CFA Institute

915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

July 30, 20

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via electronic filing: https://www.regulations.gov

Re: Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

Dear Sir or Madam:

CFA Institute[1] respectfully submits this comment letter to the U.S. Department of Labor (the "Department") in response to its recently published notice of proposed rulemaking: Financial Factors in Selecting Plan Investments Proposed Regulation (the "Proposal").[2]

CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and on issues of fairness, transparency and accountability of global financial markets.

EXECUTIVE SUMMARY

Beyond calling for an extension of the response period to enable greater consideration of the complex issues involved in this and the Department's related fiduciary duty rule proposals, CFA Institute also takes issue with the Proposal's perspective on the importance of ESG factors and ESG integration in the investment decision-making process of ERISA fiduciaries. While investors are still grappling with the best methods for measuring ESG performance, they are nevertheless confident that those companies that manage ESG issues best are managing for the long-term.

CFA Institute concurs with the SEC and the Department that materiality should determine the relevance of a factor to investment decisions, which is why the market value of ESG considerations is rooted in materiality and investor demand for risk management, alpha

---

[1] CFA Institute is a global, not-for-profit professional association of nearly 171,400 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 164,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 154 member societies in 77 countries and territories.

[2] Department of Labor, "Financial Factors in Selecting Plan Investments," 85 FR 39112 (June 30, 2020).

generation, and increasingly sophisticated investment analysis. Empirical evidence does not support the notion that ESG considerations necessarily adversely affect performance. Negative screening is simply one tool investors may use in ESG integration, which is mostly seen and performed as part of fundamental analysis.

Greater consistency and disclosure of ESG data is needed, together with increased standardization of the reporting methods. Applying these principles will help make material information more available and usable for investors, thereby reducing their costs of collection and analysis. We do not believe that many ESG factors are non-economic or that ESG integration and therefore ESG investing are not legitimate investing ideas.

Finally, CFA Institute believes investment decisions and policy governing the markets should primarily reflect and be driven by market dynamics. It is our view, based on our members' experience and the evidence we describe in the pages below that the market has already concluded that certain ESG factors are material and are an integral consideration in projecting risk-adjusted returns. By mandating that investment managers document any decisions to even provide ESG investment options as part of a retirement program, the Department is creating the expectation of higher compliance costs for those managers, which it does not account for in its cost-benefit analysis.

I. EXTENSION OF THE COMMENT PERIOD

CFA Institute has submitted a letter explaining that 30 days is too short to respond to a matter this complex in a system as complex as ERISA. The Proposal considers matters we believe warrant a longer comment period, namely: (1) the matter concerning application of ERISA's fiduciary rules to plan investment decisions spans nearly 30 years of Department history; (2) the Department's "varied statements" on the subject which have contributed to ongoing "confusion;" and, most significantly, (3) the Department has sufficient concerns that the matter has risen to the level of a "major" rulemaking rather than guidance, which has been the recent Department pattern.

We believe an extension of the comment period is warranted to not only allow the Department to gather a more complete record of public input to fully understand the potential impact of the Proposal, but also to permit respondents more time to consider these matters more fully.

II. ESG INVESTING AND ANALYSIS: CFA INSTITUTE VIEWS

A. Defining ESG

> *The Proposal states that environmental, social, and governance (ESG) considerations and ESG-adjacent terms, such as socially responsible investing and economically targeted investing, "do not have a uniform meaning and the terminology is evolving."*

We agree. Although the use of ESG integration in the investment process has grown rapidly in the past decade, ESG has a definitional problem. It has become a universal term to describe fund objectives, types of assets in which a fund invests or does not invest, investment strategies, and characteristics of individual investments. Likewise, investors interpret these terms in a variety of ways.

