Breckinridge
CAPITAL ADVISORS

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Dear Acting Assistant Secretary Khawar,

It is my pleasure to submit comments on the Department of Labor's (the "Department's") Notice of Proposed Rulemaking (NPRM) entitled, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (the "Proposed Rule").

I am founder and President of Breckinridge Capital Advisors, a U.S. based high-grade fixed income investment advisor. At Breckinridge, we recognize ESG analysis as a means of discerning long-term value. While our analysis of an issuer's creditworthiness begins with fundamental bottom-up research, we believe evaluating ESG information and trends provides a broader, more forward-looking assessment of potential risks that may not be reflected in the market. Therefore, we believe bond issuers who integrate ESG matters in their business and financial decisions are better prepared to meet future challenges and to take advantage of new opportunities.

Our belief is that a thoughtful and forward-looking assessment of risk would be incomplete without the inclusion of material ESG factors. Proprietary, quantitatively-based, sector specific ESG frameworks are part of our investment approach. In addition, analysts consider internal and external qualitative research, enhanced by our engagement efforts. Analysts assign sustainability ratings to bond issuers that are important factors in security selection and portfolio positioning.

Breckinridge has been a signatory to the Principles for Responsible Investment (PRI) since 2012. The PRI crafted the following rationale in support of the Proposed Rule change. We agree with their thoughtful comments and are proud to share them in this letter.

The Proposed Rule would provide necessary clarification that fiduciaries should consider climate-related and other ESG factors just as they would any other potentially relevant economic factor.

The current rules are out of step with market realities and place limitations on fiduciaries' ability to prudently consider ESG factors as potentially economically relevant to investment decisions.[1] Growing evidence shows that climate change presents new challenges to global economies, local markets and every company around the world. The COVID-19 global pandemic has highlighted the importance of risks related to worker health and safety and human capital management more generally, and an abundant literature finds links between ESG factors and company performance.

[1] https://dwtyzx6upklss.cloudfront.net/Uploads/f/n/b/pricomment_dolerisaproposedrule30july2020_986374.pdf

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The Department's guidance has long established that fiduciary duty includes consideration of all potentially economically relevant factors that could affect risk and return and long-term plan success.[2] It falls directly within the duty of prudence for fiduciaries to consider the possible risks and opportunities created by climate change and other ESG factors for investments, portfolios, and long-term returns. The Proposed Rule would support fiduciaries in their consideration of potentially economically relevant ESG information by removing arbitrary barriers and clarifying duties to consider all factors appropriately within their risk-return assessments.

The Proposed Rule would appropriately remove barriers to considering ESG factors when selecting default investment vehicles.

Qualified Default Investment Alternatives (QDIAs) are an important vehicle for plans to ensure that participants' and beneficiaries' retirement savings are consistently being invested in a sound way whether or not they declare a preferred investment vehicle or risk-return profile. To ensure this, fiduciaries require the ability to offer all financially prudent options as QDIAs. The current rule unnecessarily prevents fiduciaries from selecting a QDIA that considers non-pecuniary (assumedly targeting ESG) factors, regardless of their economic relevance. The lack of clarity around the definition of pecuniary and the new considerations for QDIA inclusion likely makes fiduciaries more cautious, to the possible detriment of participants and beneficiaries. We support rescission of this limitation and the maintenance of prior QDIA rules for all investment options being utilized as a default.

The Proposed Rule's clarification of the "tie-breaker" test would appropriately allow fiduciaries to consider collateral benefits without making the unrealistic determination that investment choices are "economically indistinguishable".

The current rule requiring investments based on collateral benefits to be "economically indistinguishable" sets an exceeding high bar that is in practice impossible for fiduciaries to surmount, given the existence of differences among even very similar investments. The Proposed Rule's requirement that the investments "equally serve the financial interests of the plan" to support selection of an investment with collateral benefits would better facilitate fiduciaries discharging their duties when making choices among investments with various risk-return characteristics.

As well, the Proposed Rule appropriately eliminates the specific documentation requirements imposed by the current rule, which excessively burden fiduciaries using the tie-breaker and create a stigma around considering ESG factors in investment decision-making. Fiduciaries require autonomy to set strategy and execute investment decisions in line with that strategy without excessive regulatory scrutiny spurred by hostility to ESG or any other kind of potentially relevant considerations.

The Proposed Rule would remove inappropriate obstacles to fiduciaries' exercise of their stewardship responsibilities.

The current rule creates confusion around if and how it is appropriate for fiduciaries to engage in the proxy voting process. We support the Proposed Rule's clarification of the exercising of shareholder rights and find it in line with previous guidance that fiduciaries should exercise these rights conscientiously, taking into account costs and benefits.[3]

[2] https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01
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The current rule imposes documentation requirements for the exercising of shareholder rights broadly, as well as the use of proxy voting firms, that have the potential to increase costs and deter participation in the proxy voting process. These requirements were added despite the absence of evidence that fiduciaries were confused by or contravening the previous guidance. Added documentation requirements not only impose an unnecessary time and cost burden, they also create doubt about the propriety of fiduciaries' stewardship activities. We support the removal of these increased documentation provisions and addition of clarifying language that is in line with prior Department guidance on when and how fiduciaries should exercise shareholder rights and engage in the proxy voting process.

In sum, the Proposed Rule would amend numerous confusing, contradictory and burdensome provisions of the current rules that display a prejudice against climate-related and other ESG considerations. The clear prejudice against this potentially relevant economic information is outside the investment mainstream[4], and could force fiduciaries to fail to consider, or act in spite of or knowledge of, information potentially providing for lower risk and/or higher returns. The Proposed Rule further provides fiduciaries the clarity and autonomy necessary to appropriately utilize information on climate-related and ESG factors to make investment decisions and exercise shareholder rights in line with their fiduciary duties and overarching investment strategy.

Thank you for the opportunity to comment and share our views on "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights."

Sincerely,

Peter B. Coffin

Peter B. Coffin
President, Breckinridge Capital Advisors

[4] https://www.unpri.org/pri-blog/ceo-quarterly-update-celebrating-4000-signatories-and-supporting-the-evolution-of-ri/8033.article

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