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Office of Regulations and Interpretations US Department of Labor
Room N-5655
200 Constitution Avenue NW Washington, DC 20210
RE: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

To whom it may concern:

I write to provide comments in response to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal").

I write as a CFA charterholder (retired) who throughout my investment career successfully utilized tools of social investing and ESG to lower portfolio risk and enhance risk adjected returns.

I began my investment career in 1985, when social investing was a new and still unproven investment discipline. I helped to develop the industry's earliest social screens, tools that today seem absolutely primitive, in an industry that has blossomed to manage an estimated 10 percent of the marketable securities.

The DOL fails to consider the widespread adoption of ESG tools within the investment industry, including by BlackRock, CALPERS, NYCERS and NYSTERS. These large and successful asset managers certainly do not consider there to be a financial loss associated with use of ESG techniques to lower risk. The DOL's assertion that use of ESG portfolios underperform is not supported by the vast majority of academic studies (see ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies; by Freude/Busch/Bassan; Journal of Sustainable Finance and Investment; 2015")

Over my career I participated in the filing of more than 100 shareholder proposals on behalf of clients, including those in ERISA portfolios. The proposals covered a range of environmental, social and governance issues including excessive executive compensation, predatory lending, and board independence. In each of these instances the Securities and Exchange Commission rejected challenges that these proposals were matters of ordinary business, ruling they were within the rightful purview of shareholder consideration. The SEC recognized that these proposals highlighted the business risk of policies affecting employees, the environment, customers and the broader society. The Department of Labor should do the same.

In 2001, I led the filing of a shareholder proposal with Bristol-Myers Squibb, challenging the company's compensation decision to give executive officers large raises just after the company had engaged in a large layoff. The proposal asked the company to adopt a policy of freezing executive pay during periods of significant downsizing. After the SEC disallowed the Company's request for a no-action letter, negotiations ensued, and an agreement was reached creating Bristol Myers Squibb Team Share option program. Under Team Share workers throughout the world shared a pool of stock options equivalent in size to the pool shared by corporate managers. The Company observed an almost immediate increase in productivity and a sustained increased in share price over many years. Bristol Myers leaders openly spoke about their pride in the successful program. If the proposed rule had been in place, the actions that led to the creation of Team Share might have been rendered illegal and the subsequent value created by Team Share would not have materialized.

In 1999, I participated in the filing of a board independence resolution at American International Group, challenging the fact that ten of 18 corporate directors were executives of the company, reporting to CEO, Maurice Greenberg. The resolution was soundly defeated in a shareholder vote, and as a result many of the proponent's clients sold their shares. Less than a decade later, long-standing governance failures led to an inability to control risk leading to AIG's collapse in one of the most spectacular business failures of the 2008 Banking Crisis. If this proposal had been in place, using an ESG lens to identify governance risk and to divest of the security, could be held as an imprudent, prohibited activity.

ESG has become an important tool for measuring risks, particularly systemic risks that exist across the economy. It is widely embraced by financial institutions large and small managing ERISA assets as well as individual investors with self-directed retirement accounts. The cost of implementing this proposal would be significant, both in terms of transaction costs as well as lost investment potential that would result from forcing investors to ignore risks previously identified using ESG analysis.

For these reasons, the DOL should withdraw this proposed new rule.

Sincerely,

Scott Klinger