How ESG is used often depends on the industry and the time horizon for investment. It is possible for two investment shops with differing definitions of ESG integration to use different methods for that integration, both leading to robust analysis. Indeed, in the same way that value is a dynamic concept, ESG considerations as part of investment analysis have evolved significantly from their origins in exclusionary screening on the basis of moral values to incorporating hard data, complex models, and advanced analytical frameworks (SASB, GRI, PRI, GARP, etc.).

In the market for ideas, we expect the better ideas will outperform while the ideas that are not as good will underperform. This dynamic is what makes a market function and what makes its price-determination role valuable to society in general.

In this context, we are deeply troubled that the DOL is seeking to limit some ideas from entering this contest of ideas because of a misunderstanding about what ESG is and is not. The DOL's proposed rule seems to view a fund that considers ESG information in its decision making as exercising willful ignorance and expecting to underperform. The Proposal also seems to assume that market actors who incorporate ESG into their investment processes have accepted underperformance as a given and that they want to forward some social agenda. That is simply not the case.

Institutional investors and for-profit investment managers have been incorporating ESG information in the investment process for years; first with governance data and now, in some cases, with environmental and social data. This is because they feel ESG information can add value to the investment process. These organizations compete with other firms to achieve the highest returns for their clients, and they believe ESG information helps them achieve this goal.

Investors also often see ESG as a proxy for management and board quality.[3] Investors are still working to understand what the best methods are for measuring ESG performance, but their main belief is that companies that manage these ESG issues best are managing for the long-term as most ESG issues are long-term in nature. By proposing to limit the idea of ESG investing in the market, the DOL would set a precedent that certain types of investment thought are not welcome in US equity markets. We do not believe this is the appropriate approach.

B. Materiality

> The Proposal states*, "…an ERISA fiduciary's evaluation of plan investments must be focused solely on economic considerations that have a material effect on the risk and return of an investment based on appropriate investment horizons, consistent with the plan's funding policy and investment policy objectives."*

> The Proposal states, *"The term "pecuniary factor" means a factor that has a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy established pursuant to section 402(a)(1) of ERISA."*

We agree. We note, however, that the Proposal hinges on the view that ESG investing and financial returns are mutually exclusive. And while the Department acknowledges "there may be

[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1964011

instances" when investment professionals can appropriately treat ESG factors as material, the Proposal functionally assumes that ESG factors are immaterial. Similarly, the Proposal assumes that ESG investing underperforms non-ESG investing. In our extensive research and discussions with investors and CFA Institute members, we reach a different conclusion:

- The ESG market value proposition is rooted in materiality and investor demand for risk management, alpha generation, and increasingly sophisticated investment analysis.
- On the whole, the empirical evidence does not support the notion that ESG considerations necessarily adversely affect performance. This is consistent with the principle that ESG integration is often simply about enhancing investment analysis.

CFA Institute members and investment professionals have consistently told us that ESG and materiality go hand in hand. In 2017, CFA Institute surveyed our members and found that 73% of the respondents factor ESG information into their investment analyses and decisions because they believe it is material at some level, with governance being the most common issue they consider.[4] In 2018, we conducted a similar survey of senior global investment professionals. Again, we found that by far the most widespread reason for using ESG information in investment decisions – flagged by 63% of respondents – was materiality to investment performance. A more recent survey publicized in an upcoming edition of the *Financial Analysts Journal* that CFA Institute publishes, finds that 75% see ESG factors as material. In summary, financial professionals tell us that consideration of ESG factors is increasingly becoming an essential part of their fundamental analysis and investment choices.

Finally, two-thirds of institutional investors responding to our 2020 *Earning Investors' Trust* survey think that the growth of ESG investing has increased trust in the financial services industry.[5]

This trend spans all markets, too. In partnership with the Principles for Responsible Investments (PRI), CFA Institute published a series of reports aimed at better understanding the current state of ESG integration around the world. We observed that all markets we visited looked at ESG integration primarily through a risk lens. The markets that had the most sophisticated approaches to ESG integration tended to look for *opportunities* presented by ESG integration just as much as they focused on risk. In other words, ESG integration presents opportunities for both risk mitigation and alpha generation.

