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Submitted via regulations.gov

Hon. Jeanne Klinefelter Wilson  
Acting Assistant Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

### Re: RIN 1210-AB91 Proposed Rule

Dear Assistant Secretary Wilson:

I am pleased to submit the following comments concerning this Proposed Rule.<sup>1</sup> In addition, thank you for the extensive work Secretary Scalia, Mr. Jason DeWitt, the Department's staff, and you have done on this rulemaking effort. When finalized, it will significantly strengthen retirement savings by providing needed reform aimed at ensuring pension fund fiduciaries remain committed to maximizing their plan participants' financial returns. The Proposed Rule also mentions an important governance issue on which I believe the Labor Department should focus further: robo-voting.

As Jonathan Chanis rightly noted in a comment letter to the Securities and Exchange Commission (SEC), "The outsourcing of proxy research often has been coupled with the outsourcing of vote decision-making. If a fund manager does not even review a proxy voting recommendation before automatically casting the vote, it is impossible to know if the required fiduciary responsibility has been fulfilled. Robo-voting is antithetical to good governance."<sup>2</sup>

Thankfully, the Department's Employee Benefits Security Administration is in a unique position to make a positive impact on good governance by constraining robo-voting. For the past 46 years, the Employee Retirement Income Security Act (ERISA) has set standards for most established retirement plans in private industry to provide protection for individuals in these plans.<sup>3</sup> Using its authority under ERISA, the Administration should go a step further than the SEC and prohibit robo-voting when the votes being cast are of a non-economic nature. This Proposed Rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights", can codify such an improvement. Ideally, all robo-voting should be banned. But practically speaking, the Labor Department can score a big win for pension plan beneficiaries by explicitly banning this voting practice in certain circumstances.

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<sup>1</sup> Employee Benefits Security Administration (EBSA), Department of Labor, Proposed Rule, Financial Factors in Selecting Plan Investments (RIN 1210-AB91), September 4, 2020, <https://www.federalregister.gov/documents/2020/09/04/2020-19472/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights>.

<sup>2</sup> Dr. Jonathan Chanis, SEC Comment Letter, January 30, 2020, <https://www.sec.gov/comments/s7-22-19/s72219-6728459-207302.pdf>.

<sup>3</sup> U.S. Department of Labor, ERISA, <https://www.dol.gov/general/topic/health-plans/erisa>.

The need for robo-voting reform has never been greater, as large proxy advisors continue to use this practice and thus, disenfranchise pensioners. For example, a research report from the American Council for Capital Formation found:

"175 entities, representing more than \$5 trillion in assets under management, that follow [Institutional Shareholder Services (ISS)] over 95% of the time... [Automatic voting] is more concerning given recent concerns over the accuracy of advisor recommendations, the limited amount of time proxy advisors allow for company corrections, and the need for investment managers to align voting with fiduciary considerations."<sup>4</sup>

In addition, I would like to comment directly on the Department's solicitation on p. 62 of the Proposed Rule: "Many asset managers serve both ERISA plans and other investors. The Department invites comments as to whether any such asset managers currently follow uniform proxy policies for both, and vote shares uniformly for both. The Department believes such uniform voting for ERISA and non-ERISA clients may sometimes jeopardize responsible fiduciaries' satisfaction of their duties under ERISA." **Robo-voting represents an abdication of plan fiduciaries' duties. By allowing these fiduciaries to robo-vote shares on non-pecuniary votes or resolutions, the Department permits them to shirk their duty and loyalty to increasing their beneficiaries' investments.**

I began my career as a trader in 1973. In the ensuing decades, I went on to trade in 30 different markets worldwide across seven economic sectors. I also gained memberships on the following exchanges: Chicago Board Options Exchange, Midwest Stock Exchange, Chicago Board of Trade, NYMEX Exchange, N.Y. COMEX Exchange, N.Y. Coffee, Sugar and Cocoa Exchange, N.Y. Cotton Exchange, FINEX, NYFE, and the MidAmerica Commodity Exchange. For more than 27 years, I also led my own private investment firm that executed a quantitative investment model and a sound comprehensive risk management philosophy into a single, integrated strategy.

Going forward, the Labor Department can mitigate future risk to retirees' savings by providing for strong restrictions on robo-voting. I am hopeful that with this Proposed Rule, the Department ensures that retirees' investment accounts are protected from this bad voting practice.

Thank you for your consideration of my comments.

Sincerely,



Robert A. Moss  
Former President  
RAM Management Group, Ltd.

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<sup>4</sup> Timothy Doyle, The Realities of Robo-voting, American Council for Capital Formation, November 2018, p. 5, [http://accf.org/wp-content/uploads/2018/11/ACCF-RoboVoting-Report\\_11\\_8\\_FINAL.pdf](http://accf.org/wp-content/uploads/2018/11/ACCF-RoboVoting-Report_11_8_FINAL.pdf).