Investor Advocates for Social Justice

July 30, 2020

VIA ELECTRONIC FILING

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: RIN 1210-AB95, Financial Factors in Selecting Plan Investments proposed rule

Dear Assistant Secretary Wilson,

I am writing regarding the Department of Labor (DOL) Employee Benefits Security Administration's proposed rule, Financial Factors in Selecting Plan Investments, Regulatory Identifier Number (RIN) number 1210-AB95. Investor Advocates for Social Justice (IASJ), formerly the Tri-State Coalition for Responsible Investment, represents 35 faith-based institutional investors. IASJ and its investor Affiliates are concerned that the proposed rule would dissuade investors from assessing material investment risks and opportunities in their decisions.

IASJ strongly urges the Department of Labor to withdraw the proposed rule. Our primary concerns with the proposed rule are that it mischaracterizes environmental, social, and governance (ESG) factors and that it would create additional costs and burdens for ERISA plans and church funds that consider ERISA guidance, which would discourage them from considering material ESG risks in long-term investing strategies.

IASJ is a 501(c)(3) non-profit that represents long-term institutional investors in shareholder engagement, proxy voting, and other responsible investment activities. Through shareholder engagement activities, IASJ addresses material ESG issues which have a long-term impact on company performance and shareholder return. Many IASJ Affiliates consider ESG factors in their investment decision making, work specifically with SRI investment managers and ESG funds, and subscribe to proxy voting practices that consider ESG risks. Faith-based institutions recognize the importance of integrating ESG factors when making investment decisions, as growing evidence suggests companies that have strong governance and systems in place to manage ESG risks will be more sustainable long-term investments.[1]

[1] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2699610

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The DOL proposed rule mischaracterizes ESG integration as inconsistent with fiduciary responsibilities to assess material risks. On the contrary, ESG factors allow fiduciaries to assess the potential long-term impacts of systemic risks on retirement security. Systemic risks such as climate change and economic inequality impact all sectors and a fiduciary cannot avoid or overcome systemic risks through traditional diversification strategies. As a result, we believe it would be irresponsible for the DOL to dissuade U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA) plans from integrating ESG factors in investment decisions.

While the faith-based institutions represented by IASJ are generally not subject to ERISA due to the exemption for church plans, many church plans consider ERISA rules as they exercise their fiduciary duty. By changing the "tie-breaker" test, the proposed rule would create additional burdens or roadblocks for fiduciaries who are seeking to integrate assessment of financially material ESG opportunities and risks into investment decisions. In practice, this may interfere with investors ability to pursue their long-term investment objectives.

IASJ is also concerned about the factual basis and analysis that informed the proposed rule. In particular, we believe the DOL relied on outdated studies that do not accurately reflect the performance of ESG funds today. We recommend the proposed rule review and take into account more current research which concludes that funds that integrate long-term ESG risks and opportunities often outperform traditional funds.

Specifically, among the many articles submitted by Ceres and the Interfaith Center on Corporate Responsibility, we encourage DOL to review:

- A study by Morninigstar found that "when markets were flat (2015) or down (2018), the returns of 57% and 63% of sustainable funds placed in the top half of their categories. When markets were up in 2016, 2017, and 2019, the returns of 55%, 54%, and 65% of sustainable funds placed in the top half of their categories."[2]
- Research conducted by the Morgan Stanley Institute assessing 11,000 mutual funds from 2004 to 2008 found no financial trade-off in the returns of sustainable funds compared to traditional funds, and they demonstrate lower downside risk and there was "strong statistical evidence that sustainable funds are more stable" during periods of extreme volatility."[3]

The proposed rule is also out of step with growing international recognition of the value of ESG considerations in investment analysis. This proposed rule may place investors with a global

[2] "US ESG Funds Outperformed Conventional Funds in 2019", Morningstar, 2020, https://www.morningstar.com/articles/973590/us-esg-funds-outperformed-conventional-funds-in-2019

[3] Morgan Stanley Institute for Sustainable Investing, 2019https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable_Reality_Analyzing_Risk_and_Returns_of_Sustainable_Funds.pdf

investment approach in a difficult position because it is inconsistent with growing momentum outside the United States to require investor due diligence and reporting related to ESG factors. For example, the Occupational Pension Schemes (Investment) Regulations in the UK require pension funds' Statement of Investment Principles to cover "the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realization of investments; and their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments."[4] In the EU, The Revision of the Institutions for Occupational Retirement Provision Directive (IORP II) requires pension funds above a certain size to consider ESG issues and disclose how related risks are considered in the Investment Policy Statement.[5] While other countries embrace the importance of ESG integration, the proposed rule would create challenges for U.S. investors with exposure in multiple markets as they seek to comply with diverging standards.

In light of the above arguments, IASJ recommends that the DOL:

1. Acknowledge that ESG issues may in fact pose material short-, medium- and long-term financial impacts and risks;
2. Clarify that when ESG issues present material risks or opportunities, the fiduciary duties under the U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA), would compel qualified investment professionals to treat such ESG issues as economic considerations;
3. Retain the existing interpretation of the "tie-breaker" test, which allows for ESG factors to be considered for non-pecuniary reasons; and
4. Rely upon its existing, protective framework in whether an ESG fund (pecuniary or non-pecuniary) may constitute a QDIA (Qualified Default Investment Alternative) or component of a QDIA.

While faith-based institutional investors have been committed to values-aligned investing for decades, socially responsible investing is increasingly becoming the norm in the US and globally. Investors have come to embrace the importance of assessing ESG risks and opportunities as an important element of investment analysis and fiduciary duty. The proposed rule would prevent long-term investors from assessing material systemic risks impacting their portfolio companies. Investor Advocates for Social Justice strongly encourages the DOL to withdraw the proposed rule.

Sincerely,

Mary Beth Gallagher

Mary Beth Gallagher
Executive Director

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[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739331/response-clarifying-and-strengthening-trustees-investment-duties.pdf
[5] https://service.betterregulation.com/document/257562