October 5, 2020

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: RIN 1210–AB91

Submitted online via http://www.regulations.gov

RE: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights; RIN 1210-AB91

BlackRock, Inc. (together with its affiliates, "BlackRock")[1] respectfully submits its comments to the Department of Labor ("DoL") in response to the DoL's proposed rule regarding proxy voting and shareholder rights (the "Proposal"). Engagement and proxy voting are important tools for investors to drive long-term value. We appreciate the DoL's goal of clarifying prior guidance affirming that, in voting proxies and in exercising other shareholder rights, plan fiduciaries must consider factors that may affect the value of the plan's investment and not subordinate the interest of participants and beneficiaries in their retirement income to unrelated objectives.

We agree with the DoL's longstanding position that the fiduciary act of managing plan assets includes the management of shareholder rights. However, we are concerned that the Proposal creates an overly prescriptive and burdensome standard that would interfere with plan fiduciaries' ability and willingness to engage and vote proxies, even when they prudently determine that their votes are likely to be in the long-term economic interest of the plan. Under most circumstances, voting proxies is consistent with the long-term economic interests of plan participants and beneficiaries and does not require the expenditure of significant plan resources. In addition, it may not be cost effective or operationally feasible for plans to expend the resources necessary to comply with the Proposal. By creating additional hurdles for ERISA plans to vote, plan fiduciaries may be dissuaded from voting proxies, which could result in other investors having disproportionate voting power. Plan fiduciaries regularly refraining from voting proxies could ultimately reduce the voice of ERISA plans and potentially result in negative economic outcomes for plan participants and beneficiaries.

[1] BlackRock manages assets on behalf of individual and institutional clients across equity, fixed income, real assets, and other strategies. The assets we manage represent our clients' futures and the investment outcomes they seek, and it is our responsibility to help them better prepare themselves and their families to achieve their financial goals. Two thirds of the assets we manage are retirement-related assets. BlackRock manages assets for public and private pensions, including defined benefit ("DB") and defined contribution ("DC") plans of varying sizes.

We encourage the DoL to take a more principles-based approach to this rulemaking effort, which would address the DoL's primary concerns, preserve flexibility, and be consistent with the DoL's longstanding interpretations of fiduciary duties.

If the DoL is determined to move forward with a more prescriptive approach to proxy voting rulemaking, we also outline a series of recommendations to better align the Proposal with the DoL's stated goals.

In this letter, we:

1. Explain the role of engagement and proxy voting;
2. Address the DoL's stated rationale for the Proposal;
3. Discuss potential consequences of the Proposal;
4. Provide recommendations to clarify and formalize longstanding guidance without deterring fiduciaries from voting proxies; and
5. Provide suggested changes to the Proposal if the DoL moves forward.

Section I: The role of investment stewardship

While we understand the DoL's desire to ensure that plans do not expend assets unnecessarily on matters not economically relevant to the plan, we are concerned that the DoL has too narrow a view of a plan's economic interest. The DoL appears only to be focused on the relationship between a particular proxy vote and its potential to immediately and quantifiably increase the value of the plan's investment. However, matters that are material to the protection of a plan's investment, as well as proposals that request or relate to the disclosure of material risk considerations may also impact long-term shareholder value. As an asset manager who is often delegated the responsibility to exercise shareholder rights on behalf of our clients, we engage with boards and company management and vote proxies with the objective of preserving *and* enhancing the long-term value of our clients' investments.[2] In the Proposal, the DoL indicates that it views proposals related to corporate events, corporate repurchases of shares, issuances of additional securities with dilutive effects on shareholders, or contested elections for directors as being likely to have a significant impact on the value of the plan's investment.[3] In addition, we believe that voting on matters related to boards and directors, auditors and audit-related issues, compensation and benefits, and environmental and social issues, may also have a significant long-term impact on the value of the plan's investment, even if the economic impact for a particular vote is difficult to measure at the time of the vote.

