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Submitter Information

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General Comment

July 29, 2020

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

Dear Director Canary:

On behalf of William Blair Investment Management, LLC ("WBIM"), thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal"). WBIM is committed to integrating environmental, social and governance ("ESG") factors into our investment activities because we believe that ESG integration is essential to fulfill our fiduciary obligations to engage in appropriate risk management and achieve long term performance objectives. We believe that the Proposal misconstrues ESG integration and would lead to confusion and costs for retirement plan fiduciaries. We, therefore, urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

The Proposed Rule broadly treats any fund that includes environmental, social, corporate governance, and/or "any similarly oriented assessments or judgments in their investment mandates" as "ESG investments" that are subject to heightened scrutiny and increased administrative burden. The Department acknowledges that "some investing takes account of environmental factors and corporate governance in a manner that focuses exclusively on the financial aspects of those considerations." Yet, the Proposed Rule does not reflect this understanding. An investment alternative that includes any one of the ESG considerations (or similarly oriented assessments) in its investment mandates becomes subject to this heightened scrutiny, even if considered precisely because of risk, return and fiduciary considerations, as is often the case. This contradiction belies the purpose of the Proposed Rule and demonstrates a misunderstanding of how investment managers incorporate ESG considerations.

ESG Integration

The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors." It goes on to state that, "ESG factors and other similar factors may be economic considerations." There is now an extensive body of research that makes clear that ESG factors are material investment considerations. This is the basis for our decision to integrate ESG factors into our investment analysis.

A policy by the Department, alone, that clarifies that fiduciaries must integrate material factors into their investment actions and that ESG factors may be material would be appropriate. We are concerned, however, that the remaining components of the proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

Defined Contribution Plan Investment Options

The Proposed Rule's prohibition of ESG-integrated investments in a Qualified Default Investment Alternative (QDIA) is inconsistent. On the one hand, the Department says that ESG criteria may generally be considered if "qualified investment professionals would treat [them] as material economic considerations under generally accepted investment theories." On the other, the Proposed Rule would explicitly prohibit the use of ESG-integrated investments as a QDIA regardless of whether such ESG criteria would constitute material economic considerations. This prescriptive policy will serve to prohibit the use of these funds as component investments in a QDIA regardless of the merit of the fund in the creation of the QDIA's overall investment strategy.

Conclusion

By singling out all investments that incorporate ESG considerations for extra scrutiny, the Department not only shows a bias against ESG, but also seems to demonstrate more broadly a bias against both active management and qualitative approaches. The Proposed Rule disregards the nuances of constructing an investment lineup that serves the best interests of a broad array of plan participants. Rather than safeguarding the interests of plan participants, the Proposed Rule would compromise the ability of asset managers and plan fiduciaries to act in their best interests.

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

Sincerely,

Blake Pontius, CFA
Director of Sustainable Investing