Our findings are consistent with the results of a 2020 report published by the U.S. Government Accountability Office (GAO)(the 2020 GAO Report). In that report, the GAO confirmed that most institutional investors seek ESG factors information to "better understand risks that could affect company financial performance over time" and that institutional investors "generally agreed that ESG issues can have a substantial effect on a company's long-term financial performance."[6]

---

[4] CFA Institute. *Environmental, Social, and Governance Issues in Investing*, 2017, available at https://www.cfainstitute.org/-/media/documents/survey/esg-survey-report-2017.ashx
[5] CFA Institute, *Earning Investors' Trust,* available at: https://trust.cfainstitute.org/wp-content/uploads/2020/05/CFAI_TrustReport2020_FINAL.pdf
[6] Clements, M. *Public Companies: Disclosure of Environmental, Social and Governance Factors and Options to Enhance Them.* (GAO-20-530). Washington DC: Government Accountability Office at 1 and 9.

Finally, we note that the US Securities and Exchange Commission has adopted a materiality convention for determining when and whether companies need to disclose risks under Regulation SK. It is a position CFA Institute has endorsed and one we believe is relevant to this discussion about application of ESG factors in investment analyses and decisions.

Therefore, we find that ESG factoring is consistent with a fiduciary duty of applying care, skill, prudence, loyalty, and diligence, to consider all relevant information and material risks in investment analysis and decision-making.

C. ESG disclosure and data

> The Proposal states, *"…ESG funds often come with higher fees, because additional investigation and monitoring are necessary to assess an investment from an ESG perspective."*
>
> *The Proposal also states that that there is "a lack of precision and rigor in the ESG investment marketplace."*

These concerns are rooted in a shortage of consistent, comparable, and plentiful corporate disclosure data related to ESG factors. The leading barrier to this shortfall is a lack of reporting standards on these issues across firms. Greater consistency and disclosure of ESG data, combined with increased standardization of the reporting methods will help make material information more available and usable for investors, thereby reducing their costs of collection and analysis.

CFA Institute members said they supported this approach in a 2019 survey in which nearly 63% of members said they believe securities regulators should either develop ESG disclosure standards or support an independent standard setter to develop such standards.[7] The 2020 GAO Report found that "one of the reasons [some investors] seek additional ESG disclosures is because it is difficult to compare disclosures across companies."[8] Similarly, the SEC has agreed that consistent disclosure standards can increase the efficiency with which investors process the information.[9]

CFA Institute supports guidelines that identify detailed, yet flexible disclosure elements such as a specific set of climate-related disclosures. Existing reporting frameworks seek to increase consistency and quality of climate-related reporting. We agree that companies should provide detailed disclosures in relation to all material ESG-related matters. These will be different for each industry and may even be different for companies within the same industry due to many unique factors (company size, product mix, company lifecycle, regulatory and reporting frameworks, company strategy, etc.). It will often take engagement between issuers and investors and stakeholders to settle on which disclosures are most appropriate.

In summary, we support better quality and more consistent ESG and sustainability disclosures.

---

[7] CFA Institute. *The Case for Quarterly and Environmental, Social, and Governance Reporting*, 2019, available at: *https://www.cfainstitute.org/-/media/documents/survey/financial-reporting-quarterly-and-esg-2019.ashx*

[8] Clements, M. *Public Companies: Disclosure of Environmental, Social and Governance Factors and Options to Enhance Them.* (GAO-20-530). Washington DC: Government Accountability Office at 32.

[9] SEC, Business and Financial Disclosure Required by Regulation S-K, 81 Fed. Reg. 23,916, 23,919 (Concept Release, Apr. 22, 2016).