For example, the performance of a company's board of directors is critical to the economic success of that company and to the protection of shareholders' interests. Board members serve as agents of shareholders in overseeing the strategic direction and operation of the company. Comprehensive disclosure, including financial statements, also provides investors with a sense of the company's long-term operational risk management

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[2] Our approach to engagement and voting is public on our website, available at https://www.blackrock.com/corporate/about-us/investment-stewardship, and articulated in our Global Corporate Governance & Engagement Principles (January 2020), available at https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global.pdf.

[3] Proposal at 55226, 55242.

practices and, more broadly, the quality of executives' business management and the board's oversight. In the absence of robust disclosures, a plan fiduciary could reasonably conclude that a company is not adequately managing risk, which is a key component in a company's ability to maximize economic success. Compensation structures can indicate whether a company incentivizes and rewards executives appropriately and in a way that is aligned with shareholder interests, particularly generating sustainable long-term shareholder returns. Environmental and social proposals often ask for greater disclosure to allow shareholders to understand how companies are effectively considering these elements of risk in strategy and business operations and, as such, while proxy votes on these matters may not have an immediately quantifiable short-term impact, they can impact the long-term financial performance and value of companies, which we discuss in more detail in our comment letter to the DoL on Financial Factors in Selecting Plan Investments.

Today, engagement and proxy voting are generally low-cost across all issues, particularly when proxy voting authority is delegated to investment managers like BlackRock, who can scale this function for plan clients. Costs are not significantly impacted by the number of proxy votes cast. To the extent clients delegate the management of their voting rights to us, we consider these responsibilities, including researching if and how to vote proxies, to be part of our fiduciary duties as an investment manager, and we do not charge ERISA plans for providing these services.

Section II: Stated rationale for the Proposal

In the Proposal, the DoL suggests that that there is a misunderstanding among stakeholders that ERISA fiduciaries are required to vote all proxies. Based on our experience as an investment manager and conversations with our ERISA plan clients, fiduciaries do not believe that they are required to vote all proxies; rather, they have concluded that under most circumstances, voting proxies is in the long-term economic interests of plan participants and beneficiaries. Companies and their boards should be accountable to shareholders and should be structured with appropriate checks and balances to ensure that they operate in their shareholders' best interests. As we discussed above, a company's governance structure, the quality of its leadership, and board oversight of risk, are inseparable from a company's ability to generate long-term, sustainable value for shareholders. There is a long-standing body of compelling academic work evidencing the positive correlation between good corporate governance and long-term value.[4] For example, a 2003 study led by representatives from Harvard University and the University of Pennsylvania evaluated an investment strategy focused on purchasing shares of companies exhibiting strong governance practices and selling shares of

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[4] Appel, Ian, Todd Gormley, and Donald Keim (2016): 'Passive Investors, Not Passive Owners', Journal of Financial Economics, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2475150; Correa, Ricardo and Ugur Lel (2016): 'Say on Pay Laws, Executive Compensation, Pay Slice, and Firm Valuation Around the World', Journal of Financial Economics, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2430465; Cuñat, Vicente, Mireia Gine, and Maria Guadalupe (2012): 'The Vote is Cast: The Effect of Corporate Governance on Shareholder Value', Journal of Finance, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=155596 or https://www.nber.org/papers/w16574; Flammer, Caroline and Pratima Bansal (2017): 'Does a Long-Term Orientation Create Value? Evidence From a Regression Discontinuity', Strategic Management Journal, available at: https://onlinelibrary.wiley.com/doi/abs/10.1002/smj.2629.

companies with poor governance structures. The study found that the companies "with stronger shareholder rights had higher firm value, higher profits, higher sales growth, lower capital expenditures, and made fewer corporate acquisitions."[5]

Research also suggests that weak governance practices may contribute to ineffective risk oversight and detrimental outcomes for shareholders. In a 2000 study, companies that exhibited instances of fraud across a series of industries were found to have less independent boards and audit committees than the relative industry benchmark without instances of fraud.[6] A different study that investigated firms subject to accounting enforcement actions by the Securities and Exchange Commission ("SEC") for alleged violations of US Generally Accepted Accounting Principles found that firms who manipulated earnings were more likely to have boards dominated by management, rather than independent directors.[7] The shareholders' right to vote at companies' annual meetings on routine, fundamental ballot items, such as the election of directors and selection of auditors is important for company accountability, risk mitigation, and shareholder value creation.

