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General Comment

17 July 2020

To Whom it May Concern:

I write regarding your bulletin posted on June 23, entitled U.S. Department of Labor Proposes New Investment Duties Rule.

I can appreciate your concern with the rapid growth of sustainably invested assetsincreasing 18-fold in the US since 1995and the disparities between different ESG ratings and frameworks. At the same time, I would like to point out that the momentum and scale of sustainable investing is due in part of the fact that ESG factors drive outperformance. Earlier this month, Morningstar research on the long-term performance of 745 European sustainable funds reveals that nearly 60% of strategies outpaced traditional funds over one, three, five, and ten years. The Financial Times also reported that sustainable funds outperformed traditional funds by an average excess return of 1.83% during the coronavirus-driven market decline in March.

I am sympathetic to the importance of retirement security. At $28.7 trillion and 33% of all household financial assets based on March 31, 2020 Investment Company Institute data, the US retirement market is vital to the long-term well-being of American families

At the same time, the Secretary of Labor and more broadly the Department of Labors failure to acknowledge the causal link between long-term social and environmental issues and the retirement security of American workers is surprising. Its even more surprising in the midst of a pandemic and on the eve of a climate crisis.

More than other Cabinet members, Labor Secretary Scalia is certainly aware that 47 million Americans filed jobless claims since the pandemic. Prioritizing worker health and safety and providing employees with sick leave and health insurance all mitigate the spread of coronavirus. Insufficient focus on these social issues amplifies systemic risk: the 27.5 million uninsured and countless underinsured Americans may avoid medical attention because they cannot afford it, and National Institutes of Health (NIH) research shows that allowing sick employees to stay home for one or two days during an influenza epidemic reduced workplace infections by 25% and 39%, respectively.

In addition, current climate models predict a 3.0-4.0C increase in temperatures by 2100, rendering low-lying islands, many coastal regions, and most of the low and mid-latitudes uninhabitable. 2100 is only 80 years awayapproximately the life expectancy of a child born today in North America. Global health crises and climate change pose existential threats not only to American retirement security, but also to the human race.

Department of Labor guidance on ERISA has ebbed and flowed on sustainable investing along partisan lines since 1994. Most recently, the Department of Labor Field Assistance Bulletin 2018-1 constrained ERISA fiduciaries from assuming greater risk or sacrificing returns to pursue social or environmental goals.

Despite this limiting 2018 guidance, sustainable funds attracted inflows of $20.6 billion in 2019almost quadruple the inflows in 2018, which held the previous record. And even the investment management industry watchdog the Securities and Exchange Commission is contemplating ESG disclosure requirements based on the recommendation of its Investor-as-Owner Subcommittee of its Investor Advisory Committee. Sustainable investing is here to stay, and perhaps the SEC can help the Department of Labor to better understand its importance.

Retirement plans have indeed played key roles in addressing systemic risks, such as climate change, the coronavirus pandemic, and racial justice.

As the Department of Labor works toward finalizing and implementing this new proposed rule, I would urge you and your colleagues to consult with investors, academics, and civil society experts to deepen your understanding that incorporating ESG factors into investment decisions is indeed critical to safeguard retiree interests on a broad scale over the long-term.

The opinions expressed in this letter are my own and do not necessarily reflect the official policy or position of any other agency, organization, employer or company.

Please do not hesitate to contact me with questions.

Bhakti Mirchandani