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July 30, 2020

Jeanne Klinefelter-Wilson
Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: RIN 1210-AB95 | Proposed Rule on *Financial Factors in Selecting Plan Investments*

Dear Assistant Secretary Wilson:

I write on behalf of Newground Social Investment (“Newground”) to provide comment on the proposed U.S. Department of Labor (“DOL”) rulemaking identified above (the “Rule” or “Proposed Rule”). I write in opposition because, if adopted:

- The Rule would create regulations that are unnecessary, burdensome, and damaging to the interests of essentially every category of investor, shareholder, stakeholder, beneficiary, and working person.

We sincerely request that the Proposed Rule be withdrawn – or at least be re-proposed based on a more factual and accurate treatment of the subject matter – and that the comment period be extended from the ultra-short 30 days to 120 days.

For twenty-six years, on behalf of individual, institutional, and ERISA investment clients, Newground has reviewed the financial, social, and governance implications of the policies and practices of publicly-traded companies. In so doing, we seek material insights that enhance profitability and avoid risk, while also creating higher levels of environmental and social wellbeing. We do this in addition to rigorous financial analysis, because the data amply supports the fact that good governance and enlightened social and environmental policies are hallmarks of the best-run and most profitable companies – i.e., those that perform most strongly over the long run.

EXECUTIVE SUMMARY

The DOL has erred considerably in proposing this Rule. Not only does the Proposed Rule appear to be politically motivated, it is deeply flawed. So flawed, in fact, that its haphazard construct and simplistic methodology causes it to verge on being misleading. Starting with the questionable but apparently politically guided supposition that there is a problem, it proceeds to assert a series of intellectually specious hypotheses that might be simply lamentable where the Rule’s potential impact not so broadly harmful.

As compellingly summarized by Julie Gorte and Joe Keefe of Impax Asset Management:

“The proposed rule... is unnecessary, based more on supposition than fact, and ignores the wide body of research on this issue as well as developing best practices in finance. The rule would create undue burdens for fund managers and fiduciaries who incorporate all material information likely to affect financial returns and risks, both financial and ESG. The proposed rule should not be adopted.”

DETAIL

We have reviewed a number of thoughtful, informed, cogent, and fully documented analyses which have been submitted regarding the Proposed Rule by an impressive array of experienced investors, researchers, and fiduciaries. Nearly every one of these comment letters – each on its own – has marshalled enough concrete evidence to warrant suspension of this wayward rulemaking. Here we wish to briefly highlight six that we feel merit the Department’s particular focus, noting that the comments which follow reflect only a small portion of each respective letter’s total content.

By date then alphabetic order, we commend for the DOL’s deep consideration:

1. **Boston Trust Walden** letter dated July 27, 2020

Notes burgeoning support for environmental, social & governance (“ESG”) analytical frameworks, including:

“The **Principles for Responsible Investment (PRI)**... now includes more than 3,000 global investors with more than \$100 trillion in assets under management committed to incorporating... [ESG] factors into their investment and ownership decisions.” *[emphasis added]*

“...investor and company support for the **Sustainability Accounting Standards Board’s (SASB’s)** industry-specific disclosure standards further illustrates a broad consensus regarding the importance of ESG factors in investment decisions.” *[emphasis added]*

The Boston Trust Walden letter includes a useful and compelling **Appendix** of corporate statements that attest to the validity and usefulness of an ESG lens, which the DOL needs to incorporate into its analysis.

2. **Impax Asset Management** letter dated July 28, 2020

Perhaps the most important comment letter for the DOL to digest, this authoritative letter details the rich, decades-long history of research and analysis into ESG investment methodology and efficacy (i.e., profitability). Be certain to review the letter’s expansive **Appendix 1**, which lists and summarizes 311 important research studies.

The Impax letter concludes:

“Overall, we find the proposed rule to be based on thin and misleading evidence supporting its assumptions, and utterly lacking in a defensible cost/benefit analysis.” *[emphasis added]*

“The proposal also appears... oblivious to a wide body of credible research underscoring the materiality of ESG factors” *[emphasis added]*

“The proposal cites almost no evidence regarding the actual performance of funds that incorporate ESG factors, and the few citations it does include are either misleading or entirely miss the point.” *[emphasis added]*

“According to a sizeable and robust body of literature ignored by the DOL, funds that incorporate ESG factors are competitive with conventional funds in terms of risk-adjusted performance. We have collected hundreds of academic and financial studies and papers showing that more sustainable companies and funds do not sacrifice performance compared with less sustainable peers, and in fact are somewhat more likely to outperform than to underperform.” *[emphasis added]*

A full list of those studies is included in **Appendix 1** to the Impax letter, and a summary of several of the most salient, recent studies are detailed in the comment letter itself.

“It is somewhat astonishing, in light of all of the research... underscoring the materiality of ESG factors that the proposed rule would deem such factors “non-pecuniary”... The disconnect between the proposed rule and the actual evidence could hardly be more profound.” *[emphasis added]*

The studies “provide compelling if not overwhelming evidence that fiduciaries are indeed integrating ESG factors into company analysis and portfolio construction precisely because they view such factors as material.”

“These papers demonstrate that integrating ESG analysis into portfolio construction results in better risk-adjusted performance, or at least competitive performance, compared with non-ESG funds in the same asset classes.” *[emphasis added]*

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3. **Calvert Research and Management** letter dated July 30, 2020

Calvert succinctly counters a range of the DOL's unsubstantiated assumptions, and calls on the Department to revisit its work with an eye to factual accuracy.

