



OFFICE OF THE ILLINOIS STATE TREASURER
MICHAEL W. FRERICHS

December 13, 2021

VIA ELECTRONIC FILING

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: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)

Dear Acting Assistant Secretary Khawar,

I appreciate the opportunity to provide comments on the Department of Labor's (the "Department") proposed rule entitled, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (RIN 1210-AC03) (the "Proposed Rule"). I am supportive of the Department's efforts to clarify the relevance of Environmental, Social, and Governance ("ESG") risk factors to investors and to address problematic implications of the Department's final rule published on December 6, 2020 entitled, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (the "Proxy Rule").

As the Treasurer of the State of Illinois, I am responsible for safeguarding and prudently investing approximately \$50 billion on behalf of the people of Illinois, including taxpayers, retirement and college savers, and units of local government. As part of this responsibility, my office regularly votes on proxy ballot items and, when appropriate, supports or proposes shareholder resolutions. These activities are an important part of my duties as a fiduciary because they help my office to voice a position on material investment risks that may impact the

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long-term value of our investments. My office does not manage plans that are covered by the U.S. Employee Retirement Income Security Act of 1974 (“ERISA”). Nevertheless, I believe restrictions on the ability of ERISA fund investors to engage in critical investor protections could have implications for the market as a whole, including non-ERISA funds.

ESG Investing

I support the Department’s position as cited in the preamble to the Proposed Rule that ESG factors can be material to a fiduciary’s investment decisions.¹ As a steward of government funds and college and retirement savings, I share this view. The long-term nature of these investments necessitates that my office considers risks that may impact the sustainability of the companies in which we invest.

Moreover, there is widespread acceptance among investors of the materiality of ESG risk factors and the benefits of considering ESG factors for investors. For example, a July 2020 Government Accountability Office (“GAO”) report found that institutional investors surveyed by the GAO generally agreed that “ESG issues can have a substantial effect on a company’s long-term financial performance.”² Another survey, conducted by the CFA Institute of its member portfolio managers and research analysts found that 73% of respondents consider ESG issues in their investment analysis and decisions.³ A number of studies also demonstrate that companies with sustainable policies present lower-risk investments and frequently provide collateral benefits to investors.⁴

Proxy Voting

On September 4, 2020, the Department issued a Notice of Proposed Rulemaking for the Proxy Rule. On October 5, 2020, I provided comments on the Proxy Rule, outlining my concerns with the Department’s approach.⁵

¹ Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 86 Fed. Reg. 57,272, 57,276 (October 14, 2021).

² U.S. Gov’t Accountability Office, GAO-20-530, *Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them* 9 (2020), available at <https://www.gao.gov/products/gao-20-530>.

³ Matt Orsagh, *CFA Institute Survey: How Do ESG Issues Factor into Investment Decisions?* (Aug. 17, 2015), available at <https://blogs.cfainstitute.org/marketintegrity/2015/08/17/cfa-institute-survey-how-do-esg-issues-factor-into-investment-decisions/>.

⁴ See, e.g., Fulton, Mark, Bruce Kahn, and Camilla Sharples, *Sustainable Investing: Establishing Long-Term Value and Performance* (June 12, 2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222740&rec=1&srcabs=2508281&alg=1&pos=2; Verheyden, Tim, Robert G. Eccles, and Andreas Feiner, *ESG for all? The Impact of ESG Screening on Return, Risk, and Diversification*, *Journal of Applied Corporate Finance*, vol. 28, no. 2 (July 11, 2016), pp. 47-55, available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/jacf.12174>; Kotsantonis, Sakis, Chris Pinney, and George Serafeim, *ESG Integration in Investment Management: Myths and Realities*, *Journal of Applied Corporate Finance*, vol. 28, no. 2 (2016), pp. 10-16, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808219; *Sustainable Funds Outperform Peers in 2020 During Coronavirus*, Morgan Stanley Institute for Sustainable Investing (Feb. 24, 2021), available at <https://www.morganstanley.com/ideas/esg-funds-outperform-peers-coronavirus>.

⁵ Letter from Michael W. Frerichs, Illinois State Treasurer to John Canary, Director of the Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor (October 5, 2020), available

Proxy voting and other shareholder engagement are important investor protections that help fiduciaries provide oversight of material investment risks, including ESG risks, that impact the long-term value of plan assets. I support changes to the Proxy Rule to remove unnecessary provisions that may deter fiduciaries from exercising their shareholder rights.

First, the Proposed Rule eliminates the Proxy Rule language that creates documentation requirements for proxy voting and other exercises of shareholder rights. I agree with the Department's concern that this recordkeeping provision in the Proxy Rule could lead to the misperception among investors that proxy voting and other shareholder rights activity should be treated differently from other fiduciary activities, which could chill proxy voting activity or result in unnecessary expense and over-documentation.

Second, the Proposed Rule would eliminate the two example "safe harbor" proxy voting policies included in the Proxy Rule. While I support the Department's ongoing view that a plan's statement of investment policy should include a statement of proxy voting policy, neither of the example policies included in the Proxy Rule adequately safeguard the interests of plan beneficiaries. A policy to vote only on particular types of proposals, depending on the scope of the policy, may be too limited to capture all of the proposals that are material and relevant to fiduciaries. Additionally, a policy to refrain from voting unless the plan holds a concentrated position in a company suggests that diversified investors, such as plan fiduciaries, should not have a voice in corporate decisions.

I commend the Department for proposing this rule and recognizing the importance of considering ESG criteria in investment decisions. Thank you for your time and attention to these matters and for consideration of my comments. Please do not hesitate to contact me with any questions.

Sincerely,



Michael W. Frerichs
Illinois State Treasurer

at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00290.pdf>.