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General Comment

I am writing in strong opposition to the proposed rulemaking entitled Financial Factors in Selecting Plan Investments. Integrating environmental, social, and governance (ESG) factors into investment activities is essential to fulfilling fiduciary obligations to engage in appropriate risk management. The Proposed Rule not only misconstrues the importance and role of ESG integration in reducing risk and increasing returns, it will likely lead to confusion and additional costs for retirement plan fiduciaries. Most disturbingly, the fact that this rule is being proposed with only 30 days for public comment indicates that sowing such confusion might be its ultimate, intended goal.

I urge you to retain existing guidance and not move forward with a final rule.

Despite the Proposed Rules stated goal of providing clarity for ERISA fiduciaries, it instead creates confusion, due in part to a failure to distinguish ESG integration and Economically Targeted Investing (ETI). ESG integration is the consideration of risk factors as part of prudent fiduciary management; it is a strategy that takes these risk factors into account in investment actions. ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits.

The Proposed Rule states that ERISA fiduciaries have fulfilled their obligations if they have selected investments and/or investment courses of action based solely on pecuniary factors and that ESG factors and other similar factors may be economic considerations. In fact, there is now an extensive body of research that makes clear that ESG factors are material investment considerations. See: www.nb.com/documents/public/global/t0349_0119_wp_esg_investing_an_active_approach.pdf, www.bloomberg.com/news/articles/2020-03-31/esg-stock-resilance-is-paving-the-way-for-a-surge-in-popularity, www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds, www.lyxor.com/why-using-esg-helps-you-build-better.

Research published today by Morningstar indicates a possible reason for this absurd Proposed Ruling: flows into ESG funds have been increasing at an unprecedented pace over the past two years. (https://www.morningstar.com/articles/994219/sustainable-funds-continue-to-rake-in-assets-during-the-second-quarter) This increase bodes well for investors, and for the prospect of maintaining a decent, livable planet; however it does not bode well for the fossil fuel industry, which increasingly finds itself in extremis.

If the DOL is sincere in its desire to clarify fiduciary duty, it would be appropriate to create a policy that simply clarifies that fiduciaries must integrate material factors into their investment actions, and that ESG factors may be material. The remaining components of the Proposed Rule create confusion and are likely to cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis. That this might in fact be the intent of the ruling borders on criminal behavior.