



Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
US Department of Labour
200 Constitution Avenue NW
Washington DC 20210

Attention: Proxy Voting and Shareholder Rights NPRM

October 05, 2020

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights. Proposed Regulation (RIN 1210-AB91)

To whom it may concern:

On behalf of Addenda Capital Inc. (“Addenda”) thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights” (“Proposal” or “NPRM”).

As an investment manager for institutional asset owners, Addenda is committed to engaging proactively in proxy voting because we believe that engaging with the corporate governance practices at the companies in which we invest on behalf of our clients, contributes to long-term shareholder value and encourages sustainable business practices. We also view prudent proxy voting as a component of our fiduciary obligation to engage in appropriate risk management and to deliver the best investment returns for clients.

Addenda believes that the NPRM would impose substantial new burdens and costs on fiduciaries - both asset owners and asset managers - seeking to exercise their shareholder rights by participating in corporate governance at our portfolio companies. We, therefore, urge you to withdraw the NPRM.

The Proposal Would Impose Costly Compliance Burdens on ERISA Plans

First, the Proposal would impose new, costly procedural burdens on ERISA fiduciaries. The new analytical and recordkeeping requirements that would be imposed on ERISA fiduciaries determining whether and when to engage in proxy voting or the exercise of other shareholder rights are particularly problematic.

Under the Proposal, fiduciaries will essentially be required to conduct a cost-benefit analysis to determine whether participating in proxy voting will advance the economic interests of the plan prior to exercising shareholder rights. The Proposal acknowledges that conducting this cost-benefit analysis will, itself, be costly for plans and suggests



“permitted practices” under which the plan may adopt policies that will expedite the determination. Examples of “permitted practices” cited in the Proposal include:

- A policy that states that the default position will be to vote with management’s recommendations unless a proposal presents unique conflicts or financial impacts;
- A policy that the plan will only vote on specified types of proposals it determines to be central to the issuer’s business or financially material; or
- A policy that the plan will not vote on proposals if the value of the holdings of the issuer are below a certain threshold in relation to the total value of plan assets.

Taken together, the NPRM leaves fiduciaries with three basic options - engage in an expensive process to determine when and how to vote on matters brought for a vote by shareholders, vote with management recommendations, or refrain from voting. These options will have a chilling effect on ERISA plans’ involvement in the corporate governance of the companies they own.

The Proposal Would Undermine Long-Term Shareholder Value

Second, by discouraging participation in proxy voting and other forms of active ownership by ERISA plans, the Proposal is likely to undermine progress on environmental, social and governance (ESG) integration that is necessary to maximize long-term shareholder value and advance sustainable financial markets in the US. Ultimately, US retirement savers will bear the burden as their plans face additional risk and diminished returns.

As an investment manager for institutional investors, we have a duty to act in the best long-term interests of our clients. In this fiduciary role, we consider ESG issues that can affect the performance of investment portfolios. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interest of our beneficiaries.

The Proposal Should be Withdrawn

In addition to the arguments summarized above, we refer you to the letter from the Council of Institutional Investors (the “CII Letter”) on September 24th 2020 to Acting Assistant Secretary Wilson, in response to the Proposal.¹ The CII Letter details substantial evidence and rational to show that the proposed rule is unnecessary, unreasonable, and

¹ A copy of the CII Letter, as submitted electronically to the consultation on RIN 1210-AB91, is available online at:
https://www.cii.org/files/issues_and_advocacy/correspondence/2020/September%2024%202020%20letter%20to%20DOL.pdf



inconsistent with the financial interests of ERISA plan participants.

We urge you to you to withdraw the Proposal.

Thank you for taking our views into consideration. If Addenda can be of further assistance, please contact me at the address below.

Regards,

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