RIVERWATER PARTNERS

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December 7, 2021

Ali Khawar
Acting Assistant Secretary
US Department of Labor
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

RE: Proposed rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)

Dear Mr. Khawar,

Thank you for the opportunity to provide comments in response to the Department of Labor's proposed rule, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (RIN 1210-AC03) (the "Proposal").

Riverwater Partners LLC is an independent, employee-owned, registered investment advisory firm based in Milwaukee, Wisconsin, serving families, nonprofits, and institutions. As fiduciaries and active stewards, we represent the interests of our clients, which include superior financial returns and positive societal impact. It is our belief, and evidence shows, that companies that incorporate a sustainability lens into long-term corporate strategy offer all stakeholders, including our clients, the opportunity to achieve superior financial and social outcomes due to reduced risk and increased opportunity. We define sustainability as including environmental, social, and governance (ESG) factors. Our process incorporates Due Diligence, Engagement, and Collaboration with thought leaders to inform our practice. Engagement includes proxy voting.

In addition to separate account management, we act as a fiduciary consultant to 401(k) plans, advising plan sponsors on prudent approaches to add ESG funds to their investment menus. Long before these plan sponsors considered ESG funds, we had established written investment policy statements, with strict fund selection and monitoring criteria based on risk and return metrics among other qualitative criteria. We can assure you that it is not difficult to find ESG funds that pass our objective selection criteria for inclusion in a 401(k) investment menu. In fact, our most recent monitoring reports reveal that 80-90% of ESG funds continue to meet our "watch list" objectives for risk and return.

We commend the Department of Labor (DOL) for proposing this rule and recognizing the importance of considering environmental, social and governance (ESG) criteria in retirement investments. Indeed, where ESG factors are material, we believe that the Department should clarify for ERISA fiduciaries that the duty of care under section 404(a)(1)(B) of ERISA **requires** their consideration.

A 2015 Meta-Study[1] of 2000+ Academic ESG Performance Studies found that:

- 90% of study results demonstrate that prudent sustainability practices have a positive or neutral influence on investment performance
- 88% found that companies with robust sustainability practices demonstrate better operational performance and cash flows
- 9 of 11 GICS sectors demonstrate that stocks with superior ESG scores have signaled lower earnings volatility[2]
- Companies with high ESG ratings tend to have a lower cost of capital

This academic research provides strong evidence that Environmental, Social, and Governance factors positively influence corporate valuation and investment performance; our own experience has shown this is precisely because ESG data can potentially help mitigate against both idiosyncratic and systemic risks.

Another important change made in the proposal is the removal of the prohibition of ESG criteria in Qualified Default Investment Alternatives or QDIAs. DOL correctly states that if a fund meets the standards set by the QDIA regulation2, it is suitable for consideration.

In terms of proxy voting and shareholder rights, paragraph (d) makes important and needed changes from the current rule. We are pleased that the proposal returns to the long-held standard that the proxy vote is an asset of the plan and should be stewarded as such. Many shareholders, including Riverwater Partners, believe that environmental and social proposals raised in proxy statements are those that may have the greatest impact – positive or negative – on the economic outcomes for companies; hence, their stock prices; and therefore, the beneficiaries of ERISA plans. In fact, our September 30, 2020, letter in opposition to the Department of Labor's proposed rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (RIN 1210-AB91), argued that a key element of this right is to allow shareholders the opportunity to raise issues before a crisis that erodes shareholder value arises, using Exxon Mobil as an example.

Again, we commend the Department for its consideration of our comments as they relate to restoring shareholder rights to consider all factors, including those related to environmental, social, and governance (ESG) policies and practices, in evaluating their potential impact on the value of investments and voting proxies for retirement plan assets. It is our belief it will result in better outcomes for all stakeholders.

Sincerely,

Cindy Bohlen, CFA
Chief Mindfulness Officer

Adam Peck, CFA
Founder, Chief Investment Officer

Greg Wait, CEBS
Partner

[1] Source: DWS, University of Hamburg "ESG and Corporate Financial Performance" (December 2015)
[2] Savita Subramanian, ESG Part II, A Deeper Dive, Equity Strategy Focus Point, June 2017