ESG Global Advisors

July 28, 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: Financial Factors in Selecting Plan Investments
Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

On behalf of **ESG Global Advisors**, we thank you for the opportunity to submit comments on the notice of proposed rulemaking from the Department of Labour ("DOL") entitled "Financial Factors in Selecting Plan Investments" (referred to below as the "Proposal").

ESG Global Advisors is an advisory firm that bridges the gap between companies and investors on environmental, social and governance (ESG) factors. A multi-disciplinary team with significant investor and corporate experience, we offer expert advice to companies and investors on material ESG factors that drive long-term value, including climate change. Because we act for companies and institutional investors, we believe that we can offer a unique perspective on the Proposal.

Overall, we believe that the Proposal misconstrues the nature of ESG integration and would lead to confusion and costs for ERISA fiduciaries. We therefore urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

While the Proposal aims to provide clarity for ERISA fiduciaries, we believe it creates additional confusion. This appears to be, in part, because of a failure to distinguish ESG integration and economically targeted investing (ETI). ESG integration is focused on integrating ESG factors as part of prudent risk management and the better identification of investment opportunities. ETIs are investments that aim to provide collateral, non-financial benefits in addition to financial returns. For example, ETIs often advertise job creation or climate impact as goals of the investment. In contrast, integrating ESG factors is simply an additional tool to deliver better risk-adjusted returns, without regard for any 'collateral' benefits.

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ESG Integration

The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors." It goes on to state that, "ESG factors and other similar factors may be economic considerations." These two statements are not controversial. A policy by the DOL that simply clarified that fiduciaries must integrate material factors into their investment actions and that ESG factors may be material would be appropriate. It would reflect the growing body of research showing that ESG factors are material investment considerations that can impact the financial value of an investment. This is the reason why most of the world's largest, most sophisticated institutional investors have integrated ESG factors into their investment process. We are concerned, however, that the remaining components of the Proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

The "all else being equal test"

ESG Global is also concerned that the Proposal creates new burdens for fiduciaries using the "all else being equal test" that would lead to unnecessary costs for plan participants. It also creates confusion about what activities the DOL is attempting to regulate.

Under the "all else being equal test," which has been in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options that would meet the financial needs of the fund. It proposes the retention of the "all things being equal" test but adds onerous recordkeeping requirements for fiduciaries to document their analysis that multiple options were equal. These additional requirements bring into question whether fiduciaries would, in reality, ever have the opportunity to select between multiple investment options.

More significantly, the "all things being equal test" was originally developed to guide the consideration of ETIs. It is unclear whether the Proposal is purporting to extend this test to ESG integrated funds, but in fact, it would not make sense to do so. Since an ESG integrated fund is not purporting to deliver any collateral benefits, the 'all things being equal test' should not apply when fiduciaries are considering ESG integrated funds.

Defined contribution plan investment options

The Proposal clarifies that ERISA fiduciaries may select "ESG-themed funds" as an investment option for a participant-directed plan but that an "ESG-themed fund" cannot be selected as the default investment option. Once again, this aspect of the Proposal appears to result from confusion between ESG integration and ETIs. The Department's stated rationale for prohibiting an "ESG-themed fund" from being selected as the default investment option is that it is not appropriate to select "investment funds whose objectives include non-pecuniary goals." As noted above, ESG integrated funds do not include non-pecuniary goals so it appears that once again, the DOL is confusing ESG integrated funds with ETIs. We note once again that earlier in the Proposal, the DOL stated that ESG factors are likely to have a material economic impact. These inconsistencies within the Proposal will likely create additional confusion for ERISA fiduciaries.

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Corporate ESG-related Disclosure
Since ESG Global Advisors acts for corporations as well, we know first-hand that many U.S. and global companies, large and small, are devoting significant resources to identify how ESG factors might impact their strategy and help them uncover financial value. Companies are also very focused on how to better disclose their approach to ESG to investors. Companies are moving from the broad sustainability disclosures of the past that were typically not financially relevant to very focused ESG disclosures that connect ESG issues to the company's strategy, including business risks and opportunities. Many of those companies are focused on aligning their disclosures with the frameworks provided by the Sustainable Accounting Standards Board ("SASB") and the Task Force on Climate-Related Financial Disclosures (TCFD), both of which are focused on identifying and disclosing financially material ESG factors.

Making it more difficult for plan fiduciaries to integrate these disclosures into their investment process would do a significant disservice to companies who have invested significant resources to create them. Moreover, since companies are increasingly connecting ESG factors to their value creation narrative, if investors are prevented from thoughtfully considering and integrating these factors into their investment process and company valuation methodologies, it could impact a company's cost of capital and access to capital.

Conclusion

We respectfully suggest that the Proposal has misunderstood and/or mischaracterized the nature and purpose of ESG integration and as a result, fails to distinguish between ESG integration and ETIs. This is likely to lead to confusion for ERISA fiduciaries and additional costs to plan savers. If the Proposal is finalized in its current form, we are concerned that plan fiduciaries will struggle to fulfil their obligation to integrate all financially material ESG risk factors into their investment process (which most institutional investors recognize as being required by their fiduciary duty) while also trying to respond to the language in the Proposal that appears aimed at preventing them from taking account those same risks.

Moreover, we believe the Proposal would be contrary to the interests of corporations, many of which have focused considerable resources on understanding how ESG factors can be used to better identify business risks and opportunities and deliver superior, long-term shareholder value. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with the Proposal.

Best regards,

ESG Global Advisors

Judy Cotte, LL. M.
CEO