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July 17, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW Washington, DC 20210

Re: Comment on Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

I am writing regarding the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" (Proposed Regulation). The Employee Benefits Security Administration (EBSA) announced its proposed regulation on June 23, 2020. I would like to formally request that the comment period be extended from 30 to 90 days.

In my legal career, I have represented many retirement plan fiduciaries. I am concerned that this Proposed Regulation will not only be confusing to plan investment fiduciaries, but also detrimental financially to retirement plan participants and beneficiaries.

As you may be aware, Morningstar has recently come out with research showing that US ESG funds "comfortably outperformed their peers in 2019." (Please see attachment #2.) In addition, the report shows that "[o]ver the past five years, sustainable funds have done well in both up and down markets relative to their conventional peers."

Speaking with investment experts, there are a number of reasons for this outperformance, and many experts believe considering ESG factors will improve fund financial performance on a long-term basis. I have attached Black Rock CEO, Larry Fink's, letter to CEOs that explicitly states, "climate risk is investment risk." As you are aware, Black Rock is the world's largest asset manager, with over $7 trillion in assets under management as of end-Q4 2019.

I completely understand and agree with the ERISA requirements that fiduciaries act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to their participants and beneficiaries. Again, I understand and agree that to fulfill such obligations, investment fiduciaries must pursue the highest possible economic return for fund participants and beneficiaries. However, requiring fiduciaries to take all material economic risk factors into account in making investment decisions would be impossible if such fiduciaries are also concerned about the DOL questioning and auditing conclusions that an ESG fund might be the most economically beneficial option for a retirement fund. The chilling effect on fiduciaries would be detrimental to pursuit of the highest returns. To definitively take away ESGs as an investment option, again, will hamstring fiduciaries into ignoring fund options that may have the best returns.

By going forward with these new regulations, the DOL is stepping into the role of investment fiduciary. If the DOL was to set forth specific options for all retirement funds, choosing what funds are acceptable, this would be straightforward (though likely neither wise, nor practical). By regulating specific types of funds that are eligible or ineligible for plan investments, and by threatening a close watch on decisions to invest in ESG funds, investment fiduciaries would have to choose between doing what is best for the plan and what is least likely to get them in trouble with the regulatory bodies.

As stated in the Proposed Regulation, "[t]he fundamental principle is that an ERISA fiduciary's evaluation of plan investments must be focused solely on economic considerations that have a material effect on the risk and return of an investment based on appropriate investment horizons, consistent with the plan's funding policy and investment policy objectives." This principle, left alone, will suffice as a guiding principle of investment fiduciaries. It is clear, concise, and follows the language and intent of ERISA. The Proposed Regulation does not clarify this point but puts significant road blocks in its way.

Although I am interested in submitting a more thorough comment on the Proposed Regulation, the current 30-day comment period is insufficient to do so. As I understand from other colleagues as well, pandemic-related issues are preventing many from taking the time needed to put together a fully-researched and supported comment. Please consider providing a 60-day extension for me and other interested parties to submit comments.

Thank you for taking this request into consideration. Please feel free to contact me at lefkowitz100@gmail.com if you have any questions.

Yours very truly,

Ivan M. Lefkowitz, Esq.

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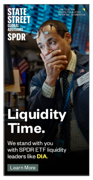

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SUSTAINABILITY MATTERS

U.S. ESG Funds Outperformed Conventional Funds in 2019

A look back at the year in sustainability.

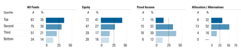
Jon Hale, Ph.D., CFA
Apr 16, 2020

Sustainable funds outperformed their conventional fund peers in 2019, helped in part by underweighting energy company investments but also by continuing a general trend from recent years of better performance than non-environmental, social, and governance funds.

Overall Performance by Morningstar Category Rank

To evaluate the investment performance of sustainable funds, we examined the rankings of their returns relative to their Morningstar Categories. The following chart groups those return ranks by quartile.

Sustainable Funds 2019 Outperformance Relative to Category



	All Funds		Equity		Fixed Income		Allocation / Alternatives	
Quartile	#	%	#	%	#	%	#	%
Top	87	35	72	41	7	15	8	32
Second	75	30	47	27	15	33	13	52
Third	51	21	29	17	18	39	4	16
Bottom	34	14	28	16	6	13	0	—

Source: Morningstar Direct. Data as of 12/31/2019.

Sustainable funds comfortably outperformed their peers in 2019. The returns of 35% of sustainable funds placed in the top quartile of their respective categories, and nearly two thirds finished in the top two quartiles. By contrast, the returns of only 14% of sustainable funds placed in the bottom quartile, and only about one third placed in the bottom half.

