantly, the final rule from the Department should also instruct plan fiduciaries and their investment teams to provide documentation to certify that the proxy votes they are casting have a positive financial impact. Your Department already mandates these types of records for investments in the environmental, social, and governance (ESG) sector. As I noted in a previous comment letter to the Department, “While I believe any individual should be able invest in an ESG fund or pursue a variety of sustainable investing strategies, these types of investments are hard to define and rigorously evaluate. Because of this, there is an extraordinary bar for pension funds to meet for these types of investments.” Dr. Joseph Kalt, Ford Foundation Professor Emeritus at Harvard University, also has found in his research on this subject that ESG-related activism actually diverts resources away from promoting investment returns.

This proposed rule provides for substantial regulatory improvements that will not only appropriately implement needed guardrails for automatic voting, but also protect the retirement security of pensioners nationwide. Thank you, Mr. DeWitt, for the effort you, the EBSA, and your staff have put forth to date.

Sincerely,



Michael T. Fahey

Cc: Jeanne Klinefelter Wilson, Acting Assistant Secretary, EBSA, U.S. Department of Labor