Without government intervention, the market has already moved closer to a solution. Institutional and professional investors are increasingly looking to standards set by the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate Related Financial Disclosures (TCFD). Investors have gravitated to these standards because they focus on investors with a focus on materiality in the case of the SASB standards, and a focus on governance, strategy, risk management, and metrics related to climate change in the TCFD standards. Larry Fink, Chairman and CEO of Blackrock, called out these standards as the ones they expect CEOs to manage to going forward.[10] Regulators around the world are incorporating these standards into their policy making, as evidenced by the recent consultation paper published by the Ontario Capital Markets Modernization Taskforce which proposes SASB and TCFD standards as potential reporting standards for ESG data.[11]

At a recent House Financial Services Committee hearing, SEC Chair Jay Clayton said the SEC is working with the Commission's EU counterparts on ESG taxonomy. We welcome such cooperation.

D. ESG fund names and advertising

> The Proposal states, "*There is no consensus about what constitutes a genuine ESG investment, and ESG rating systems are often vague and inconsistent, despite featuring prominently in marketing efforts."*
>
> The Proposal also states, *"The Department is also concerned that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance."*

As we explain in our letter to the SEC regarding its Fund Names[12] proposed rule, one of the main problems around ESG/Sustainable products is that individuals bring to them their own definitions for ESG or Sustainable Investing. Investors often project their own expectations onto funds with names that include ESG or a Sustainable implication. Because these terms are used and interpreted in many ways, they are a source of confusion in the marketplace.

CFA Institute believes the best way to achieve transparency and comparability, and to protect investors, is to require funds to explain to investors how the terms "ESG" and "sustainability" relate to their funds' objectives, constraints, strategies, and characteristics of investments in a way that is transparent, comprehensible, and comparable.

It is critical for investors to understand the prioritization of objectives when a fund has multiple objectives. In general, it is our position that the priority of objectives would be best communicated in a disclosure rather than the fund name.

E. ESG funds and Performance

---

[10] https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter?cid=ppc:CEOLetter:PMS:US:NA
[11] https://www.ontario.ca/page/consultation-modernizing-ontarios-capital-markets

[12] *See* CFA Institute comment letter on "Fund Names," File No. S7-04-20, submitted on 5 May 2020: https://www.cfainstitute.org/-/media/documents/comment-letter/2020-2024/20200505.ashx.

The proposed DOL rule implicitly assumes there is a tradeoff between ESG investing and performance. This is a common misperception of ESG integration and ESG investing.

Anyone can claim that ESG outperforms or underperforms by simply defining ESG investing in a way that supports their thesis as there is not one agreed upon definition of ESG investing. As is the case with value investing and investing based on growth, there are times ESG investing will outperform and times when it will underperform. But the thesis behind ESG integration is a sound one – that integrating ESG analysis into the investment process can drive outperformance. As stated above, this belief that ESG investing can outperform is shared by many investment professionals.

There is a perception in many circles that ESG integration or ESG investing are the same as negative screening. It is not. Historically investors and professional asset managers were discouraged from negative screening as such a practice limited one's investment universe leading to underperformance because such investors or asset managers would have fewer investment options than their competitors.

This misperception is still prevalent among some investors but is changing. When CFA Institute partnered with PRI in 2017 – 2018 to hold workshops around the world to better understand how investors integrate ESG in the investment process, about ¼ to 1/3 of investors in those meetings came with the perception that ESG or sustainable investing were the same thing as negative screening. After talking with other investors many of these professionals left with a broader understanding of ESG integration and recognized their own application of such factors. Unfortunately, it appears this inaccurate and fading perception is driving the DOL's proposed rulemaking.

Negative screening is simply one tool investors may use in ESG integration. Currently ESG integration is mostly seen and performed as part of fundamental analysis. As part of the project CFA Institute embarked on with PRI to better understand ESG integration, we partnered with asset managers around the world to produce the report; *Guidance and Case Studies For ESG Integration: Equities and Fixed Income*.[13] This report shows that ESG investing and ESG integration are varied in their execution. Each case study shows a different way that ESG data can be integrated in the investment process.

