

October 5, 2020

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

RE: RIN 1210-AB91

Dear Acting Assistant Secretary Wilson,

I am writing on behalf of the Nathan Cummings Foundation to express our opposition to the United States Department of Labor's proposed rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (**RIN 1210-AB91**). We strongly believe that this rule will have detrimental consequences for beneficiaries of ERISA plans and, indeed, for all long-term investors.

The severely limited comment period constrains our ability to provide a lengthy list of examples demonstrating the proposed rule's potential harm. In recognition of this limitation, we offer thoughts on the relationship between proxy voting, shareholder proposals on board diversity and long-term shareholder value as just one example of how the proposed rule will constrain investors' ability to successfully engage corporations on issues with demonstrated material implications for long-term shareholder value.

There is a significant body of research demonstrating the link between racial and gender diversity on boards and long-term shareholder value. For instance, *Board of Director Diversity and Firm Financial Performance* found a significant positive correlation between gender diversity and the inclusion of people of color on boards and both return on assets and return on investment.¹ Another study, *Demographic Diversity in the Boardroom: Mediators of the Board Diversity-Firm Performance Relationship*, found a positive and

¹ Erhardt, Niclas L. and Werbel, James D. and Shrader, Charles B., Board of Director Diversity and Firm Financial Performance. *Corporate Governance: An International Review*, Vol. 11, pp. 102-111, April 2003. Available at SSRN: <http://ssrn.com/abstract=416337>

significant relationship between racial diversity and innovation, reputation and firm performance.²

Social science research also suggests that board diversity is good for long-term performance. For instance, there is evidence that diversity on boards decreases tendencies towards groupthink. In their comprehensive working paper, *Diversity on Corporate Boards: How Much Difference does Difference Make?*, Deborah Rhode and Amanda Packel suggest that people of color's experience of needing to relate to both dominate and subordinate groups is thought to provide a form of bicultural fluency that may enhance decision making.³ Furthermore, some argue that the life experiences of both women and people of color allow them to bring different questions and concerns to a discussion, thereby allowing a board to consider a wider range of outlooks, options and solutions.⁴ Rhode and Packel also note that some studies, including the work by Miller and Triana cited above, have found that group diversity is associated with a wider range of information networks as well as greater levels of creativity and innovation.

Long-term investors concerned about the link between diverse boards and firm performance have successfully used the shareholder proposal process to drive corporate commitments to take steps to enhance the gender and racial diversity of their boards. A recent article in *Responsible Investor* noted that during the 2020 proxy season, investors withdrew multiple proposals focused on board diversity after companies took steps to address investors' concerns.⁵ Among the companies taking specific steps to address board diversity in exchange for the withdrawal of shareholder proposals were L Brands, Hilton Worldwide Holdings and Expedia. Those proposals on board diversity that did go to a vote received high levels of support, with at least two proposals receiving majority support.⁶

² Miller, Toyah and del Carmen Triana, María, Demographic Diversity in the Boardroom: Mediators of the Board Diversity - Firm Performance Relationship. *Journal of Management Studies*, Vol. 46, No. 5, pp. 755-786, July 2009. Available at SSRN: <http://ssrn.com/abstract=1410337>

³ Rhode, Deborah and Packel, Amanda K., *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, September 2010. Rock Center for Corporate Governance at Stanford University Working Paper No. 89. Available at SSRN: <http://ssrn.com/abstract=1685615>

⁴ Medland, Dina, *Women and the Workplace: The Benefits of Gender Diversity Put to the Test*. *Financial Times*, October 17, 2012. Available at: <https://www.ft.com/content/1fc8a3dc-0d65-11e2-97a1-00144feabdc0>

⁵ Hodgson, Paul, *Paul Hodgson: The Gap Between Words and Actions on Racial Justice*. *Responsible Investor*, June 24, 2020. Available at: <https://www.responsible-investor.com/articles/paul-hodgson-the-gap-between-words-and-actions-on-racial-justice>

⁶ Orowitz, Hannah and Rosati, Brigid, *An Early Look at the 2020 Proxy Season*, June 2020. Harvard Law School Forum on Corporate Governance. Available at: <https://corpgov.law.harvard.edu/2020/06/10/an-early-look-at-the-2020-proxy-season/>

High levels of investor support get companies' attention, help to bring companies to the table to discuss the topic of the shareholder proposals and ultimately serve to encourage companies to take action to address the concerns raised in a proposal. In the case of board diversity, this means concrete steps designed to increase racial and gender diversity at the board level. Based on research like that from Miller and Triana, it's clear that this is ultimately beneficial for long-term investors like those invested in ERISA funds. The proposed rule change, which will almost certainly result in lower levels of support for environmental, social and governance proposals with material implications for long-term shareholder value, is ultimately likely to be damaging to investors and the broader American economy.

We urge you to reconsider this short-sighted proposal. We would be happy to make ourselves available to discuss in more detail our views on the proposed rule. Please do not hesitate to contact me at laura.campos@nathancummings.org if we can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Campos', written over a horizontal line.

Laura Campos
Director, Corporate & Political Accountability