July 24, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration ("EBSA")
An agency within the U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Financial Factors in Selecting Plan Investments Amending "Investment duties" Regulation at 29 CFR 2550.404a-1 (the "Proposed Rule")

Dear Director Canary,

Thank you for the opportunity to provide feedback on the Proposed Rule, which seeks to clarify guidance to ERISA plan fiduciaries on their duties and requirements in evaluating and selecting investments based on environmental, social and governance ("ESG") factors.

Legal & General Investment Management America, Inc. ("LGIMA") is a U.S. registered investment adviser with $219 billion in assets under management ("AUM").[1] We are the U.S.-based affiliate of Legal & General Investment Management Limited, a subsidiary of Legal & General Group, a multinational financial services company that is the 4th largest institutional global asset manager, with over $1.5 trillion in AUM. In the U.S., approximately 76% of our assets are from pension plan clients; globally that figure is 74%.

We care deeply about the pension plan industry and do not take lightly our responsibility in helping plan sponsors keep their pension promises to participants. In addition, as a highly diversified and long-term investor, we have the benefit of being able to take a global and long-term view of what financial and operational metrics must be considered within investment analysis and portfolio building to ensure that investment portfolios meet the long-term needs of beneficiaries. We write to you today, and hope you hear our feedback, in that spirit – that of commitment to the pension plan industry and with the perspective and experience of long-term, universal owner.[2]

It is our strong view that the EBSA should make ESG considerations a bedrock of fiduciary duty rather than discourage the practice. Our belief is that the proposed guidance reflects a misunderstanding of how ESG analysis is used in the market and fails to recognize that ESG integration is not a new or innovative approach to investing, but a tried-and-true approach to ensuring long-term portfolio success.

The primary intent of ESG analysis is to improve the risk-adjusted returns for savers over the long-term. Long-term investors have a fundamental interest in ensuring that shareholder and bondholder value is not eroded by a company's failure to manage its own governance and the risks associated with its natural and social environment (i.e., its ESG factors). There is an extensive body of research that establishes the link between ESG analysis with company performance and there is observable evidence that portfolios that implement ESG analysis experience strong relative investment performance over specific time periods.[3] Therefore, by integrating ESG considerations into their investment process, investors seek protection from future risks and the potential of better long-term financial outcomes. Not taking ESG metrics into consideration when building portfolios to meet the long-term objectives of pension plans risks the integrity of the pension plan industry and Americans' retirement savings. This is not a novel idea but is rather the same conclusion reached by many foreign regulators and long-term institutional investors.[4]

Legal & General Investment Management America, Inc.
71 South Wacker Drive, Suite 800
Chicago, IL 60606

LGIMA acts on this fundamental belief across its investment strategies in a range of ways. For example, in our active strategies, as part of a comprehensive investment analysis process that considers financial and non-financial metrics that we believe impact business performance, our analysts increasingly look at expanded datasets which help them better understand fundamental business risks and assess future value. For index strategies, we select and establish methodologies that may include desirable corporate ESG characteristics that would be beneficial for long-term performance. For both active strategies and index strategies, the ESG analysis is simply a part of the investment process – it is not a replacement of other financial metrics but another lens through which we look at companies' risk and return profiles. In addition, overarching our entire investment program is an active investment stewardship team which engages with board directors on a host of issues, including operational metrics, such as, paying suppliers, employee health and safety, regulatory observance, investment in employee training. Some of these data points are commonly seen as ESG factors and our job as investment managers is to analyse these same operational metrics when making long-term investment decisions. We also design custom proxy voting policies to further promote ESG practices and transparency when we believe it will drive sustainable value for our clients.

We recognize that EBSA is not prohibiting the evaluation or selection of investments based on ESG metrics. However, that is the practical effect of the Proposed Rule given the high burden of proof required for the use of ESG considerations and the fact that the Proposed Rule, in its totality, presents a view of ESG metrics and investments as inherently suspect. Given the likely effect of the Proposed Rule if adopted, it is imperative that ESBA take sufficient time to consider the importance of integrating ESG metrics in every-day investment decision-making, and the role that ESG strategies and products have when building portfolios to meet the long-term objectives of pension plans. We firmly believe that ESG considerations are integral to the process a prudent fiduciary should follow when investing for pension plans and should, therefore, be a bedrock of pension plan fiduciary duty. We respectfully request that EBSA reconsider the Proposed Rule in its totality.[5]

Thank you for considering our views and should you wish to discuss this letter further then please do not hesitate to contact us.

Yours sincerely,

Aaron Meder
CEO LGIMA

1 All data in this paragraph is presented as of December 31, 2019 for consistency because our parent company discloses AUM only on a semi-annual basis and June 30, 2020 data is not yet available.

3 "Universal owners" are large institutional investors with highly-diversified and long-term portfolios that are representative of global capital markets and, therefore, that have a financial interest in the wellbeing of the economy as a whole. See https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf.

4 See, for example, CFA-ESG Integration Primer, 2020 CFA Institute; ESG From A to Z: A Global Primer, Bank of America Merrill Lynch, November 8, 2019; and From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance, Oxford University and Arabesque Partners, March 5, 2015.

5 See, for example, GAO study 20-530 (July 2020): https://www.gao.gov/assets/710/707950.pdf.

6 We note and support the comment letters submitted on the Proposed Rule by the Securities Industry Financial Markets Association and the Investment Advisers Association, both of which count us as members. Those letters detail concerns with specific parts of the Proposed Rule. Although we share similar concerns, we opted to not detail them here, choosing instead to request that EBSA reconsider the rule in its totality.

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