We have received much feedback from investors since this report was published in September 2018, many appreciative that we highlighted the many ways in which ESG data can be integrated into the investment process. They indicated they often use the report as an educational tool to help them better craft an ESG integration strategy that made sense for their firm.

As part of our partnership with PRI, we created a tool that investors can use to help integrate ESG analysis into the investment processes. The ESG Integration Framework shown in Figure 1 demonstrates the many ways that ESG analyses can be incorporated into firms' investment processes. This graphic was created by capturing the many different ESG integration factors we learned from speaking to investors about ESG integration throughout the world. It is clear that a simple blunt negative screen is not the only method of ESG integration.

[13] See: https://www.cfainstitute.org/-/media/documents/survey/guidance-case-studies-esg-integration.ashx

Figure 1 – The ESG Integration framework

F. ESG Investing is Not A Trojan Horse for a Social Agenda

This proposed rule seems to assume that many ESG factors are non-economic in nature and that ESG integration and therefore ESG investing are not legitimate investing ideas to hold. Instead, it seems to assume such strategies are a trojan horse for a non-economic political agenda. This is not the case.

Investment firms operate in a competitive landscape. If Investment Firm A offered funds that routinely underperformed those of its competitors due to its dedication to putting a social or environmental agenda ahead of performance, they would eventually go out of business.

Of course, some issues that have social or environmental implications can be material and therefore part of the routine investment process by investors and asset managers. A company that dumps toxic chemicals into a river, for example, will likely face significant future contingent liabilities that would significantly undermine long-term shareowner value. Consequently, such matters should be of extreme importance to investors when performing their analyses of such a company. As in this hypothetical example, this does not mean investors that take these material factors into account are promoting a social or environmental agenda. It simply means they believe these factors are worth including into their analyses.

The Proposal however seems to assume that anything related to ESG must have a political or social purpose. That is increasingly not the case.

A 2019 report by BNP Paribas[14] took a look at the transition risk facing the oil and gas industry due to the continued growth of solar and wind energy that will drive the nascent electric vehicle industry that is projected to make up half of the global fleet of cars by 2035. An investor may conclude from the report that oil and gas stocks will face a challenging landscape in the coming decades as the world moves to lower carbon intensive energy sources. Such a decision would be made from a cold calculating analysis, not from emotion or base on environmental zealotry. A fund manager or investor could make the decision to divest from oil and gas companies because they believe that in the long-run (the next decade and beyond) these firms face too many challenges to their business model. If a fund manager believes such a sector is set to underperform over the long-term, they would be very reasonable in offering investors a product that does not include this sector in order to remove this expected underperformance from their portfolio. This decision may be incorrect, but fund managers and their investors should be free to make it.

In other words, one does not have to be a zealous environmentalist to not want to invest in fossil fuel companies. Investors may decide not to invest in such companies because they believe such companies are bad long-term investments. Nevertheless, the Proposal does not seem to allow investment managers and investors to make such decisions. As an organization of investment professionals, we believe investment managers recognize their duty to clients and will act responsibly.

III. THE PROPOSAL: CFA INSTITUTE VIEWS

A. Proposal does not inherently resolve confusion regarding ESG factors

> The Proposal states, *"Confusion with respect to these factors [non-pecuniary] persists, perhaps due in part to varied statements the Department has made on the subject over the years in sub-regulatory guidance."*
>
> The Proposal also states, *"…the rule would eliminate confusion that plan fiduciaries may currently face in the marketplace and reiterate long-established fiduciary standards of prudence and loyalty for selecting and monitoring investments."*

With respect to the first statement, we agree. Over the years, the Department's regulatory back-and-forth on consideration of ESG factors and the discussion about what examples comprise pecuniary and non-pecuniary factors has been confusing. The Department's introduction of the Proposal as a rule rather than guidance, however, does not in and of itself resolve this standing conflict.

