



October 5, 2020

California State Teachers' Retirement System
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VIA ELECTRONIC FILING

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, [*Fiduciary Duties Regarding Proxy Voting and Shareholder Rights Proposed Rule*](#) – Amend certain provision of investment duties, Regulation at 29 CFR 2550.404a-1

Dear Assistant Secretary Wilson,

I am writing on behalf of the California State Teachers' Retirement System ("CalSTRS"). CalSTRS was established for the benefit of California's public school teachers over 100 years ago and is the largest educator-only pension fund in the world, with a global investment portfolio valued at approximately \$263 billion.¹ We serve the investment and retirement interests of more than 964,000 plan participants and their beneficiaries. The long-term nature of CalSTRS' liabilities, and our responsibility as a fiduciary to our members, make the fund keenly interested in the rules and regulations that govern the securities market.

We appreciate the opportunity to provide our comments on the Employee Benefits Security Administration's ("EBSA") proposed rule *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, Regulatory Identifier Number (RIN) 1210-AB91 ("proposal"). We do not believe the proposal will achieve the Department of Labor's ("DOL") stated purpose of reducing costs for beneficiaries. Instead this proposal will increase costs while reducing corporate accountability by limiting when and how private retirement plans and their assets managers can cast proxy votes. As a result, we view the current proposal as detrimental to our ability to function as fiduciaries serving the best interests of our plan beneficiaries.

We believe that the basic proxy infrastructure is desperately in need of reform to *increase* corporate accountability and shareholder rights; therefore, we urge the EBSA to scrap this proposal. Over the last two years, shareholder rights have been weakened by SEC proposals that impair proxy voting. We have previously communicated this to the SEC in letters dated [November 30, 2018](#), and [February 3, 2020](#). CalSTRS believes that proxies are an asset, that we have a responsibility to vote on behalf of our beneficiaries, and that corporate change can be made through this collective effort. Building upon our previous statements and those made by some of our pension and investment management peers, we wish to express our deepest concerns around this EBSA proposal, which would further weaken shareholder rights if adopted.

¹ [California State Teachers' Retirement System. Current Investment Portfolio as of August 31, 2020.](#)

Proxies are an Asset, not a Liability

This latest proposal by the DOL would undo a major landmark for proxy voting. The “Avon Letter” was written in 1988 and stemmed from a proposition raised by shareholder-rights advocate Robert Monks when he served at the DOL as an Administrator of the Office of Pension and Welfare Programs, giving him jurisdiction over the whole U.S. pension system. In the Avon Letter, he stated that:

“In general, the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock. For example, it is the Department’s position that the decision as to how proxies should be voted with regard to the issues presented by the fact pattern are fiduciary acts of plan asset management.”

As a result, fiduciaries that oversee retirement plans must treat proxy voting as another of the fund’s assets. To date, the Avon Letter has served its purpose well by leading to a more consistent and rigorous proxy voting process by fund managers. Because of the letter, the industry has moved away from treating proxy voting as a liability, where managers often failed to submit votes. The letter has led to a more consistent and rigorous proxy voting process by fund managers, and it started this discipline not just for ERISA funds but also for many public pension funds that base their proxy voting policies off the highest standards set by ERISA.

An underlying goal of the letter was to prevent rubber-stamping management’s views. Now, the DOL has proposed an option that would not only displace the Avon Letter but also limit voting to when a fiduciary “prudently determines that the matters being voted upon would have an economic impact on the plan.” The department has gone from a standpoint of holding that it is part of fiduciary duty to vote proxies to a directive to skip votes deemed nonpecuniary, uneconomical or both. Illogically, fiduciaries can avoid this directive by setting their proxy policy to *always vote with management, whether the proxy is a nonpecuniary and/or, uneconomical decision or not*. This could affect a system’s ability to make independent decisions on behalf of its beneficiaries.

Responsibility to Vote

The following statement by David Bell, former DOL Assistant Secretary, captures the key issue:

“A fiduciary who fails to vote, or casts a vote without considering the impact of the question, or votes blindly with management would appear to violate his duty to manage plan assets solely in the interests of the participants and beneficiaries of the plan.”

Because proxy votes are plan assets, trustees have a fiduciary obligation to vote them *solely in the interests of shareowners*. Doing this is likely to improve corporate performance and enhance shareowner value as management and shareholders occasionally have divergent interests. Additionally, it is illogical for the DOL to claim voting is cost prohibitive. The internet provides a mechanism to easily fulfill that obligation in a timely, cost-effective manner. In fact, the internet can make announcements so inexpensive and instantaneous that announcing votes in something close to real time would seem to be a fiduciary obligation, if doing so could possibly influence the outcome by encouraging others to copy a vote.

Collective

We are a nation built on democracy. The right to vote, essential to a well-functioning democracy, is the most enshrined right in the U. S. Constitution and is protected by five separate amendments. This right to vote allows us to express our collective voice on the topics that matter most. Voting on corporate activities draws many similarities.

The DOL’s proposal inappropriately equates a proxy vote to a single action. Proxy votes do not occur in a vacuum, and votes can influence future market practices. Votes have power because they are an act from a larger group. Not only with other shareholders in the context of the matter being considered but also for the signal voters send to the broader market on investor views. For example, shareholders at a few companies cast ballots for majority voting, declassifying boards and proxy access, which led to widespread and voluntary adoption of these measures across a large swath of the market. The value of a vote goes well beyond a particular context and a particular company in ways that can initiate broader market movements and improved governance practices across a portfolio and an industry.

The point being, using our influence to vote on issues – like certain kinds of arrangements—whether reduced carbon emissions or single-classed boards—add value to the portfolio generally, and regulators should adopt a voting policy that supports voting whenever a fiduciary sees a responsibility to do so. The DOL’s proposal does not allow that kind of policy-based voting and would instead require that each vote be individually calculated anew, which unnecessarily adds to plan burdens and expenses to the point where each individual vote may no longer be cost-justified. Additionally, at least in some parts of the proposal, the DOL does not seem to recognize how the value of a vote with respect to one company may in fact have plan-wide effects.²

Summary

The DOL contends in their proposal that ERISA fiduciaries are allowing plan assets “to be used to support or pursue proxy proposals for environmental, social or public policy agendas that have no connection to increasing the value of investments,” and argues that evidence of the benefits of shareholder engagement is “mixed.” This is counter to an ever-expanding amount of scientific research showing that ESG risk management is directly linked to total portfolio value. Additionally, in September the Commodity Futures Trading Commission issued a new report, [Managing Climate Risk in the U.S. Financial System](#), warning that climate change poses “serious emerging risks to the U.S. financial system” and calling for regulators to “move urgently and decisively to confront them.”

In summary, we urge the DOL to allow the existing regulations to stand and to reject the proposed rule. If the proposal is finalized with these amendments, fiduciaries will struggle to fulfil their obligations to deliver optimal returns by failing to integrate all financially material risk factors that have been repeatedly proven to be associated with corporate value. Given that proxy votes are an asset, we, as fiduciaries, have a responsibility to vote, and we would hope that the democratic nature of our society would allow us to make our voices heard for the long-term benefit of our beneficiaries. If you have any questions, please contact me directly at amastagni@calstrs.com or my colleague Brian Graeme at bgraeme@calstrs.com.

Sincerely,



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California State Teachers’ Retirement System

² Lawprofessors.com, September 2020 (https://lawprofessors.typepad.com/business_law/2020/09/i-just-read-the-department-of-labors-new-erisa-voting-proposals-and-boy-are-my-fingers-tired-from-ty.html).