ALIGN CAPITAL

Wendell Minnick
Executive Chairman

E: wenminn21@gmail.com
P: (561) 213-1411

July 29, 2020

The Hon. Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Rule: RIN 1210-AB95; Federal Register Number 2020-13705

Dear Secretary Scalia:

This Department of Labor proposed rule[1] provides the needed reforms necessary to ensure that the retirement savings of pension plan participants are protected. A stain on the current pension investing landscape is the growing tendency of fund managers to consider in their plan selections non-pecuniary cultural and societal issues. This is embodied most by the trend of environmental, social, and governance ("ESG") investing. I am very pleased to see the Department's Employee Benefits Security Administration (EBSA) address this issue. It is worrisome that pension plan fiduciaries, who are entrusted to maximize pensioners' financial interests, time and again wade into the murky ESG ecosystem during investment plan selection. The EBSA's efforts to hold pension managers more accountable in this regard should be lauded.

For the better part of the past 40 years, I have been active in raising capital for both private and public companies. I am also the former founder and manager of four companies that were acquired by public companies and venture capital firms. Through my extensive network of qualified investors, moreover, I have been fortunate to unite smart and dedicated individuals with talented and promising companies. This experience has given me first-hand knowledge of how pension funds evaluate and make their investment decisions.

Regarding these decisions, I am delighted to see that this rule specifically addresses the qualified default investment alternative (QDIA) structured into many 401(k) accounts. The proposed rule states: "The Department does not believe that investment funds whose objectives include non-pecuniary goals—even if selected by fiduciaries only on the basis of objective risk-return criteria consistent with paragraph (c)(3)—should be the default investment option in an ERISA plan. ERISA

[1] Federal Register, Proposed Rule, Employee Benefits Security Administration, Financial Factors in Selecting Plan Investments, June 30, 2020, accessed: https://www.federalregister.gov/documents/2020/06/30/2020-13705/financial-factors-in-selecting-plan-investments.

is a statute whose overriding concern relevant here has always been providing a secure retirement for American workers and retirees…"[2] This is a strong protection that will benefit every retirement account holder, regardless if they are active or passive participants in their account.

I was also encouraged by recent remarks made by SEC Commissioner Elad Roisman at the Society for Corporate Governance National Conference earlier this month. Mr. Roisman stated, "One risk I worry about here is the extent to which retail investors understand that some of these funds may be *prioritizing* environmental or social goals above the fund's economic returns… But, some of these funds invest and vote proxies primarily to achieve some environmental or social good, possibly *at the expense of* investment returns."[3] I strongly agree with Commissioner Roisman's assessment, as it not only underpins the pecuniary vs. non-pecuniary issue central to this ruling, but also reinforces the need to protect the QDIA and retail plan participant I referenced earlier.

In conclusion, it is worth highlighting in the context of this rule a survey conducted by the Spectrem Group,[4] a wealth management and retirement market research and consulting firm. With 5,000 qualifying investors participating, the survey used a scale to score investment priorities from a range of 1 (meaning a "pure ESG" focus) to 100 (meaning "pure wealth creation"). The results are telling, and they certainly support the Department's regulatory actions outlined in this rule:

- On the 1 – 100 scale, the median score was 76;
- 17% percent of respondents scored 100, while only 0.2% scored 1; and
- 91% of all respondents preferred pure wealth creation.

Increased scrutiny from the Department would make clear that pension plan fiduciaries must prioritize their participants' economic well-being and not pursue non-financial agendas.

I appreciate your consideration of my comments.

Sincerely yours,

Wendell Minnick
Executive Chairman
Align Capital Holdings

---

[2] Id.
[3] Securities and Exchange Commission, "Keynote Speech at the Society for Corporate Governance National Conference", July 7, 2020, accessed: https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020#_ftnref16.
[4] Spectrem Group, "Spectrem Group Study Reveals Wide Retail Investor Support for Proposed SEC Amendments", Press statement, January 10, 2020, accessed: https://www.prnewswire.com/news-releases/spectrem-group-study-reveals-wide-retail-investor-support-for-proposed-sec-amendments--january-10-2020-300984956.html.