CFA Institute believes investment decisions and policy governing the markets should primarily

[14] https://www.bnpparibas-am.us/investors/wells-wires-and-wheels/

reflect and be driven by market dynamics, and that policymakers should do their best to ensure that capital markets and market choices do not bend with political winds. From our vantage point, as the world's largest association of investment professionals, and following the evidence we detail above, the market has already come to a consensus that certain ESG factors are material and are an integral consideration in projecting risk-adjusted returns. In that respect, the Proposal contradicts market consensus.

B. Proposal raises the bar for documentation requirements regarding ESG considerations and investments

> The Proposal states, *"...individual account plan fiduciaries will need to document their selections of investment alternatives that include one or more ESG or similarly oriented assessments or judgments in their investment mandates or that include these parameters in the fund name."*
>
> The Proposal states, "*The Department believes this documentation requirement provides a safeguard against the risk that fiduciaries will improperly find economic equivalence and make decisions based on non-pecuniary factors without a proper analysis and evaluation."*
>
> The Proposal states, *"…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."*
>
> The Proposal states, *"…the Department concludes that this documentation requirement would impose little, if any, additional cost. While the costs associated with the rule are small, its benefits could be significant for plans that are heavily invested in underperforming ESG funds and would be required to change their current ESG investments in response to the proposed rule."*

ERISA imposes a fiduciary duty on investment managers and advisers who have discretion over how beneficiaries' funds are invested. Holding these investment professionals to these standards is intended to ensure they will put the best interests of their beneficiaries or clients ahead of their own interests and the interests of their employers. To that end, investment managers have generally adopted regular documentation for their due diligence efforts and investment decisions, thereby providing evidence of appropriate reviews and analyses of relevant factors.

In this case, though, the Department intends to require such documentation. While the documentation will not be any more intrusive than existing best practice for such fiduciaries, this documentation provision carries with it an implicitly higher degree of scrutiny and more onerous review by the Department. Consequently, while we don't disagree that the narrow act of records-retention will not create significant additional costs for fiduciaries, we are concerned the Department's enforcement of this unique records-retention provision will lead to higher costs related to defending managers' decisions to include ESG-related investment options in employee retirement plans or in individuals' retirement accounts. Depending on the depth of the examinations, review, and potential challenge the Department employs, these costs may be significant.

Given the broad-based definition of ESG and no precise definition given in the Proposal, we are concerned plan fiduciaries will interpret the additional documentation requirements to cover all actively managed funds, thus creating an unnecessary burden on the ability of plan fiduciaries to consider all material factors in their search to enhance or protect returns, a critical component of a fiduciary's obligation.

We are equally concerned that the Department did not survey plan fiduciaries and participants, particularly small entities, in estimating the administrative burden and additional costs stemming from the Proposal. Without the benefit of engaging directly with market participants, we cannot comment on whether the Department's cost estimates are accurate.

Moreover, the Department estimates that most ESG funds are already compliant, in which case the Proposal would affect only those ESG funds not already available. We question whether it is good policy to introduce administrative and regulatory burdens without first establishing a clear need to do so. In general, we find the Department's quantitative estimates of both the costs and benefits of the Proposal to be insufficient.

The Proposal raises the burden of proof for plan fiduciaries when selecting ESG investments and incorporating ESG factors to a higher standard than applies generally to non-ESG considerations. The ultimate effect of this provision may result in discouraging ESG investing and consideration of ESG factors across the board. Doing so, we believe, would amount to a significant oversight and omission of comprehensive due diligence by investment managers and advisers, that could result in the assumption of unnecessarily higher risks and lower returns for beneficiaries than expected. We do not believe investors should be discouraged from considering all material information to fulfill their fiduciary duty of a complete and thorough financial analysis. Applying this standard would also disqualify most funds from large fund providers who employ dozens of employees who incorporate ESG data, rightly we believe, into their analyses and investment decisions.[15]

C. Proposal bars a 401(k) plan from providing a qualified default investment alternative ("QDIA") with an ESG component

> The Proposal 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."*

Based on much of the foregoing discussion and analysis, CFA Institute does not believe the Department has sufficient reason to limit the options available to plan fiduciaries. They should be permitted to include all options they select so long as they apply appropriate loyalty, prudence, and care in selecting those options for the specific set of beneficiaries or clients involved.

