



October 2, 2020

Attention: Proxy Voting and Shareholder Rights NPRM
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB91

Miller/Howard Investments, Inc. (“Miller/Howard”) is an employee-owned, research-driven investment boutique with nearly thirty years of experience managing portfolios for major institutions, mutual funds, and individuals in dividend-focused investment strategies. We perform rigorous research seeking high-quality companies that are contributing to the economy in meaningful ways and have demonstrated a strong commitment to good governance, the environment, and social responsibility. Miller/Howard is an active investor, engaging companies, filing shareholder proposals, and voting proxies. Our active role is part of our fiduciary duty in assessing risk management and opportunities at companies held in our portfolios, and we see it as a valuable asset for our clients.

We write to comment on the Department of Labor (“DOL”) published proposed rule regarding proxy voting and the exercise of shareholder rights by private sector retirement plans that are covered by the Employee Retirement Income Security Act of 1974 (“ERISA”).

It is our position that the proposed rule would place a significant burden on fiduciaries who offer ESG funds as options in their retirement fund and could also affect the broader pension fund market by setting an unwelcome precedent that runs counter to the mainstream U.S. and global practice of integrating ESG factors into investment decisions.

Although cloaked in language about the “best interests” of plan participants and beneficiaries, the DOL clearly intends to deter ERISA plans from voting proxies, especially on shareholder proposals.

To mitigate the substantial costs associated with vote-by-vote cost-benefit analyses, **the DOL offers three “permitted practices”**: (1) **vote with management** on proposals (or types of proposals) that the fiduciary has determined will not likely significantly impact the value of the investment; (2) **focus “voting resources”** on types of proposals that the fiduciary has determined are **substantially related** to the corporation’s business activities or likely to have a significant impact on the value of the plan’s investment (examples given include M&A transactions and issuance of additional shares); and (3) **refrain from voting** on proposals or types of proposals when the plan’s holding in the issuer is below a quantitative threshold determined by the fiduciary.

The new rule would make even deciding whether to cast a vote so costly that plans will be under pressure to adopt one of the “permitted practices,” which are designed to benefit management. It does not seem coincidental that two of the three permitted practices are designed to ensure that sufficient votes are cast on management proposals such as M&A transactions.

The DOL’s release does not make the case that a new rule, much less one as burdensome as this one, is necessary. No evidence is provided to support the charge that fiduciaries are not following the DOL’s sub-regulatory guidance on proxy voting, and the economic analysis in the release fails to consider the impact on the value of plan investments from lost ESG reforms and boardroom accountability obtained through shareholder voting.

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As well, state corporate law relies on shareholder voting to counter potential management conflicts of interest and provide accountability. Burdening fiduciaries' exercise of voting rights or coercing votes in favor of management threatens to upset this balance and undermine corporate performance.

The DOL claims that the "problem" of inappropriate voting by ERISA fiduciaries is exacerbated by growth in shareholder proposals. Although proposals have increased since 1988, the year chosen by the DOL for comparison, they have not increased in recent years. Shareholder proposals make up a small fraction--only 2%--of ballot items.

The proposing release casts doubt on the value of shareholder proposals calling for increased disclosure, despite the fact that enhancing disclosure allows shareholders to make better investment decisions as well as potentially improving management and oversight of risks companies face.

Climate change provides some of the strongest evidence for the financial impacts and risks of ESG issues. Since 1980, the U.S. has sustained more than 265 climate-related extreme weather events with losses exceeding \$1 billion, causing total costs exceeding \$1.77 trillion according to research by Ceres.ⁱ

The COVID pandemic has provided a prime example of the value of risk oversight. The public health crises has outlined the importance of investors' fiduciary duty in assessing a company's exposure to and management of the opportunities and risks related to climate change.

Additionally, the DOL proposes these restrictions at a time when ESG investing is rapidly growing and more fully embraced by mainstream global finance and investment organizations. Sustainable investing assets in the U.S. reached \$12 trillion in 2018, up 38 percent from 2016, according to a recent US SIF Foundation's Trends report.ⁱⁱ

Moreover, ESG investments have been outperforming broader index funds so far in 2020, according to studies by S&P and Morningstar.ⁱⁱⁱ

Thank you for your consideration of these issues, and for considering our view that inclusion of ESG factors in investing and voting decisions can be compatible with – even conducive to – effective compliance with fiduciary responsibilities.

Regards,



Luan Jenifer
President and Board Member
Miller/Howard Investments, Inc.

ⁱ <https://www.ceres.org/>

ⁱⁱ <https://www.ussif.org/files/US%20SIF%20Trends%20Report%202018%20Release.pdf>

ⁱⁱⁱ <https://www.morningstar.com/articles/973590/us-esg-funds-outperformed-conventional-funds-in-2019>