The DoL cited a speech by one of the authors of this letter to support its assertion that "the Avon letter and subsequent sub-regulatory guidance from the Department ... has resulted in a misplaced belief among some stakeholders that fiduciaries must always vote proxies, subject to limited exceptions, in order to fulfill their obligations under ERISA."[8] BlackRock does believe that it should generally vote proxies, but for the reasons described above – because we believe that voting proxies is generally in the client's economic interest – not because prior guidance led us to that conclusion. We believe that it is more likely that other fiduciaries' decisions to vote proxies are also based on such fiduciaries' prudent determination that the vast majority of ballot items could have an economic impact on the applicable plans' investment, which in the aggregate outweighs the low, overall costs of voting, rather than a misconception that they are required to vote all proxies.

Section III: Potential consequences of the proposal

While we appreciate and agree with the DoL's goal of avoiding unnecessary costs for ERISA plan participants, we are concerned that the Proposal is likely to create additional costs for, and ultimately harm, rather than benefit, plan participants and beneficiaries. The documentation requirements are overly burdensome and costly to satisfy, and the required analysis creates an unreasonably high threshold for exercising

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5 Gompers, Paul A. and Ishii, Joy L. and Metrick, Andrew, Corporate Governance and Equity Prices. Quarterly Journal of Economics, Vol. 118, No. 1, pp. 107-155, February 2003, Available at SSRN: https://ssrn.com/abstract=278920 or http://dx.doi.org/10.2139/ssrn.278920

6 Beasley, M., Carcello, J.V., Hermanson, D.R., Lapides, P.D. 2000. Fraudulent Financial Reporting: Consideration of Industry Traits and Corporate Governance Mechanisms. *Accounting Horizons: A Quarterly Journal of the American Accounting Association.* 14: 441-452. https://aaapubs.org/doi/10.2308/acch.2000.14.4.441.

7 Dechow, Patricia and Sloan, Richard G. and Hutton, Amy P., Causes and Consequences of Earnings Manipulation: An Analysis of Firms Subject to Enforcement Actions by the Sec. Available at SSRN: https://ssrn.com/abstract=2607.

8 Proposal at 55220.

voting rights, which we fear could deter plan fiduciaries from voting proxies at all, even under circumstances where voting is likely to be in the best interest of the plan. A reduction in the number of proxy votes, while preserving the right to vote proxies under a more limited set of circumstances, will result in very little cost savings and significant operational complexities for ERISA plans. Rather, a plan fiduciary may have a strong incentive to abstain from proxy voting completely, which could broadly disenfranchise plans and harm plan participants and beneficiaries by reducing their voice and giving disproportionate weight to the votes of other investors, such as activist investors. Specifically, since some ballot items have supermajority voting requirements,[9] having fewer votes in total may ultimately prevent companies from amending their bylaws when specific management proposals, often focused on governance issues and enhancing shareholder rights, are not considered by all shareholders, including ERISA plans.

Compliance with the Proposal's requirements is too costly

The proposed documentation requirements for proxy voting on behalf of ERISA plan participants are overly prescriptive and burdensome. Most ERISA plans do not conduct in-house proxy voting or engagements. These plans neither have the expertise nor the appetite to engage directly with portfolio companies in which they invest. As a result, many ERISA plan clients defer to their asset managers to manage proxy voting decisions. This fiduciary relationship works effectively and to the benefit of ERISA plan participants, as asset managers' ability to scale the voting function streamlines the vote submission process, reduces the potential for analytical and operational error, and allows plans to benefit from their asset managers' expertise in making proxy voting decisions that are informed by engagements with issuers.

If plan sponsors were to be responsible for documenting the rationale for each proxy vote as proposed, they would either need to generate guidelines and procedures to meet the documentation requirements in-house or assess the sufficiency of rationales relating to decisions generated by firms hired by plan sponsors to vote proxies. In either scenario, the requirement would create additional cost and oversight burdens for ERISA plans.