"Robust, standard ESG disclosure is one of the most effective ways to achieve improved risk/returns..." *[emphasis added]*

"The DOL has failed to demonstrate that ESG investments increase risk or reduce returns, despite significant, available evidence to the contrary. More than 2,200 research studies have... consistently confirmed that social screens do not compromise investment performance." *[emphasis added]*

Calvert's own "review of academic research also shows that firms with strong ESG policies are likely to outperform peers with weaker performance."

"The DOL suggests that 'on average' ESG increases the costs of investment strategies... However, in fact, the fees of ESG funds are comparable to those of conventional funds." *[emphasis added]*

4. **Ceres** letter dated June 30, 2020

Ceres is a nonprofit organization that, among other things, supports the *Investor Network on Climate Risk and Sustainability*, which consists of over 175 institutional investors that manage more than \$29 trillion in assets. Among the key findings, detailed and substantiated in the Ceres letter:

"ESG issues pose short, medium, and long-term financial impacts and risks. The proposed rule reflects an outdated and inaccurate view that ESG factors are non-financial [when] the opposite is true." *[emphasis added]*

"Some ESG issues pose systemic risks to financial markets... Systemic risks are those that have the potential to destabilize capital markets and lead to serious negative consequences for financial institutions and the broader economy."

"ESG investments, on average, provide comparable or superior returns to non-ESG investments. The largest meta-study to date... examined over 2,200 empirical and review studies [and] found that the business case for ESG investing is 'empirically very well-founded' (i.e., investing in ESG 'pays financially')"

"The United Nations' Environment Programme and Principles for Responsible Investment conducted a global four-year study... [which] produced extensive evidence showing the importance of incorporating ESG standards into regulatory concepts of fiduciary duty. The report concludes that the fiduciary duties of loyalty and prudence require the incorporation of ESG issues into the investment process in the U.S. and other common law jurisdictions." *[emphasis added]*

5. **Interfaith Center on Corporate Responsibility (ICCR)** letter dated July 30, 2020

ICCR is a broad coalition of institutional investors that collectively represent over \$500 billion in invested capital. Newground is a long-standing member of ICCR, and its CEO is a past governing board member. ICCR members have nearly 50 years of experience engaging companies on ESG issues that we find are critical to long-term value creation. Among ICCR's observations and conclusions regarding the Proposed Rule:

"The... justification for the Proposed Rule is speculative and poorly supported, suggesting that the Department is motivated more by political hostility to ESG issues than by a well-founded concern for plan participants and beneficiaries."

"Empirical evidence indicates that better ESG performance is associated with lower idiosyncratic risk, lower probability of financial distress/bankruptcy, more positive analyst recommendations, lower cost of capital, and superior returns." *[emphasis added]*

The DOL "does not establish either that the Proposed Rule is necessary or that it would provide appreciable benefits, and it fails to analyze costs to plans and their participants and beneficiaries."

"The CFA Institute... believes that... material information 'includes the consideration of material ESG information'" *[emphasis added]*

"State Street Global Advisors... recently noted: 'We believe that addressing material ESG issues is good business practice and essential to a company's long-term financial performance...'" *[emphasis added]*

6. **UN PRI** letter dated July 30, 2020

Representing 3,000 global investors with more than \$100 trillion in assets under management, PRI makes several searing observations then outlines seven key findings/concerns, which it proceeds to substantiate:

"If finalized, the Proposal will create confusion among ERISA fiduciaries and asset managers, chill fiduciaries' efforts to integrate material ESG factors into their investment practices and could be costly for retirement savers and investment managers." *[emphasis added]*

"...the Proposal reflects a basic misunderstanding of ESG integration practices, causes confusion, and could lead to costs for plan savers, fiduciaries and service providers." *[emphasis added]*

1. The Proposal appears to reflect a misunderstanding of the investment practices that involve consideration of ESG factors. *[emphasis added]*
2. ESG factors are financially material. *[emphasis added]*

3. Fiduciary duty requires integration of material ESG factors. *[emphasis added]*
4. The DOL should clarify that fiduciaries have an obligation to integrate material ESG factors into investment decisions. *[emphasis added]*
5. Potential cost to American savers due to the Department's confusing and burdensome interpretation of the "all things being equal test" and the chilling effect on ESG integration.
6. Depending on the interpretation of the rule's scope, the QDIA prohibition may greatly limit choices of default investment options and could deny retirement savers access to superior investment products.
7. The Proposal could impose costs on asset managers who have integrated ESG analysis, which could be passed along to savers.

IN CLOSING

Newground concurs with Mercy Investments, who finds that the Proposed Rule erroneously characterizes ESG risks as extrinsic to the fiduciary concerns of investors. We also concur with the many organizations and thought leaders in the investment field who have sent comments which affirm that ESG risk is a proper concern for investors and fiduciaries, and represents a necessary part of the appropriate and legally mandated exercise of fiduciary duty.

We appreciate the Department's time and the attention paid to this important matter, especially during a pandemic. We are confident the facts of the matter are clear, and urge that the Proposed Rule be withdrawn – or at least be re-proposed based on a more factual and accurate assessment of the subject matter. We also request that the comment period be extended from the unreasonably short 30 days to 120 days.

We would be happy to confer with DOL staff should questions arise related to any of these comments. Thank you.

Sincerely,



Bruce T. Herbert, AIF

Chief Executive and ACCREDITED INVESTMENT FIDUCIARY