July 9, 2022

Employee Benefits Security Administration, U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210
Attn: Megan Sweeney

Re: Release Number 20-997-NAT

Dear Megan,

We are writing in response to the Department of Labor's (DOL) proposed New Investment Duties Rule. While the proposed rule suggests some grounding in the DOL's mission to promote the welfare of wage earners, it is diametrically opposed to this mission and significantly impedes wage earners' personal choice.

Investor interest in products that integrate environmental, social, and governance (ESG) considerations has gone mainstream[i] and (despite their exclusion from 97%[ii] of 401k plan offerings), ESG funds have been one of the highest-growth categories in the market for multiple years running. In 2019 they pulled in ~4x[iii] the AUM they'd attracted in 2018. Inflows are accelerating in 2020[iv] which is at least partly driven by the fact that ESG funds have outperformed their non-ESG peers during the COVID-19 pandemic, just as they have during major prior drawdowns such as the 2018 Fed Policy reaction.[v] In the U.S., ESG-mandated assets could comprise half of all managed assets by 2025[vi]; and globally, managed assets should reach the 50% mark by the end of this year[vii]. In addition to investor demand, there is growing consensus among business leaders on ESG: McKinsey[viii] found that 83% of C-suite leaders and investment professionals expect ESG programs will contribute more shareholder value in five years than today. What is clear is that many business leaders and investors prefer to 'grow the pie' sustainably by recognizing the synergistic interests of stakeholders and shareholders over the long term. The DOL seems to be unaware of this important evolution in market thinking and investor behavior.

A free market would allow investors to choose investment products that align with their preferences, just as it will allows them to purchase organic produce from their grocer, if they choose. The proposed DOL rule is on par with banning organic produce from grocery stores nationwide. While consumers may debate the costs and benefits of non-GMO strawberries or free-range eggs, they are free to choose between conventional and organic products in almost every aisle of the market. Investors should have the same freedom of choice — whether it is all-cap growth, international equities, specific ESG products, or ESG integration for risk mitigation or return enhancement in any broad-based investment strategy.

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In addition to impinging on investors' freedom to allocate per their product preferences, the DOL's statements of support for this proposed rule are reckless at best. The DOL's insinuation that investments in ESG funds introduce undue risk from which wage earners should be protected is contrary to fact. At both the fund level, as well as the individual security level, there are now mountains of evidence affirming the widespread assertion that ESG risks and opportunities are material risks and opportunities, and that investors are well served to act on their preferences to manage such risks and capture such opportunities.

- At the fund level, Morningstar[ix] has found that 41 out of 56 ESG indices outperformed their non-ESG equivalents since inception. And even in short-term the market correction that played out in 1Q2020, Morningstar[x] had very positive findings: ESG funds were significantly overrepresented in the top quartile & half of peers and underrepresented in the bottom half & quartile.
- At the individual security level, the most comprehensive study of the long-term performance implications of ESG reviewed[xi] more than 2,200 pieces of academic research conducted through 2014, finding that 90% of the research found non-negative ESG-CFP (corporate financial performance) relationships, and a large majority had positive findings. Of course, this study predates the big upswing in ESG AUM and investor focus, during which time ESG factors have generally outperformed, and during which time researchers have observed a widening valuation premium for companies with strong sustainability performance. In the market shock induced by the current global pandemic, according to Bank of America Global Research, across all regions, companies with below-median ESG scores have seen bigger downward EPS revisions and companies with above-median ESG scores have seen smaller downward EPS revisions YTD[xii].

These facts should surprise approximately no one.

A fiduciary's job is to act in her or his client's best interest. If there is information about a company's ESG profile that signals inferior or superior performance, a reasonable investor will want to incorporate this information into an assessment of the company's long-term cost of capital, volatility of earnings, and/or the market's demand for exposure to the company.

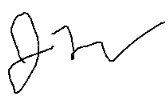
For the same reasons, public and private companies are increasingly identifying and managing ESG risks across their businesses. They cannot recruit and retain talent if they do not treat people fairly; their brands will lose appeal if they are seen as poor stewards of the environment; their social licenses to operate will expire if they do not proactively engage with stakeholders and communities; and their investors will flee and activists will take hold if their boards and governance are not diverse and responsible.

It is simply good business to manage environmental, social, and governance risks. And it is good to invest in those companies which are, and which are committed to improving their ESG performance. It is for this reason that some of the world's most respected long-only investors (BlackRock, Calvert, Morgan Stanley, T. Rowe Price, UBS, Wellington) are offering specific ESG products, and are integrating ESG considerations more broadly across their traditional investment platforms. Here the DOL's language suggesting that "ESG factors can be pecuniary factors, but only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories" is at odds with the data. It presumes that ESG diminishes value and begs the question of just what evidence is necessary to argue that it is not, even though that evidence now exists in abundance. We believe the DOL's position on ESG should be grounded in objectivity, and that wage earners' freedom of choice in asset allocation should not be infringed upon by partisan politics.

Investors worldwide are recognizing that in the Age of ESG[xiii] you cannot deliver for shareholders without delivering for stakeholders. If investment managers' clients demand it, it is the investment manager's business to provide it. If consumers prefer it, it is good business to offer it. If employees need it, it is good business to provide it. If the planet will fail without it, it is bad business — for everyone — to pursue it. ESG is not political.

Business leaders know this. Investors know this. It is time the DOL knows this as well.

Sincerely,



Jessica Wirth Strine is a former institutional investor and current managing partner and CEO at Sustainable Governance Partners.

Robert G. Eccles is an American retired tenured professor of the Harvard Business School. He is now a Visiting Professor of Management Practice at Said Business School at the University of Oxford.

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