Furthermore, there may be additional costs under the proposal for ERISA plans invested through pooled vehicles. Collective investment trusts ("CITs") are widely-used as investments by ERISA plans.[10] Typically, the governing documents for CITs (and other pooled vehicles that hold ERISA assets) provide that the trustee or investment manager with authority to manage plan assets pursuant to section 403(a)(2) of ERISA, has full authority to vote proxies on securities held in such pooled vehicles. As such, that trustee or investment manager follows its own proxy voting guidelines, consistent with applicable law, when voting proxies on securities held by CITs and other pooled vehicles, typically

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[9] For more information on vote standards, see CFA Institute "Shareowner Rights across the Markets: a Manual for Investors, (2009), available at https://www.cfainstitute.org/-/media/documents/support/advocacy/shareowner-rights/ccb-v2009-n2-1.ashx.

[10] It is estimated that in 2019, approximately 28% of 401(K) plan assets (or approximately $1.5 trillion) are invested in collective investment trusts. See Exhibit 3, "Improving investment outcomes for 403(b) plan participants" https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-improving-investment-outcomes-for-403b-participants-may-2020.pdf.

requiring each participating plan to accept those proxy voting guidelines as the plan's proxy voting policy, insofar as the plan's investments in the CIT or other pooled vehicle are concerned. Voting a CIT's or other pooled vehicle's shareholding differently on a prorated basis (i.e., voting some investors' indirect proportionate interests and instructing an abstain vote for others' indirect proportionate interests on the very same ballot item) may not be practical or consistent with the trustee's or investment manager's proxy voting guidelines. If ERISA plan assets would have to be moved into segregated accounts in order to be voted differently from the assets of other investors in a pooled vehicle, then it is likely that those ERISA plans would incur additional risks and costs. A related concern is that some investment managers may be able to operate segregated accounts only for large plans, which could negatively affect small plans.

As discussed in more detail in Section V below, the only cost-effective way to comply with the Proposal's requirements for many fiduciaries will be to adopt one of its "permitted practices," and there may be further cost incentives to abstain from voting entirely. Only voting certain proxies (as suggested under the permitted practices) is not cost-effective. The proxy voting system is complex, and there are operational challenges associated with only voting sporadically, as discussed further below.

Discouraging proxy voting by ERISA plans could negatively impact overall market effectiveness

BlackRock has long advocated for the principle of one-share, one-vote.[11] We believe that shareholders should have a voice through their vote, proportionate to their economic exposure to a company. However, if the default position of ERISA plans is to abstain from voting, this could create various unintended consequences, including giving disproportionate weight to the votes of other investors, such as investors focused on a truncated investment timeframe or an activist investing approach. Amplifying the voice of investors whose objectives may not be aligned with long-term shareholder value may conflict with the goals that are associated with long-term savings and retirement planning, which would be disadvantageous to ERISA plan participants and beneficiaries.

To promote good corporate governance practices that drive value for ERISA plans, it is important to ensure that enough long-term shareholders are able to vote on ballot items. As Exhibit 1 shows, over 98% of ballot items are management proposals across categories including the election of directors, capitalization, and compensation. If ERISA plans were to abstain from voting, it would be more challenging for companies to get the votes necessary to pass many routine ballot items, which could ultimately make the operation of companies less effective and jeopardize long-term value for shareholders. As discussed in more detail in Section IV below, we encourage the DoL to preserve the ability of ERISA plans to vote in a cost-effective manner and to take a principles-based approach to preserve the flexibility of plans to vote against management where appropriate. Votes against management proposals, for example on individual director elections, have made a

[11] For more on BlackRock's positions, see BlackRock Investment Stewardship website, available at https://www.blackrock.com/corporate/about-us/investment-stewardship#our-responsibility.

positive impact over time addressing overboarding,[12] board diversity,[13] and other important governance issues.

