

Special DOL proxy voting rules set to take effect on December 1, 2023 — potential action items for ERISA plan fiduciaries

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In late 2022, the U.S. Department of Labor (the “DOL”) issued final regulations (the “Final Rules”) which address the extent to which ERISA plan fiduciaries may consider environmental, social and governance (“ESG”) factors when making investment decisions and exercising shareholder rights, such as voting proxies, on behalf of ERISA-covered plans.

Although the Final Rules generally became effective on January 30, 2023, certain special proxy voting related rules are set to first take effect on December 1, 2023, and may require action by ERISA plan fiduciaries in advance of the effective date.

Those special proxy voting-related rules provide that, to the extent an investment manager of a pooled investment vehicle holding “plan assets” of more than one ERISA plan (a “Pooled Plan Asset Vehicle”) is subject to an investment policy statement (“IPS”) (which includes any proxy voting policy) that conflicts with another ERISA plan’s IPS, the investment manager must reconcile, insofar as possible, those conflicting policies (assuming compliance with each policy would be consistent with ERISA).

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