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Submitter Information

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General Comment

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:

I believe that the Proposed Rule fundamentally misconstrues the importance and role of ESG integration in reducing risk and increasing returns. Further, the Proposed Rule is likely to lead to confusion and costs for retirement plan fiduciaries. I, therefore, urge you to retain existing guidance and not move forward with a final rule.

Despite the Proposed Rule's stated goal of providing clarity for ERISA fiduciaries, it instead creates confusion due in part to a failure to distinguish ESG integration and Economically Targeted Investing (ETI). ESG integration is the consideration of risk factors as part of prudent fiduciary management and a strategy that takes these factors into account in investment actions. ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits. For example, ETIs often advertise job creation or climate impact as goals of the investment. [1]

ESG Integration

The Proposed Rule states that ERISA fiduciaries have fulfilled their obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors" and that "ESG factors and other similar factors may be economic considerations." In fact, there is now an extensive body of research that makes clear that ESG factors are material investment considerations. [2] As such there exists a sound basis for integrating ESG factors into investment actions.

A policy by the DOL that simply clarifies that fiduciaries must integrate material factors into their investment actions, and that ESG factors may be material, would be appropriate. I am concerned, however, that the remaining components of the proposal create confusion and are likely to cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

Conclusion

The Proposal mischaracterizes ESG integration and fails to distinguish between ESG integration and economically targeted investing. This is likely to lead to confusion for ERISA fiduciaries and costs to plan savers. If the Proposal is finalized in its current form, I am concerned that fiduciaries will struggle to fulfill their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears to be aimed at preventing fiduciaries from taking account of these same risks.

Institutional investors have a duty to act in the best, long-term interests of their beneficiaries. In this fiduciary role, I believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposed Rule goes into effect, it will undermine fiduciaries' ability to act in the long-term best interest of their beneficiaries. As such, I urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

Alex Morozov

[1] For further discussion of ESG integration as an investment strategy, see Gary, S. Best Interests in the Long-Term: Fiduciary Duties and ESG Integration, 90 U. Colo. L. Rev. 733, 745 (2019), attached hereto as Exhibit A and incorporated into this comment letter in full.

[2] See, Exibits A-E attached.

Attachments

Attachment1_ExhibitsA-E

Attachment2_All_Else_Being_Equal_Test_and_Defaultness