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General Comment

US Department of Labor
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: 1210-AB91 - Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

Thank you for the opportunity to submit comments on the recent rulemaking proposed by the Department of Labor (DOL) on the Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.

In May 2018, we, along with Kenneth W. Grant, Todd D. Kendall, PhD, and David Molin, PhD published research on the effect of shareholder proposals on a companys financial performance. The paper, Political, Social, and Environmental Shareholder Resolutions: Do They Create or destroy Shareholder Value? was supported by the National Association of Manufacturers.

Numerous academics and other entities have highlighted the increased prevalence of politically charged resolutions in recent years. For example, data compiled by As You Sow, a nonprofit shareholder advocacy group, published in Proxy Previews yearly compendium of shareholder activist resolutions concerning environmental, social and sustainability issues, shows that the number of such proposals doubled between 2005 and 2010.

Our research focused on the impact of these types of proposals on shareholder returns.

Specifically, using the case of climate-change related proposals, we statistically examined the reaction of companies stock prices to both increased disclosure of climate-change-related information, as well as shareholder proposals calling for such disclosure. We sought to quantify the cost and potential value creation of proposals, and whether the voices and interests of long-term retail investors are represented in the process.

We found that the adoption of politically-charged shareholder resolutions have no statistically significant impact on company returns one way or the other. Unfortunately, this does not mean that such proposals are entirely without cost. The process of preparing, proposing, and campaigning for a shareholder proposal is often costly to the proposer and to the target company, who is responding to the proposal. Such proposals can often cost millions of dollars.

We note that many resolutions are sponsored by a handful of relatively active individuals or groups. Based on a breakdown of environmental resolutions that went to a vote at the largest 250 U.S. publicly held firms from 2006 to 2017, we found 376 environmental resolutions where the sponsoring entity could be identified.

Nearly 40% were sponsored by socially responsible investing firms: As You Sow, a nonprofit shareholder group, filed 34 (or 9%) of the proposals, while Green Century Capital Management, a designated socially responsible investment firm and active shareholder advocate, and the New York State Common Retirement Fund, the nations third largest pension fund, each sponsored 22 (or together nearly 12% of the total). Trillium Asset Management, a designated socially responsible investment firm, sponsored 19 resolutions, or about 5% of the total.

While our findings address environmentally focused resolutions rather than those promoting non-pecuniary objectives more broadly, we believe that there is a common thread running between the two. Many of the politically-charged resolutions we reviewed appear to be driven more by a subjective focus on non-traditional metrics which are not demonstrably in the best interests of the beneficiary. Our research suggests that when goals outside of those best interests are inserted into the decision-making process, shareholder value is not enhanced and there is a risk that fiduciary duties are impugned.

We believe our research supports the objective of the proposed rule and that the DOL is correct to clarify that ERISA fiduciaries must only vote on resolutions where they can demonstrate that the proposal will have an economic impact on the plan. As our research clearly shows, politically charged shareholder resolutions have little to no economic impact on shareholder value, but ultimately still result in cost for the target company and to the ultimate beneficiaries, its shareholders. Providing fiduciaries with clear directions that they must prioritize economic interests when assessing these plans would therefore appear to be warranted and beneficial to retail investors.

We have the link to our report below our comment letter and hope you will take it into consideration as you work to improve ERISA. We thank you for the opportunity to comment and would be happy to answer any questions on the comments or our research.

https://corpgov.law.harvard.edu/wp-content/uploads/2018/06/ESG-Paper-FINAL_reduced-size-

002.pdf

Sincerely,

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