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Financial Factors in Selecting Plan Investments

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Submitter Information

Name: Anonymous Anonymous

General Comment

In the wake of increasing corporate social activism, the proposed ERISA clarification on ESG investments is timely. ESG funds and investments are particularly appealing to investment managers that are desperately seeking to maintain high fee structures in the wake of migration to low cost index products and social activists that want to use financial coercion to force corporations to influence social behavior. For the vast majority of investors who belong to neither of these two groups, ESG funds pose a serious threat to both their long term financial health and their liberty.

Recent unrest and activism in the US along with the corresponding responses by many corporations demonstrates the need to separate values based investing from ERISA plans. Many companies engage in social activism and virtue signalling to achieve higher ESG ratings. Every corporate action that attempts to appease one group will aggrieve another. ESG investment managers impart their impression of good ESG values and actions on the scores that deem an investment "ESG Compliant". These managers thereby perpetuate certain societal values which do not represent all employees or even the public at large. By having ESG investments in ERISA plans, you would force employees to finance and perpetuate values that they not only disagree with but which also might be detrimental to their future well being and career success.

The recent wave of "cancel culture" de-platforming and the efforts by large financial institutions to deny banking services to unpopular industries such as coal or oil producers highlights the need to restrict ESG investments from ERISA plans. The behavior of such companies is rewarded by ESG investors but in effect is discriminatory and perpetuates a form of forced compliance and acquiescence with the demands of the woke mob. Dissenting views and alternative viewpoints are banned by ESG authoritarians. Claims that climate change is "settled science" and scientists with dissenting viewpoints should be ignored or ostracized is just one example of the dangers of funneling massive ERISA assets into ESG investments. Large corporations will bow to the woke mob, induced by the carrot of cheap financing and additional capital. The mob will enact their policies without the consent of the people or the legislature by using access to ESG financial assets as a stick to force compliance by large global corporations. We already see this happening en mass with the de-platforming of conservatives or those with dissenting viewpoints in social media. Tech companies such as Twitter, Google, PayPal, Visa, and Mastercard have denied services to individuals and organizations that express views counter to the accepted orthodoxy. Ultimately, large ERISA investments in ESG funds will accelerate this behavior and force everyone to tow the line or be denied the opportunity to participate in the economy.

As noted in the proposed regulation, the definition of ESG is subjective and open to interpretation. This allows managers substantial leeway to define acceptable investments and opens the door to corrupt practices. Active managers have failed to outperform indices in recent years and are frantically searching for new products and strategies to maintain higher fees. While many managers may try to argue that ESG funds outperform broader indices, by definition their investment criteria is environmental / social / governance driven and thereby non-financial in nature. They are seeking to reward firms that comply with their definition of good ESG qualities with preferential financing, while conversely punishing those firms that do not conform to their views on ESG. This form of social engineering does not impute financial benefits to ERISA plan participants and is sub-optimal from a risk/return optimization standpoint.

Many ERISA plans have very limited investment options, and in most cases employees have minimal ability to direct or influence the menu of investments. In no circumstance should employees be limited to ESG only investments nor should ESG investments be default options. All employees should have the right to deny or restrict investment of their retirement assets into any ESG portfolio that may not represent their values or interests.

In summation, ESG investments are clearly nonpecuniary in nature and are inferior to lower cost alternatives UNLESS you place a non-monetary value on the power to force economic participants to comply with certain social, environmental, or governance objectives. Fiduciaries should put the financial interests of participants first, and leave the social activism out of ERISA plans. Any inclusion of ESG investments is contrary to the long term financial interests of participants and only serves to further the social agenda of a small segment of the plan participants.