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Thursday, July 30, 2020

Assistant Secretary Preston Rutledge
EBSA
Department of Labor
200 Constitution Ave, NW, Ste S-2524
Washington DC 20210

RE: RIN 1210-AB95 NPRM: Financial Factors in Selecting Plan Investment

Dear Assistant Secretary Rutledge:

I am writing to oppose the proposed rule RIN 1210-AB95 in the strongest terms possible. I fully concur with the comments submitted by Jon Lukomnik, Sinclair Capital's Managing Partner, and colleagues, which concluded:

> *The Departments' proposed regulation is wrong in its assumptions about what ESG is, wrong about the cost of the proposed regulation, would impoverish Americans saving for retirement, is out of step with both foreign regulators and the capital markets, ignores facts about ESG performance, is wrong about costs of ESG products, ignores the pecuniary benefits of ESG products to plan fiduciaries, would cause plan fiduciaries to violate their duty of care by placing an impost to their examination of systematic risks and opportunities which will determine 75%-95% of return, and ignores the duty of impartiality.*

I further concur with the comments submitted by Robert A.G. Monks and Nell Minow of ValueEdge Advisors on July 20, 2020, which enumerate how the proposed rule "fails as a matter of process, substance, cost-benefit analysis, regulatory policy, economics, consistency with other Administration policy, and clarity."

The current economic and public health crisis stemming from the COVID-19 pandemic highlights the immense import of many risks that investors who integrate ESG factors into their analytical frameworks have recognized for years. While many have described this pandemic as a black swan event that could not have been anticipated, that characterization is wholly inaccurate. For instance, the World Economic Forum has included pandemics among the top risks in its annual Global Risks Report for years, and pandemic risk was an integral factor in my team's asset management strategy as far back as 2007. The current disruption associated with this pandemic was entirely predictable, and indeed was predicted repeatedly and extensively by global authorities. That some companies and investment portfolios are suffering now is a reflection of the fact that they did not adequately assess the measurable risks to which they were subject and build proper resilience strategies to deal with them.

The same holds for other ESG risks, including climate change and poor health and safety management. Previous commenters have already highlighted numerous studies in support of that statement, so I will simply add an example here. A little more than a decade ago, my analysis of ESG factors affecting my company's €8 billion portfolio led me to determine that Transocean (NYSE: RIG) failed to meet our investment criteria. Specifically, I concluded that the company's health and safety policies, practices, and outcomes were opaque and unreliable. The financial analysts on my team all had buy recommendations on Transocean, and we exited the position after rather heated debate. The Deepwater Horizon disaster began three days later, slashing the company's stock price by nearly half. To this day, Transocean has not traded above its initial 1993 public offering price in years. The reasons for this are manifold, but climate change and the fossil fuel industry's outsized contribution to it is absolutely a factor, and one ESG analysts have long understood.

Does this mean that ESG analysis can predict major oil spills or stock price movements? Of course not. It does mean that it provides important, financially material signals that support fiduciaries in delivering long-term value to their shareholders.

I urge you to withdraw the proposed rule.

Sincerely,

Sara E. Murphy

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