Exhibit 1: Ballot Items on SEC Form N-PX Filings (July 1, 2019-June 30, 2020)

Category	Proponent	Number of Proposals
Directors Related	Management	77,663
Capitalization	Management	14,433
Compensation	Management	13,414
Reorg. and Mergers	Management	7,582
Anti-takeover Related	Management	1,179
Other/Misc.	Management	34,805
Governance	Shareholder	858
Social	Shareholder	118
Environmental	Shareholder	111
Other	Shareholder	2,838
Grand Total	**All**	**153,001**

Source: Form N-PX filings to the SEC by mutual funds and other registered investment management companies. Form N-PX provides information to investors on how funds vote proxies related to securities they hold. Includes all ballot items disclosed during the last filing year from July 1, 2019-June 30, 2020 for companies held by BlackRock mutual funds, including iShares funds.

Furthermore, the vote standards set by individual companies will determine the effect of an "abstain" vote and the number of votes needed to establish a quorum, elect a director or pass a proposal.[14] Additionally, it may not be possible to only vote on certain ballot items while neglecting input for other proposals, depending on the vote standard set within the company-specific bylaws and country-specific listing standards, which dictate the availability of affirmative, negative, or abstain voting options.[15] Given these voting standards and the requirements that a fiduciary must satisfy in order to vote under the Proposal, this could effectively preclude ERISA plans from voting on economically-relevant issues. Further, many ERISA plan participants' investments are not limited to investing in US securities. Some markets have a requirement for shareholders to vote, and parsing out, or "splitting," votes for those holdings may not be operationally possible, depending on the nature of the selected plan investments, which would similarly create challenges for ERISA plans to vote only on certain issues.

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12 Kosmas Papadopoulos, Harvard Law School Forum on Corporate Governance, "Director Overboarding: Global Trends, Definitions, and Impact" (August 5, 2019), available at https://corpgov.law.harvard.edu/2019/08/05/director-overboarding-global-trends-definitions-and-impact/.

13 Subodh Mishra, Harvard Law School Forum on Corporate Governance, "U.S. Board Diversity Trends in 2019" (June 18, 2019), available at https://corpgov.law.harvard.edu/2019/06/18/u-s-board-diversity-trends-in-2019/.

14 The most common vote standards within the US are (i) a majority of the votes cast; (ii) a majority of the shares present and entitled to vote; and (iii) a majority of the outstanding shares and (iv) for director elections only, a plurality of the votes cast.

15 For more information on the voting standards in different countries, see ISS, Market Mechanics Guide (January 2020), available at https://www.issgovernance.com/file/faq/market-mechanics-guide.pdf.

Lastly, the use of cumulative voting may allow for certain ballot items to be disproportionately accounted for, if votes only on specific ballot items are submitted, in essence allowing "votes" to be aggregated on a few proposals.

Section IV: Recommendations to clarify and formalize longstanding guidance without deterring fiduciaries from voting proxies

As discussed above, we agree with the DoL's longstanding position that the fiduciary act of managing plan assets includes the management of shareholder rights, including voting rights, appurtenant to shares of stock and that Section 404(a)(1) of ERISA requires fiduciaries to discharge their duties relating to the exercise of such rights prudently and solely in the interests of participants and beneficiaries. However, we are concerned that the Proposal goes far beyond the clarification and formalization of this well-established principle. As drafted, the Proposal creates an overly prescriptive and burdensome standard that would deter plan fiduciaries from voting proxies even when they prudently determine that their votes are likely to have an economic impact on the plan. In addition, as demonstrated herein the DoL falls short of its goal to "reflect these [fiduciary] principles while permitting fiduciaries to execute such duties in a cost-effective manner."[16] We encourage the DoL to take a more principles-based approach to this rulemaking effort, which would enable the DoL to address its articulated concerns while at the same time preserving flexibility, and would be consistent with over forty years of the DoL's interpretations of ERISA's fiduciary duties.