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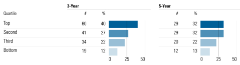
Morningstar's list of high-quality stocks at a good price

Sustainable equity funds did even better, with the returns of 41% ranking in the top quartile of their respective categories, and 68% in the top two quartiles. The returns of only 16% placed in the bottom quartile and 33% in the bottom half.

The relative returns of sustainable fixed-income funds in 2019 were more or less average for their categories and clustered into the middle two quartiles, while those of sustainable allocation and alternative funds skewed more positively. Overall, rather than their returns being distributed evenly within their respective categories, the returns of sustainable funds were skewed toward the top half, with the returns of two thirds landing in the top half and one third in the bottom half.

Focusing on the trailing annualized three-year returns through the end of 2019, we see a similar pattern. The returns of 40% of sustainable funds placed in the top quartile of their categories, and two thirds finished in the top half. Much of that outperformance was driven by sustainable equity funds. We see a similar story over the trailing five years, even though only 90 sustainable funds have five-year records, compared with 154 sustainable funds that have three-year records.

Sustainable Funds Three- and Five-Year Performance Relative to Category

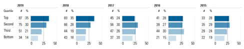


	3-Year		5-Year	
Quartile	#	%	#	%
Top	60	40	29	32
Second	41	27	29	32
Third	34	22	20	22
Bottom	19	12	12	13

Source: Morningstar Direct. Data as of 12/31/2019.

Over the past five years, sustainable funds have done well in both up and down markets relative to their conventional peers. When markets were flat (2015) or down (2018), the returns of 57% and 63% of sustainable funds placed in the top half of their categories. When markets were up in 2016, 2017, and 2019, the returns of 55%, 54%, and 65% of sustainable funds placed in the top half of their categories.

Sustainable Funds Annual Performance Relative to Category, 2015-2019



	2019		2018		2017		2016		2015	
Quartile	#	%	#	%	#	%	#	%	#	%
Top	87	35	83	35	45	24	41	28	33	28
Second	75	30	66	28	56	30	39	27	35	29
Third	51	21	44	19	47	26	44	30	29	24
Bottom	34	14	43	18	37	20	21	15	22	19

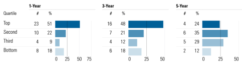
Source: Morningstar Direct. Data as of 12/31/2019.

Performance of Sustainable Large-Cap Equity Funds

Most investors have significant exposure to the world's largest companies, and the largest groups of sustainable funds are those that invest in U.S. and global large-cap equity. These funds outperformed in 2019 and for the trailing three and five years.

U.S. Large Cap: Investors have 56 sustainable-fund options in the large-blend category, and as a group, sustainable large-blend funds turned in an impressive 2019. Of the 45 funds with full-year records, the returns of 23 ranked in the category's top quartile, and the returns of 73% ranked in the top half. Moreover, all of the top-quartile sustainable funds (23 of 45) beat the S&P 500 for the year. That is a 51% "beat rate," twice that of large-blend funds overall.

Sustainable Large-Blend Funds Outperform Category



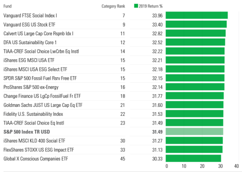
	1-Year		3-Year		5-Year	
Quartile	#	%	#	%	#	%
Top	23	51	16	48	4	24
Second	10	22	7	21	6	35
Third	4	9	4	12	5	29
Bottom	8	18	6	18	2	12

Source: Morningstar Direct. Data as of 12/31/2019.

Over the longer periods, nearly half of the 33 sustainable large-blend funds with sufficient records place in the category's top quartile for the trailing three years. Although the group diminishes to only 17 funds with five-year records, more than half place in the category's top half for the trailing five years.

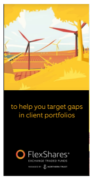
Among sustainable index funds in the large-blend category, 13 of 16 matched or outperformed the S&P 500 in 2019.

