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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 10, 2023

Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden:

I am writing to support your planned veto of H.J. Res. 30 — Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." As Comptroller of the State of New York, I serve as the Trustee of the New York Common Retirement Fund (Fund), which is the one of the largest public pension funds in the United States.

The Fund is not subject to the Employee Retirement Income Security Act (ERISA) or the Department of Labor's rules, but ERISA guidance has the potential to change market standards by impacting the common and prevailing market practices of ERISA fiduciaries, who are a meaningful segment of institutional investors. It also has the potential to affect the corporate governance of the companies in which the Fund invests and, therefore, the Fund's investments.

Investors worldwide have come to understand that prudent, long-term portfolio management requires contending with real-world issues. What investors, including the Fund, increasingly recognize is that companies that commit resources to managing environmental, social and governance (ESG) issues like climate risk, board oversight and human capital management, perform better. Accordingly, we cannot ignore the growing consensus among investors that ESG factors are financial factors that should be considered by all fiduciaries.

The New York State and Local Retirement System is ranked one of America's best-managed and best-funded public pension plans. We have integrated ESG factors into our investment processes as part of our risk analysis for close to a decade. Like all fiduciaries, I am compelled to consider matters that may be material to risk or return when making investment decisions. ESG factors that meet this standard are no different.

The DOL Rule was welcomed by a broad array of investors because for many years, ERISA fiduciaries faced shifting standards from the Department about whether they can and should consider ESG factors in their role as investment stewards for retirement plan participants. I supported the DOL Rule because it strengthened and provided greater guidance on the appropriateness of the evaluation of ESG factors—especially climate change.

Far too many people are trying to impose their politics on what should be a dollars-and-cents, apolitical investment process. Voiding the 2022 DOL Rule would handcuff ERISA investors by discouraging them from considering material factors that a prudent investor, including pension funds, absolutely must consider.

Thank you for your continuous efforts to deliver for America's workers and for protecting the DOL Rule, which will better protect the retirement security for millions of workers.

Sincerely,

Thomas P. DiNapoli
New York State Comptroller