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July 30, 2020

Mr. Jeffrey J. Turner
Deputy Director
Office of Regulations and Interpretations
Employee Benefits Security Administration, Department of Labor
200 Constitution Avenue, NW
FP Building, Room N-5655
Washington, DC 20210

Re: "Financial Factors in Selecting Plan Investments" – RIN 1210-AB95

Dear Deputy Director Turner:

The Department's efforts to strengthen its oversight of environmental, social, and governance (ESG) investing undertaken by the pension plans it regulates under the Employee Retirement Income Security Act (ERISA) are both important and timely. I fully support the work of the Employee Benefits Security Administration and its staff. Pension plan fiduciaries, who are charged with maximizing the financial gains of their plans' participants, must adhere to their "eye single" mandate and not put self-interest or politically motivated investment theses ahead of their beneficiaries.

As an executive, investor, and board member, I have specialized in investment selection and analysis, due diligence, and financial engineering throughout my career. Along the way, I have become aware of the growing trend of ESG investing. Last year, the Securities and Exchange Commission (SEC) similarly addressed this issue of ESG investing in a Proposed Rule regarding proxy voting advice.[1] I am pleased to see that the SEC finalized this ruling last week.

In recent remarks, SEC Commissioner Elad Roisman referenced this Department of Labor Proposed Rule. He stated, "When an asset manager markets a fund as having an ESG strategy… [d]oes the fund intend to subordinate the goal of achieving economic returns to non-pecuniary goals, and, if, so, to what extent?"[2] As such, this rule dovetails nicely with the Commission's final ruling in ensuring retirement savings are not hindered by non-financial goals. In addition, Commissioner Roisman should be commended for the continued work he is doing on this issue.

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[1] U.S. Securities and Exchange Commission, Proposed Rule: "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice", S7-22-19, November 5, 2019, https://www.sec.gov/rules/proposed/2019/34-87457.pdf.
[2] Elad L. Roisman, "Keynote Speech at the Society for Corporate Governance National Conference", July 7, 2020, https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020#_ftnref16.

While there are many enhancements contained in this Proposed Rule, I further recommend that the Department's final ruling includes language that instructs fiduciaries regulated under ERISA to not use resources to engage in ESG shareholder activism or any particular ESG proxy voting if such activities do not strengthen the financial returns of their clients.

Research conducted by Joseph Kalt, Ford Foundation Professor Emeritus of International Political Economy at Harvard University, sheds further light on my recommendation. In his report, "Political, Social, and Environmental Shareholder Resolutions: Do They Create or Destroy Shareholder Value?", Dr. Kalt discusses the consequences of activist shareholder proposals, whereas "preparing, proposing, and campaigning for a shareholder proposal is costly to the proposer".[3] He goes on to say that not only can these proposals cost millions of dollars, but also, "Such costs are particularly concerning in cases where the sponsoring investor is a public pension fund, given the obligation fund managers have to maintain returns to their pensioners and the current underfunded status of many funds."[4]

Finally, in addition to my recommendation, I would like to stress the aforementioned "eye single" approach. As you know well, this mandate sits at the foundation of ERISA law. Regardless of a pension plan manager's personal social tastes, political views, or investment preferences, this "eye single" mandate rightfully directs the manager's investment decisions to be based solely on whether they enhance retirement savings.

With many societal "norms" being upended today, coupled with passionate debate on a variety of social and cultural topics across the nation, the Department's position in this ruling makes clear that the pecuniary interests of pensioners must come first and foremost. I, therefore, applaud the Department for this rulemaking, which will protect hard-earned pension savings both today and well into the future.

Thank you for this opportunity to provide my thoughts.

Sincerely,

Hank Torbert
President
Alta Max, LLC

[3] Joseph Kalt, PhD, "Political, Social, and Environmental Shareholder Resolutions: Do They Create or Destroy Shareholder Value?", pg. 50, May 2018, https://corpgov.law.harvard.edu/wp-content/uploads/2018/06/ESG-Paper-FINAL_reduced-size-002.pdf.
[4] Ibid.