Mr. Jason A. DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Rule Number: RIN 1210-AB95

Dear Mr. DeWitt:

Thank you for addressing the need for clarity around the Department of Labor's position pertaining to Environmental, Social, and Governance (ESG) investing. Enclosed is an op-ed I recently authored for BizPac Review in support of the proposed rule change.

I appreciate your consideration with regards to this matter.

Sincerely,

Dr. Michael Busler, Ph.D.: *public policy analyst, economics expert and a professor of finance at Stockton University in New Jersey*

"Green" Investing is Hurting Retirees' Bottom Line. This New Rule Would Fix That.

Over the last decade a new investing trend has started to take hold at hedge funds and investment management corporations across the country. Environmental, Social and Governance or ESG themed investing, which prioritizes amorphous goals of sustainability and ethical management above returns has quickly gone from a fledgling investment vehicle to a main-stream investment strategy.

As a Professor of Finance, I am concerned about the long-term viability of the $10.7 trillion invested in private pension funds should this trend continue. As more and more of my students every year demonstrate growing interest in ESG investing, I've become increasingly concerned that the next generation of retirement plan fiduciaries will lose the "eye single" focus of maximizing returns for their clients. This principle must be strengthened now to quell the recent movement to prioritize ESG over maximizing returns in investment strategies.

This is why the Department of Labor's (DOL) recently proposed rule: Financial Factors in Selecting Plan Investments, is necessary. The rule takes a strong and clear stand, stating: "It is unlawful for a fiduciary to sacrifice return or accept additional risk to promote a public policy, political, or any other nonpecuniary goal." It also reaffirms the need for fiduciaries to "always put first the economic interests of the plan in providing retirement benefits." Public comments on the rule are open until July 30th and if you share similar concerns regarding ESG investing and fiduciary duties, you can submit your comments here.

As ESG principles are pushed more and more by progressive officials to promote social or environmental causes, modernizing the Employee Retirement Income Security Act (ERISA) to ensure that a fund's investment strategies remain focused on maximized returns will empower fund managers to uphold this responsibility to investors. It will also help minimize the hidden costs of these increasingly popular ESG funds.

ESG funds have historically underperformed market benchmarks. While it bears mentioning that some ESG funds have outperformed the wider market over the past year, especially in the wake of the market upheaval caused by COVID-19, data suggests that it is much more difficult for ESG funds to outperform broad market indices over the long term.

Research from Wayne Winegarden of the Pacific Research Institute found that on average ESG investing performed 43.9% worse over a 10-year period compared to a standard S&P 500 index fund.[1] He further found that the expense ratios of ESG funds were on-average 7.6 times higher than a standard index fund. In fact, over a 25-year period and holding performance constant, the difference in fees alone would cause an ESG portfolio to underperform by as much as 16.6%. Clearly, reform and a refocus on healthy returns needs to be a priority.

On the corporate finance side, studies have found that ESG programs negatively affected a firm's financial performance or at a minimum served as a distraction. Research from the Manhattan Institute has found that increased shareholder activism from public pension funds did not tend to create shareholder value and in the case of actions by the New York State Common Retirement fund "has been negatively associated with subsequent share-price movement relative to the broader stock market."[2]

Fortunately, a field bulletin from the Department of Labor in 2018 addressed such actions, prohibiting ERISA fiduciaries from incurring expenses to actively sponsor proxy fights on ESG issues. Unfortunately, the formal DOL rule as is currently proposed provides no guidance on the matter. Plan holders and investors have made it known that they do not support ESG shareholder activism and given the already high expense ratios of many ESG funds it is important to find ways to reduce costs to beneficiaries.[3] An exception could be made if it can be proven such ESG-related proxy activism will help the bottom line of plan holders (say in the case of company facing large fines for disregarding environmental or labor standards) but otherwise the final rule should include some language prohibiting such activities.

While they are not without their problems, ESG investment funds will continue to exist within the world of finance and have every right to do so. Individuals saving for retirement or looking to build wealth in the stock market may choose investments based on any factors they see fit, such as societal goals, but should do so at their own risk. Pension fiduciaries do not have the

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[1] https://www.pacificresearch.org/wp-content/uploads/2019/05/ESG_Funds_F_web.pdf
[2] https://corpgov.law.harvard.edu/2015/07/01/public-pension-funds-shareholder-proposal-activism/
[3] https://spectrem.com/Content_Whitepaper/white-paper-reclaiming-main-street.aspx

right to make such political and public policy decisions on behalf of their plan holders and should again refocus on maximizing returns.

The fact of the matter is that judged against past performance, expense ratios and the potential to affect a firm's financial performance, ESG funds have not yet demonstrated that they are able to match the returns that can be generated from investing in broad based index funds and therefore should not be backing America's private pensions. The new rule from the Department of Labor makes good financial sense and will help guarantee a secure future for American retirees.

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