D. Other considerations

SEC Fund Names Rule: As the Department notes, the SEC's Fund Names proposed rule is pending and, with respect to fund names and marketing, both the SEC and the Department share similar concerns. It is unclear to what extent the agencies are cooperating to address these

---

[15] CFA Institute uses Vanguard as its retirement plan provider. The plan does not include an ESG or Sustainable fund as part of the offering to employees. It is nevertheless understood that Vanguard staff analyzes ESG issues for the purpose of engagement with companies that they feel are underperforming on some ESG metrics.

concerns. It is difficult to assess the impact of this Proposal when the Fund Names rule has the potential to resolve some of the Proposal's underlying concerns.

Issuer engagement and proxy voting: It is challenging to assess the impact of this Proposal in isolation, without the Department's guidance on proxy voting and issuer engagement as is relates to ESG matters. Because investing in ESG funds is often paired with a robust engagement policy, it is difficult to assess the impact of this Proposal on corporate governance and capital markets.

CONCLUSION

We do not believe the Proposal, as written, will improve investment outcomes for beneficiaries by restricting the inclusion of ESG factors in the review and analysis of investment options for retirement plan beneficiaries. We recognize the Department's concerns over investing for non-pecuniary purposes but believe both the fiduciary requirements placed on investment managers and advisers, together with the inclusion of a more comprehensive set of investment analysis tools and data will help to avoid such negative outcomes.

Should you have any questions about our positions, please do not hesitate to contact Matt Orsagh, CFA, at matt.orsagh@cfainstitute.org or James C. Allen, CFA, at james.allen@cfainstitute.org or 434.227.1338.

Sincerely,

/s/ James C. Allen

James C. Allen, CFA
Head
Capital Markets Policy – Americas

CFA Institute

/s/ Matt Orsagh

Matt Orsagh, CFA
Sr. Director
Capital Markets Policy – Americas

CFA Institute

CFA Institute

915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

Appendix A

CFA INSTITUTE: CURRICULUM AND INDUSTRY ESG STANDARDS

The CFA Institute Standards of Professional Conduct require CFA charterholders to conduct appropriate research and investigation of all material information relevant to their investment analyses and portfolio management decisions, recommendations, or actions. This includes considering material ESG information as an important component of a complete and thorough financial analysis. We are focused on developing the curricula for new members and as part of our members' continuing education. CFA Institute is specifically focused on the quality and comparability of the ESG information provided by corporate issuers and how to integrate various ESG factors into the investment-selection process.

CFA Institute is currently developing an industry standard for the classification and disclosure of ESG investment products. The purpose of the standard is to enable investment managers to better communicate the features and benefits of ESG investment products and to allow clients to better understand and compare ESG investment products with respect to objectives, constraints, methods (strategies), and holdings (assets), much like the CFA Institute Global Investment Performance Standards (GIPS®) enable transparency and comparability with respect to past performance.

CFA Institute selected 15 individual volunteers, from over 200 applicants, to serve on a working group whose purpose is to propose the structural elements of the standard and to seek public comment on the proposal. The members of the working group come from seven different countries, have deep investment management experience including significant understanding of ESG factors, and bring experience as asset owners, investment managers, consultants, service providers, and standard setters.

The Working Group aims to have a proposal out for consultation by August 2020 and final recommendations near the end of the year. We expect an exposure draft of the standard to be released in the summer of 2021 and the final standard to be release in 2022.