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**Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
Attn: Attention: Proxy Voting and Shareholder Rights NPRM**

**U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210**

Submitted via Federal eRulemaking Portal: www.regulations.gov

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

Dear Sir/Madam:

State Street Global Advisors, the investment management arm of State Street Corporation¹, appreciates the opportunity to provide comments on the Department of Labor’s (the “Department’s”) proposed rule entitled “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights” (the “Proposed Rule”).²

With \$3.054 trillion in assets under management, State Street Global Advisors is the world’s third-largest asset manager³. As a fiduciary, State Street Global Advisors has a duty to act prudently and in the best interest of our clients, an obligation that extends to the proxy voting activity we undertake on our clients’ behalf. As a long-term investor in more than 10,000 public companies across the world, State Street Global Advisors believes that voting on proxy issues is an important tool in driving long-term shareholder value for our clients. Our dedicated team of corporate governance professionals is focused on ensuring that this responsibility is implemented in a thoughtful, efficient manner.

By imposing requirements that will discourage the voting of proxies by private sector retirement plans covered by the Employee Retirement Income Security Act (“ERISA”), the Proposed Rule will diminish the ability of plan participants and their beneficiaries to derive the value that we believe can be obtained from voting on

¹ Headquartered in Boston, Massachusetts, State Street Corporation is a global custodian bank which specializes in the provision of financial services to institutional investor clients. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With \$33.515 trillion in assets under custody and administration and \$3.054 trillion of assets under management, State Street operates in more than 100 geographic markets globally as of June 30, 2020. State Street is organized as a United States bank holding company, with operations conducted through several entities, primarily its wholly-owned state-chartered insured depository institution, State Street Bank and Trust Company.

² Available at <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf>

³ As of June 30, 2020.

issues affecting long-term shareholder value. In addition, the Proposed Rule would increase, rather than decrease, costs for ERISA plans, further eroding the long-term value that U.S. plan participants and their beneficiaries are able to realize. Therefore, we respectfully urge the Department to withdraw the Proposed Rule and engage with a broad range of stakeholders—including plan sponsors, investment advisers and managers, advocates for plan participants and beneficiaries—regarding the voting of proxies.

The Proposed Rule Disenfranchises Plan Participants

The proxy vote is a fundamental right of corporate shareholders and provides a mechanism for the owners of companies to have a say in the matters affecting the future value of their investment. By voting on items such as the election of directors, executive compensation and shareholder proposals, investors create an incentive for management teams to act in the best interest of shareholders. As such, the proxy vote has historically been an important plan asset that, along with the actual investment of capital, has been put in the care of plan fiduciaries.

Instead of acknowledging this important asset, the Proposed Rule seeks to minimize the impact of voting and potentially eliminate it in certain spaces. Indeed, the Proposed Rule seemingly prejudices the voting of proxies as imprudent unless the applicable proposals relate to certain enumerated topics, such as corporate events, corporate repurchases of shares, issuances of additional securities with dilutive effects on shareholders or contested elections for directors. By deeming only these explicitly enumerated categories of proposals as being considered to have a significant impact on plan investments in the “permitted practices” sub-section, the Proposed Rule will have the effect of rendering votes on other categories of proxy proposals presumptively imprudent. This presumption could pressure fiduciaries to categorically avoid voting on such matters, even when such votes may be material to and in the best interest of plan participants.

Further, by discouraging ERISA plans from voting the shares of the companies they own, the Proposed Rule would effectively redistribute the influence of ERISA plans to other investors. Non-ERISA investors would be free to vote in their own best interest, which could focus on, for example, short-term vs. long-term gains. This could disadvantage the priorities of non-voting ERISA investors who are seeking long-term value for their retirement security.

Plan Assets Are Already Being Prudently Expended to Vote Proxies

State Street Global Advisors agrees with the Department’s position that managing plan assets as a fiduciary includes the management of voting rights, and that fiduciaries must carry out their duties relating such voting rights prudently.⁴ We respectfully disagree, however, with the Department’s view that there is a

⁴ See 85 Fed. Reg. 55,220 (2020) (Proposal).

“...persistent misunderstanding among some stakeholders that ERISA fiduciaries are required to vote all proxies...,” and that such a misunderstanding is resulting in the expenditure of plan assets “...unnecessarily on matters not economically relevant.”⁵

Studies have demonstrated the positive impact of proxy voting and shareholder engagement on investment returns.⁶ In prudently carrying out its duties related to the management of voting rights, State Street Global Advisors utilizes an approach to proxy voting designed to consider the long-term economic value of our clients’ investments. More specifically, our “Proxy Voting and Engagement Guidelines for Environmental and Social Issues” explains that our primary fiduciary obligation to our clients is to maximize the long-term returns of their investments.⁷ As such, we cast our votes in a manner that supports and is designed to build shareholder value.

At the same time, we recognize that every voting matter does not have an equal impact on long-term value. We therefore refrain from voting when we believe the costs to do so may exceed the benefit, such as when investors are charged excessive meeting-specific fees. We have also developed a systematic prioritization process to align resources expended with the potential material impact of voting. Our understanding is that this approach is consistent with practices across the market. As explained more fully below, although we see the value in undertaking a cost-benefit analysis in deciding when and how to vote on certain voting matters, we believe that the structure and barriers created by the Proposed Rule would increase costs significantly for our clients without providing any new benefits beyond the analysis we already undertake today.

