

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: Proxy Voting and Shareholder Rights NPRM

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)

Dear Sir or Madam:

The Vanguard Group, Inc. (Vanguard)¹ shares the Department of Labor's (Department) commitment to ensuring that retirement fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) prioritize the economic interests of plan participants and beneficiaries. However, we respectfully object to the Department's proposed rule on fiduciary duties regarding proxy voting and shareholder rights because we believe it will erode shareholder value by imposing prescriptive limitations on a fiduciary's ability to engage with portfolio companies and to vote proxies on behalf of plan participants and beneficiaries.² Through our long experience engaging with portfolio companies and voting proxies on behalf of our clients, particularly fund investors, we have demonstrated that good governance and effective stewardship mitigate risk and protect shareholder value over the long term.

We do not believe the Department should deprive retirement investors of the enduring benefits that investment stewardship programs provide to investors. Accordingly, we urge the Department to reconsider the proposal and, if it decides a rule is necessary, to adopt a principles-based framework that gives ERISA fiduciaries the latitude to manage the voting of plan securities in any manner consistent with the Department's position that ERISA fiduciaries should ensure that voting practices are implemented solely for the economic benefit of plan participants and beneficiaries. In addition, any final rule that the Department adopts should provide a safe harbor that permits ERISA fiduciaries to vote a proxy if needed for a portfolio holding to achieve

¹ Vanguard is one of the world's leading asset managers and a leading provider of investment, advisory, and recordkeeping services for defined contribution retirement plans. As of August 31, 2020, Vanguard managed approximately \$6.6 trillion in assets globally on behalf of more than 30 million investors. We provide direct recordkeeping and investment related services to nearly 5 million participants in nearly 1,500 defined contribution plans. These assets account for more than \$560 billion of Vanguard's total assets under management. We also manage over \$840 billion through Vanguard funds for nearly \$5.3 million individual retirement account investors.

² Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, 85 Fed. Reg. 55219 (September 4, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf>.

a quorum for its shareholders' meeting to avoid potential costs associated with delaying a shareholders' meeting due to lack of quorum.

Responsible Proxy Voting Practices Mitigate Risks for Plan Participants and Beneficiaries

Vanguard's core purpose is to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. As we stated in response to another recent proposal, maximizing shareholder value over the long term is an essential component of investment success, and we do not object to the Department affirming this foundational principle in its "Investment duties regulation."³ Consistent with this standard, Vanguard has long believed that all investors—including retirement investors—benefit from broadly-diversified portfolios overseen by diligent management teams that engage with portfolio companies to promote sustainable, long-term value creation by helping companies understand and manage material risks.

Vanguard operates a deliberate, constructive, and results-oriented stewardship program on behalf of our diverse product lineup, which, collectively, is a practically permanent investor in thousands of companies worldwide. We view each engagement, including proxy voting, as an opportunity to improve investment outcomes for our shareholders and to mitigate risks associated with owning stock in public companies. As explained through the examples below, our efforts have contributed to improved governance practices across developed financial markets, better alignment of executive incentives and long-term performance, and non-direct economic benefits to investors that develop over time and, in many instances, are difficult to measure.

The US securities laws require public companies to provide investors with a non-binding vote on executive compensation plans, and we exercise this right prudently, with an eye toward managing the risk that a company's compensation philosophy may not align with its long-term strategy and shareholder value. For example, in 2018, the Vanguard funds voted against the executive compensation plan at the Walt Disney Company (Disney) on the basis that the CEO's compensation was not sufficiently linked to the company's performance (thus not aligned with shareholders' interests). Through dialogue with the Disney board over the following year, we continued to express our concerns, and the board ultimately put forward a new plan with changes to CEO compensation that better aligned with performance. Our funds supported the new proposal.⁴ Our engagement and voting activity on this matter over successive years allowed us to voice our expectation that executive compensation should align to long-term shareholder value and had a direct positive impact to Disney shareholders in the form of tens of millions in compensation savings.

³ See Letter from John James, Managing Director, Institutional Investor Group, The Vanguard Group, Inc. to Office of Regulations and Interpretations, Employee Benefits Security Administration, dated July 30, 2020, available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00648.pdf>.

⁴ See Vanguard Investment Stewardship 2020 Annual Report, available at https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/2020_investment_stewardship_annual_report.pdf.

Proxy voting by Vanguard and other fiduciary advisers also serves a defensive purpose, ensuring that the interests of long-term investors are not subordinated to those of activists or others with a short-term perspective, and preventing adoption of proposals that would erode shareholder value. At the 2020 annual meeting for Barclays, for example, a shareholder proposal asked the board of the UK financial services company to report annually on targets to phase out financial activities in the energy and utilities sectors that do not align with the Paris Agreement, which sets out a global framework for limiting global warming. Through our engagement with Barclays' leadership, we determined that the company has a sincere commitment to managing the risks that climate change poses to its business. Barclays put forth its own climate-related proposal that set ambitious goals to align with the Paris Agreement, to disclose its targets and strategy, and to report annually on progress. Ultimately, we determined that management's approach was in the best interest of long-term shareholders and voted in favor of this proposal and against the shareholder proposal.

