PUBLIC SUBMISSION

Received: July 30, 2020
Tracking No. 1k4-9i43-ybwf
Comments Due: July 30, 2020
Submission Type: API

Docket: EBSA-2020-0004
Financial Factors in Selecting Plan Investments

Comment On: EBSA-2020-0004-0002
Financial Factors in Selecting Plan Investments

Document: EBSA-2020-0004-DRAFT-1534
Comment on FR Doc # 2020-13705

Submitter Information

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General Comment

Re: EBSA-2020-0004-0002 Comment

Thank you for the opportunity to comment on the proposed rule to clarify that fiduciaries may never subordinate the interests of plan participants and beneficiaries in their retirement income to non-pecuniary goals. I have over 20 years of experience as a buy-side institutional investor and I am a former Managing Director at BlackRock, the worlds largest asset manager, where I helped build their sustainable investment strategy. As you may know, there is a lot of confusion around the terminology that we use in this field. I am concerned that this confusion may inadvertently impact your rule in a negative way, so I want to weigh in and share my perspective to help you make your rulemaking as effective as possible. Specifically, I am concerned that the concepts of values and value are being confused, when in fact those are quite distinct.

Values-based investing, historically known as socially responsible investing (SRI), primarily leverages the tools of negative screening (e.g. divestment, exclusion or avoidance, etc.) or intentional inclusion (e.g. positive tilting) of securities based on values, morals or ethics. Depending on an investors values, securities could be screened out that advance weapons, tobacco, gambling or fetal tissue research, for example. The field of SRI and the tool of negative screening is widely used by faith-based institutions to align their investment portfolios with their belief systems. Hence, the question here is whether or not fiduciaries are allowed to invest in accordance with their values, or if doing so is an abdication of fiduciary responsibility?

ESG investing in its purest form, considers environmental, social and governance factors as they relate to financial value. Proper ESG analysis considers how these factors affect the financial performance over long-term time horizons. Hence, in my view there is no question that fiduciaries must consider ESG factors in investment analysis, because if they do not, that is an abdication of fiduciary responsibility. ESG is by definition pecuniary. The field was developed out of concern that this was a gap in historical financial analysis, and that by analyzing these factors more thoroughly, we could in fact become better fiduciaries.

Here are two examples that illustrate my concern that this concept of values and value, along with impact investing, which is a third and different investment capability, may be being confused:

1. When the Department says, This proposed regulation is designed in part to make clear that ERISA plan fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of nonpecuniary objectives. If there were such an underlying strategy, it would have nothing to do with ESG. There are investments that might consider values or impacts, such as the consequences an investment may have on the environment or society, but by definition that is not an ESG strategy but either an SRI/values based strategy or impact strategy. And in portfolio construction, multiple capabilities may be employed.

2. The Department writes, 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. This is not an accurate statement. Research and consensus are continuously expanding around the standards to be used in assessing the material impact of ESG factors on financial performance, for example by the Sustainability Accounting Standards Board (SASB). Furthermore, the fact that there are multiple ratings systems to assess the impact of ESG factors on future financial performance is no different from there being a lack of consensus from sell side analysts on whether to buy, sell or hold a security. There is a fiduciary duty to utilize reputable information even if there is not a singular opinion on future performance.

Clearly then, ESG investing needs to be considered distinctly from values-based or impact investing because it is in fact a pecuniary goal. Assessing long-term financial value in a manner that takes account of all relevant criteria surely aligns with fiduciary duty.

In conclusion, when the Department says, Providing a secure retirement for American workers is the paramount, and eminently-worthy, social goal of ERISA plans; plan assets may not be enlisted in pursuit of other social or environmental objectives., what is technically meant by this statement is that impact investing, and perhaps values based investing, may not be enlisted if they lead to underperformance. Those are two examples of investment capabilities in pursuit of objectives beyond financial value, but ESG is not.

Thank you,

Chad Spitler