Sustainable Large-Blend Index Funds Outperform S&P 500



Fund	Category Rank	🟩 2019 Return %
Vanguard FTSE Social Index I	7	33.96
Vanguard ESG US Stock ETF	9	33.40
Calvert US Large Cap Core Rspnb Idx I	11	32.82
DFA US Sustainability Core 1	12	32.52
TIAA-CREF Social Choice LwCrbn Eq Instl	14	32.22
iShares ESG MSCI USA ETF	15	32.21
iShares MSCI USA ESG Select ETF	15	32.18
SPDR S&P 500 Fossil Fuel Rsrv Free ETF	15	32.15
ProShares S&P 500 ex-Energy	16	32.14
Change Finance US LgCp FossilFuel Fr ETF	18	31.77
Goldman Sachs JUST US Large Cap Eq ETF	21	31.60
Fidelity U.S. Sustainability Index	22	31.53
TIAA-CREF Social Choice Eq Instl	23	31.49
S&P 500 Index TR USD		**31.49**
iShares MSCI KLD 400 Social ETF	30	31.27
FlexShares STOXX US ESG Impact ETF	33	31.13
Global X Conscious Companies ETF	45	30.33

Source: Morningstar Direct, 12/31/2019. Note: Oldest share classes of OE funds shown.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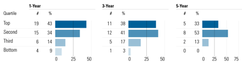
Global and Non-U.S. Developed-Markets Large Cap: There are 48 sustainable funds that focus on developed-markets large-cap equities, of which there are 30 diversified sustainable global funds focused on large-cap equities in developed markets, including the United States. These funds are in the world large-stock category. The remaining 18 funds focus on core non-U.S. large caps and reside in the foreign large-blend category.

Of the 44 sustainable funds with full-year records, the returns of 19 ranked in the top quartile of their categories with another 15 in the second quartile. That is an impressive 43% top-quartile rate and a 77% top-half rate.

By contrast, the returns of only four funds ranked in the bottom quartile. While the ranks of funds with longer-term records thin considerably, the three- and five-year returns of the older sustainable funds rank even better relative to their categories.

Sustainable Global and Core International Equity Funds Outperform Category

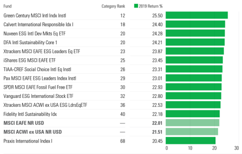


	1-Year		3-Year		5-Year	
Quartile	#	%	#	%	#	%
Top	19	43	11	38	5	33
Second	15	34	12	41	8	53
Third	6	14	5	17	2	13
Bottom	4	9	1	3	0	0

Source: Morningstar Direct. Data as of 12/31/2019.

Among sustainable index funds that focus on non-U.S. large caps, 12 out of 13 beat the relevant conventional index, either the MSCI EAFE or MSCI ACWI ex USA.

Sustainable International-Equity Index Funds' Performance Versus Relevant MSCI Index



Fund	Category Rank	🟩 2019 Return %
Green Century MSCI Intl Indx Instl	12	25.50
Calvert International Responsible Idx I	18	24.40
Nuveen ESG Intl Dev Mkts Eq ETF	20	24.28
DFA Intl Sustainability Core 1	20	24.21
Xtrackers MSCI EAFE ESG Leaders Eq ETF	23	23.87
iShares ESG MSCI EAFE ETF	25	23.45
TIAA-CREF Social Choice Intl Eq Instl	26	23.31
Pax MSCI EAFE ESG Leaders Index Instl	29	23.01
SPDR MSCI EAFE Fossil Fuel Free ETF	30	22.93
Vanguard ESG International Stock ETF	32	22.80
Xtrackers MSCI ACWI ex USA ESG LdrsEqETF	36	22.53
Fidelity Intl Sustainability Idx	40	22.18
MSCI EAFE NR USD	—	**22.01**
MSCI ACWI ex USA NR USD	—	**21.51**
Praxis International Index I	68	20.45

Source: Morningstar Direct, 12/31/2019. Note: Oldest share classes of open-end funds shown.

A partial explanation for the outperformance of sustainable equity funds--both U.S. and global--may lie in their sector weightings. They have been, on average, underweight energy during a period of significant underperformance by that sector. Diversified sustainable U.S. equity funds have about a 1.9% average energy weighting compared with 3.9% for the S&P 500. That difference alone, however, does not explain the relative outperformance of sustainable funds across categories.

Similarly, many have the impression that sustainable funds are overweight technology, which could be responsible for their relative outperformance. But diversified sustainable U.S. equity funds have an average 23.9% weighting to the information technology sector, just about the same as the S&P 500's 24.2% weighting.

The performance of sustainable funds relative to the fund universe is consistent with evidence from academic research, which suggests no systematic performance penalty associated with sustainable investing and possible avenues for outperformance through reduced risk or added alpha.

Because of the variety of approaches that a fund manager can take to sustainability and to other facets of the investment process, including passive funds optimized to minimize tracking error to conventional market-weighted indexes and differences in the skill of active managers, consistent year-by-year outperformance by sustainable funds relative to the fund universe seems unlikely, yet it has happened in each of the past five calendar years. M

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