

August 9, 1994

To Our Clients

ERISA Proxy Voting and Corporate Governance Guidelines

The Department of Labor has codified the Avon letter in an interpretive bulletin issued July 28, 1994. The bulletin makes clear the DOL position that an investment manager with authority (either explicit or because the investment contract does not expressly preclude the investment manager from voting) to vote shares must do so and if the investment manager is by contract precluded from voting, then, on issues that could affect value of plan's investment, the trustee must vote. The bulletin reiterates the DOL position that this voting requirement is exclusive, thereby throwing into question plans that "pass through" the vote to employee-beneficiaries. The bulletin also requires (albeit by obscure language) that the ERISA fiduciary evaluate a takeover bid or proxy issue on the basis of shareholder value, not employee interests.

In addition, the bulletin says that a plan fiduciary may be an activist with respect to shareholder value issues, e.g., opposing or supporting a restructuring or changing the board of directors to facilitate a takeover bid. Further, the fiduciary may "engage in activities intended to monitor or influence corporate management," e.g., considering "the appropriateness of executive compensation" and "the nature of long-term business plans."

Thus, the bulletin reaffirms the DOL's pro-takeover and pro-corporate-governance-activist positions.

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