BlackRock Recommendations:

1. We believe that the DoL could formalize its long-standing principle and address its primary concerns by retaining Sections 2550.404a-1(e)(1) and (e)(2)(i) in the Proposal and adding a sentence at the end of proposed Section 2550.404a-1(e)(1) that reads: "For the avoidance of doubt, there is no requirement under ERISA or this Section to always vote proxies appurtenant to shares of stock."
2. We recommend deleting the remaining sections of the Proposal. We are concerned that, rather than providing useful guidance to plan fiduciaries those sections operate to create prescriptive, burdensome, and costly requirements for plan fiduciaries and are unnecessary given the preceding provisions and inconsistent with the general approach of the existing Section 2550.404a-1. Further, the DoL may be overcorrecting in attempting to address its concerns that prior guidance caused plan fiduciaries to mistakenly believe that they must always vote proxies. We fear that the Proposal, as drafted, could cause some plan fiduciaries to interpret their fiduciary obligations to require them to never vote proxies, which, for the reasons we describe above, we believe would harm plan participants and beneficiaries.

Nevertheless, if the DoL is determined to move forward with a more prescriptive approach to proxy voting rulemaking, below are a series of recommendations to better align the Proposal with the DoL's stated goals.

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[16] Proposal at 55223.

Section V: Recommendations to clarify and improve the Proposal

Modify the fiduciary requirements in Section 2550.404a-1(e)(2) to provide more flexibility and eliminate the overly burdensome requirements

Many of the fiduciary requirements in proposed Section 2550.404a-1(e)(2)(ii) are difficult and costly to satisfy, particularly on a vote by vote basis. The DoL acknowledged the significant costs associated with these requirements,[17] but instead of providing a more workable approach, the DoL proposed certain alternative approaches to proxy voting, or more often refraining from proxy voting, that it believes will be the more cost-effective way to satisfy the requirements in proposed subsections (e)(1) and (e)(2)(i). While we believe that the option of using a proxy voting policy could be a prudent and preferred approach for many fiduciaries, we do not think effectively forcing fiduciaries into using one or more of the permitted practices by making it cost prohibitive to satisfy the DoL's prescribed requirements for voting as a general matter is consistent with the DoL's and ERISA's historic principles-based approach.

BlackRock Recommendations:

1. Replace Section 2550.404a-1(e)(2)(ii)(A) with the following language: "Give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the management of shareholder rights, including those factors that the fiduciary prudently determines could be reasonably expected to have an economic impact on the plan's investment."
2. Section 2550.404a-1(e)(2)(ii)(B) should be deleted. The requirements are overly rigid and difficult to satisfy on a vote by vote basis. Consistent with the general principles of ERISA, fiduciaries should have more flexibility to determine how they meet their fiduciary obligations.
3. Section 2550.404a-1(e)(2)(ii)(D) should be deleted. As drafted, it is overly burdensome and the issues raised are addressed elsewhere in Section 2550.404a-1(e)(2) (e.g., the engagement of service providers is covered in Sections 2550.404a-1(e)(2)(ii)(F) and 2550.404a-1(e)(2)(iii)).
4. A clarification should be added to Section 2550.404a-1(e)(2)(ii)(E) that proxy voting activity that is consistent with the applicable proxy voting policy does not require additional explanation or documentation.
5. Revise Section 2550.404a-1(e)(2)(iii) to read: "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 (a) vote proxies in accordance with the plan's, investment manager's, or the proxy advisory firm's proxy voting policy and/or guidelines, as applicable or (b) document the rationale for proxy voting decisions or recommendations sufficient to demonstrate that the decision or recommendation was reasonably expected to have an economic impact on the plan's investment."[18]

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[17] See e.g., Proposal at 55225, 55232.

[18] For ease of reference, the following is a comparison of our suggested language with the original: "Where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager

Delete the overly prescriptive standard under which proxy voting is required and prohibited

In the preamble to the Proposal, the DoL makes clear its presumption that under most circumstances proxy voting does not have a significant economic impact on the plan.[19] Whether intentionally or not, the DoL put its thumb on the scale against voting proxies by proposing a regulation that would add significant additional costs to the process of determining whether to vote. The DoL has developed a framework in which it is nearly impossible for a fiduciary to conclude with the requisite "would"-level certainty with respect to a particular proxy vote to ensure it has economic impact to a plan *after* taking into account the new costs and burdens to comply with the requirements of the Proposal. As discussed above, while the research suggests that there are generally long-term economic benefits to voting proxies, it is quite difficult to assign a specific value to any one proxy vote at the time the vote is or is not cast. The likely effect of Section 2550.404a-1(e)(3) is that many plan fiduciaries may no longer vote proxies. For the reasons described above, this result would disenfranchise ERISA plans and would be harmful to plan participants and beneficiaries.

