July 30, 2020

Comment on RIN 1210-AB95

From: Timothy Plan CEO Art Ally

I am writing to oppose the Department of Labor's proposed rule change regarding amendments to the "Investment duties" regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

While perhaps well meant to protect pension portfolio managers from being bullied by outside pressure groups to disinvest, the rule could also cause collateral damage to the Timothy Plan, which pioneered Biblically Responsible Investing (BRI) beginning in 1994.

Based in Orlando, Timothy Plan offers 12 mutual funds and four Exchange Traded Funds portfolios, with nearly $1.4 billion invested.

While we select stocks and securities that bring maximum return, and have experienced comparable returns over the years, Timothy Plan refrains from including companies in our portfolios of mutual funds and ETFs that do not pass our unique filtering system based on biblical principles.

The new ERISA proposed rule takes aim at investment vehicles that promote Environmental, Social or Corporate Governance (ESG) considerations. Although Timothy Plan's values differ greatly from many ESG-oriented vehicles, BRI firms could be lumped under the "social" portion of the designation.

Unlike ESG and so-called socially responsible investing (SRI), the goals of which are relativistic and change over time, BRI rests on principles proven over many thousands of years.

Labor Secretary Eugene Scalia says the goals and outcomes of hardworking Americans' retirement plans should be similarly predictable. We agree, but in this case the cure could be worse than the illness.

As explained in the Department's summary, the new rule sets in stone the idea that financial return must be the solitary factor in all investment choices made by pension managers and other fiduciaries, not merely the "paramount" factor.

The Proposed Rule Document states that, over the years, "Each Interpretive Bulletin has consistently stated that the paramount focus of plan fiduciaries must be the plan's financial returns and risk to participants and beneficiaries. ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action."

Well, “paramount” and “solely” are quite different, which is why it seems the new rule is being promulgated. It leaves no room for those who want the freedom to invest in companies that won’t violate their consciences. This would greatly reduce investors’ freedom of choice.

We doubt the people who designed this amended rule were taking aim at Timothy Plan, and that this may well be a manifestation of the law of unintended consequences.

People who invest in the Timothy Plan do not see screening out companies that engage in activities antithetical to their beliefs as “unrelated objectives.” For many investors in our mutual funds and ETFs, it is more important to them that their money be invested only in activities that don’t violate their values.

The last thing they and we need is a new requirement for voluminous paperwork to “prove” we and financial advisors are using returns as the sole parameter in choosing investment vehicles.

Timothy Plan makes it quite clear in all of our materials and on our website that while we seek the greatest possible return for investors, we exclude stocks from companies that violate our filters.

If investors want no screening whatever, they can invest in about 8,000 other mutual funds or about 7,000 Exchange Traded Funds in the United States alone. In fact, there is even a firm specializing in “sin” stocks.

The Department’s memo on the new rule seems to indicate that practically speaking, a fund adviser would have to prove that for every stock Timothy declines to include in our portfolios, there is an “economically indistinguishable” vehicle offered to investors. For example:

“The proposed rule requires plan fiduciaries who select investments based on non-pecuniary factors to document why alternative investments are “economically indistinguishable” in terms of their expected risk and return characteristics.”

But, then, it goes on to say that, “The Department believes that the likelihood that two investments will be “economically indistinguishable” is rare, and therefore the need to document such circumstances also will be rare.”

So, the only real defense seems to be to produce documentation that the exclusion of one stock is offset by another “economically indistinguishable” stock, which is a “rare” circumstance.

I think “Catch-22” fits here.

In sum, we oppose the rule change because it reduces investor choice and could punish firms like the Timothy Plan, which takes into account the most deeply held values of our investors.

Art Ally,

Founder and CEO, Timothy Plan and Timothy Partners