These engagements, along with thousands of others, aim to provide benefits to shareholders by helping companies manage risks to long-term shareholder value. We urge the Department to recognize that shareholder engagement and voting by ERISA fiduciaries can help companies manage risk and improve investment outcomes and to permit ERISA fiduciaries to continue exercising shareholder rights consistent with the overall objective of maximizing shareholder value.

Curtailing Proxy Voting by ERISA Fiduciaries Will Harm Plan Participants and Beneficiaries

Millions of participants and beneficiaries in ERISA plans stand to miss out on the benefits of effective investment stewardship programs if the Department adopts its proposal. This is because the proposal would curtail the ability of ERISA fiduciaries to vote on proxies, even in circumstances where the fiduciary's overall stewardship program aims to enhance the interests of long-term shareholders through effective risk mitigation. The proposal, for example, would prohibit a fiduciary from voting on any matter, unless the fiduciary determines "that the matter being voted upon would have an economic impact on the plan." The Department explains that this prohibition is necessary to correct "a misunderstanding that fiduciaries must research and vote all proxies" that causes "some plans to expend their assets unnecessarily on matters not economically relevant to the plan."⁵

In practice, the proposal's focus on discrete *matters*, rather than the objectives of engagement more broadly, likely will disenfranchise retirement investors by causing ERISA fiduciaries to vote less frequently to avoid allegations that they have made an incorrect determination about the economic impact of a particular proposal. This risk is particularly salient because, in our experience, although stewardship programs typically run at efficient cost, their value compounds over time and, as described above, manifests through both proactive and defensive means. A fiduciary, for example, may face challenges quantifying benefits when value-eroding proposals are defeated or left off corporate ballots as a result of diligent stewardship programs. To avoid

⁵ 85 Fed. Reg. at 55221.

these disputes and to reduce costs associated with researching and analyzing the costs and benefits of each proxy vote to demonstrate compliance with the proposal, fiduciaries might rely on the proposal's "permitted practices" that provide qualified safe harbors to fiduciaries that agree to vote in particular ways or to abstain from voting in certain circumstances. These practices will result in retirement investors losing their voting rights and voice in a wide range of important matters.

We see no basis for the Department to adopt a regulation that would effectively give ERISA plan participants and beneficiaries less ability to exercise corporate voting rights than their counterparts in other types of accounts. The Department should reconsider the proposal's prohibition on ERISA fiduciaries' voting on any proxy matter unless they determine that the vote will have an economic impact on the plan. We do not believe such a rulemaking is necessary, given the high standards that already govern the voting practices of ERISA fiduciaries, the ability of stewardship programs to operate in a cost-efficient manner, and the focus that effective stewardship programs place on long-term shareholder value.

If, after further consideration, the Department determines to proceed with a rulemaking, we suggest that it adopt a principles-based standard that grants ERISA fiduciaries flexibility to exercise voting rights broadly in a manner designed to economically benefit plan participants and beneficiaries over the long term. This approach would be fully consistent with the Department's longstanding focus on investment performance as well as the inherently long-term perspective of retirement investors.

In addition, any final rule that the Department adopts should provide a safe harbor that permits ERISA fiduciaries to vote a proxy if needed for a portfolio holding to achieve a quorum for its shareholders' meeting. If an ERISA fiduciary's holdings of mutual funds or exchange-traded funds are subject to the proposal, a safe harbor that permits voting to obtain quorum is particularly important because these investment companies have statutory quorum requirements "of a majority of the outstanding voting securities" of the fund for certain types of items.⁶ The votes of ERISA fiduciaries are often instrumental in helping funds meet quorum requirements, and they should retain the ability to vote whenever necessary for a fund to obtain a quorum to avoid potential direct and indirect costs associated with delaying a shareholders' meeting due to lack of quorum.

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⁶ See, e.g., Sections 2(a)(42), 13, 15, and 32 of the Investment Company Act of 1940, available at <https://www.govinfo.gov/content/pkg/COMPS-1879/pdf/COMPS-1879.pdf>.

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Vanguard appreciates the opportunity to comment on the proposal. We welcome the opportunity to continue working with the Department on these important issues. If you have any questions or would like to discuss our views further, please contact John Galloway at (610) 503-2069 or George Gilbert at (202) 824-1293.

Sincerely,

/s/ Anne Robinson

Anne Robinson
Managing Director and General Counsel
The Vanguard Group, Inc.