BlackRock Recommendation:

1. Section 2550.404a-1(e)(3)(ii) should be deleted. The DoL can address its concern that plan fiduciaries understand that they need not vote all proxies by expressly including a statement to that effect, as noted in our recommendation to modify Section 2550.404a-1(e)(1).

Provide safe harbor relief for permitted practices; Add another type of proxy voting policy to the list of "permitted practices"

The DoL included "permitted practices" in the Proposal to "help fiduciaries more cost-effectively comply with the obligations under paragraphs (e)(3)(i) and (ii)."[20] We agree that, given the cost-intensive nature of the Proposal's requirements in Section 2550.404a-1(e)(2) and the overly rigid standard established in Section 2550.404a-1(e)(3), many plan fiduciaries will likely opt to follow a permitted practice. However, we are concerned that these permitted practices will not provide the cost savings that the DoL anticipates, unless the DoL makes it clear that each constitutes a safe harbor.

The list of permitted practices should also be expanded to include a proxy voting policy that permits proxy voting where there are no material incremental costs to the plan associated with researching or voting a particular proxy. As described in greater detail

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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 *(a) vote proxies in accordance with the plan's, investment manager's, or the proxy advisory firm's proxy voting policy and/or guidelines, as applicable or (b)* 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~~ *reasonably expected to have an economic impact on the plan's investment*."

[19] See e.g., Proposal at 55222, 55229.

[20] Proposal at 55225.

above, the costs associated with proxy voting generally are not variable, such that abstaining from a particular vote or types of votes is unlikely to result in cost savings to a plan. However, there are voting circumstances that could result in material additional costs to vote proxies. Some examples of voting issues that occur from time to time in mostly non-U.S. markets and could require the expenditure of material additional resources are: (a) a requirement to vote proxies in person, (b) a "shareblocking" requirement (i.e., investors who exercise their voting rights are required to surrender the right to dispose of their holdings for some specified period in proximity to the shareholder meeting), and (c) retaining a service provider to translate proxy materials. Under our proposed permitted practice, a fiduciary would not vote if it reasonably and prudently determined that the plan's voting in such circumstances would result in material costs to the plan.

BlackRock Recommendations:

1. Provide safe harbor relief for plans that use one or more of the permitted practices.

2. Add the following cost-based permitted practice as Section 2550.404a-1(e)(3)(iii)(D): "A policy of voting proxies on proposals or particular types of proposals that the fiduciary has prudently determined are unlikely to involve additional material costs to the plan."

Modify Section (e)(4)(ii) to better align with existing market practices.

We appreciate that the DoL included in the Proposal language regarding the obligations of an investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan. As discussed in Section II, most of BlackRock's ERISA clients delegate proxy voting to us. With certain modifications, we believe Section 2550.404a-1(e)(4)(ii) will be more streamlined and better align with existing industry practices. Specifically, the first two sentences of Section 2550.404a-1(e)(4)(ii) do not accurately reflect the practical realities of plan investment in pooled vehicles and the third sentence is unnecessary.

BlackRock Recommendation:

1. Modify Section 2550.404a-1(e)(4)(ii) to read as follows: "An investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan may develop proxy voting guidelines for that pooled vehicle consistent with Title I of ERISA and this Section, and require each participating plan to accept those proxy voting guidelines before the plan is allowed to invest."

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We thank the DoL for providing the opportunity to comment on the Proposal, and we welcome the opportunity to further discuss any of the information or recommendations we have provided.

Sincerely,

Barbara Novick
Vice Chairman

Sandra Boss
Global Head of Investment Stewardship

Nicole Rosser
Director, Legal & Compliance