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Financial Factors in Selecting Plan Investments

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Financial Factors in Selecting Plan Investments

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Submitter Information

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General Comment

Office of Regulations and Interpretations
U.S. Department of Labor
Washington, DC 20210

Attention: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

To whom it may concern:

I am writing to provide comments in response to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments," which relates to ERISA-regulated retirement plans. I believe this rule should be withdrawn. Failure to allow fiduciaries to consider all material risk factors, including ESG criteria, would be to the detriment of plan participants.

Previous financial performance is only one part of fundamental analysis that may also include macroeconomic, market, sector, policy, regulatory, stewardship and societal factors that impact a company or asset's competitiveness and risk and return in the future. Additional due-diligence using any number of, so described, "non-pecuniary" factors that may impact medium to long-term performance should not be identified as immaterial and sets a problematic precedent for fiduciary duty going forward by subordinating these factors in investment analysis and decision-making to strategies and investments that only employ what the DoL determines are pecuniary factors, using backward-looking financial performance as the only consideration possible in selecting investments.

The Business Roundtable and the American Sustainable Business Council are two vocal industry groups of corporate leaders who have made the case against management and corporate decision-making solely to maximize short-term shareholder return, as it constrains their ability to make important investments and adapt to dynamic circumstances in the short-term so they can deliver medium and long-term shareholder value and value to other stakeholders including customers, employees, and society at large. The DoL can expect these entities to weigh-in against this rule, as well as the entire investment community as it would severely and unnecessarily constrains business and investment decisions.

Further, non-ESG investment alternatives may or may not have stable and competitive risk/return profiles, under various dynamic circumstances in the future. It is, indeed, the important role of investment professionals to thoughtfully weigh all factors at their disposal in selecting investments and choosing the composition of portfolios.

Creating a cumbersome, backward-looking protocol for assessing future risk and return, and privileging past financial performance over all other datapoints, can have unintended consequences. It might concentrate investment in securities and products that may or may not bear less risk and greater return in the future, versus those employing human judgement and prudence, over mechanical use financial data from one reporting source. This concentration will pose systemic financial risk and is something regulators at the OFR are tracking and seeking to minimize. For this reason, the OFR should also be consulted on any sweeping new ERISA rule that might cause herding and market concentration.

Finally, the onus is on the DoL to provide evidence that this rule need exist given ESG strategies and investments have been shown in numerous studies to match or out-perform non-ESG strategies and investments. Changing the existing rules would seem to result in the opposite of its stated intention, which is to hold ERISA plan managers to a higher standard. This new standard must be demonstrated to, in-fact, be a higher standard and robust in the medium to long-term before it is painfully deployed.

I respectfully ask that the US Department of Labor withdraw this rule.

Sincerely,