The Proposed Rule Creates Additional Costs for ERISA Plans

By introducing additional prescriptive requirements that will result in substantial new compliance burdens, the Proposed Rule would create additional costs for ERISA plans. In addition to introducing new compliance costs, we do not believe the Proposed Rule would achieve its objective of removing existing systematic costs, which are necessarily incurred today and which would still be incurred under the Proposed Rule. As a result, the Proposed Rule would increase costs for ERISA plans and their fiduciaries and ultimately have a negative impact on long-term returns for plan participants.

The Proposed Rule appears to require plan fiduciaries to make a proactive determination regarding the pecuniary impact of each agenda item on a per plan

⁵ See 85 *Fed. Reg.* 55,220 & 55221 (2020) .

⁶ The Council of Institutional Investors has compiled a bibliography that captures many of these studies, which we have attached as Appendix A.

⁷ Available at <https://www.ssga.com/library-content/pdfs/ic/global-Proxy-Voting-and-engagement-guidelines-es-issues.pdf>

basis.⁸ Further, the Proposed Rule creates an expectation that managers justify and communicate their decisions regarding the pecuniary benefit of each agenda item to each plan sponsor, thereby introducing millions of new data points that must be generated, documented and reported.⁹ We believe that this requirement would be extraordinarily and unduly burdensome. To illustrate this point, a plan fiduciary that is responsible for investing a single ERISA plan in a strategy that tracks the MSCI ACWI Investable Market Index (IMI) would need to assess and document nearly 90,000 decisions regarding the pecuniary impact of individual proposals regarding companies comprising the index constituents.¹⁰ Thus, even a small asset manager responsible for the assets of just twelve ERISA plans with investments that track the MSCI ACWI IMI index would have an obligation to document more than a million decisions on how they decided to vote.¹¹ Creating technology infrastructure that can capture the data necessary to conduct such a review and report on it will require considerable additional investment by plan fiduciaries. While the Proposed Rule purports to seek to minimize the costs associated with these decisions through the introduction of “permissible practices,” compliance with the permitted practice provisions would still require investment in technology infrastructure and other burdensome review practices and result, to the detriment of plans, in less opportunity for the exercise of plan voting rights.

Finally, we do not believe the Proposed Rule would alleviate costs associated with existing proxy voting practices as intended. The primary costs for plan fiduciaries are associated with the receipt of ballots and the acquisition of information necessary to take action on the ballots.¹² Neither of these costs would be eliminated, or even reduced, under the Proposed Rule.

Thus, plans will be negatively impacted because the Proposed Rule does not reduce the costs currently allocated to voting proxies, and it introduces new compliance

⁸ See the requirements of proposed sub-section 29 C.F.R. § 2550.404a-1(e)(2)(ii)(B) requiring that a plan fiduciary do the following before voting a proxy: “Consider the likely impact on the investment performance of the plan based on such factors as the size of the plan’s holdings in the issuer relative to the total investment assets of the plan, the plan’s percentage ownership of the issuer, and the costs involved.”

⁹ See the requirements of proposed subsection 404a-1(e)(2)(iii): “Where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager pursuant to ERISA section 403(a)(2), or a proxy voting firm or other person performs advisory services as to the voting of proxies, a responsible plan fiduciary shall require such investment manager or proxy advisory firm to document the rationale for proxy voting decisions or recommendations sufficient to demonstrate that the decision or recommendation was based on the expected economic benefit to the plan, and that the decision or recommendation was based solely on the interests of participants and beneficiaries in obtaining financial benefits under the plan.”

¹⁰ Example assumes approximately 10 agenda items per meeting. The MSCI ACWI Investable Market Index (IMI) captures large, mid and small cap representation across 23 Developed Markets (DM) and 26 Emerging Markets (EM) countries*. With 8,768 constituents, the index is comprehensive, covering approximately 99% of the global equity investment opportunity set. <https://www.msci.com/acwi>

¹¹ Example assumes 12 plans making 90,000 decisions each based on the rationale described in the preceding footnote.

¹² The information necessary to take action on a ballot is frequently packaged with additional information by proxy service providers, such as a voting recommendation, however there is no source of disaggregated information available at scale.

costs associated with overly prescriptive research, reporting and recordkeeping obligations.

This Flawed Rule Would Create, Rather than Solve, Problems

Over fifty percent of Americans own shares of public companies through an ERISA plan.¹³ Research shows that it is in the long-term interest of plan beneficiaries for their fiduciaries to engage in active ownership through the thoughtful exercise of proxy voting rights.¹⁴ The Proposed Rule introduces new hurdles to the exercise of those rights based on what we believe to be a flawed premise that the current voting practices of plan fiduciaries are resulting in unnecessary expenditures of plan assets. These hurdles would cause ERISA plans and their fiduciaries to incur new, unavoidable compliance costs without reducing existing expenses. Further, the Proposed Rule would, to the detriment of ERISA plan beneficiaries, reduce plan voting activity and shift influence to other investors that may not have the long-term, sustainable value creation objectives of most plan beneficiaries.

For all of the reasons described in this letter, we respectfully urge the Department to withdraw the Proposed Rule. Once again, State Street Global Advisors appreciates the opportunity to comment on the Proposed Rule. Please do not hesitate to contact us with any questions, or if we can be of further assistance in any way.

Sincerely,



Lynn S. Blake, CFA

¹³ <http://www.pensionrights.org/publications/statistic/how-many-american-workers-participate-workplace-retirement-plans>

¹⁴ See Appendix A