Submission to Employee Benefits Security Administration, Labor
Re: Z-RIN 1210-ZA30
Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

May 16, 2022

To whom it may concern:

My name is Paul Rissman. I was a fiduciary for 19 years with AllianceBernstein, LP, and upon my retirement held the position of Chief Investment Officer of Alliance Growth Equities. In my asset management career I have additionally been both a quantitative and fundamental analyst, portfolio manager, and Director of Research. I am also currently a fiduciary as a board director for the Sierra Club Foundation, where I sit on the Investment Committee. I am pleased to submit this comment to the Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk.

This submission intends to contribute to the General Request for Comments, Item 1: "Please provide your views on how EBSA should address and implement the action items set forth for EBSA in Executive Order 14030 on Climate-Related Financial Risk. Specifically, what agency actions can be taken under ERISA, FERSA, and any other relevant laws to protect the lifesavings and pensions of U.S. workers and families from the threats of climate-related financial risk?"

In this letter I assert that EBSA can best serve its constituents, as well as the nation, by guiding ERISA fiduciaries to concentrate on the long-term systemic financial risks to their portfolios. We make six points: 1) ESG investing, engagement, and voting are pecuniary in nature; 2) ERISA fiduciaries must be just as cognizant of long-term material impacts to their beneficiaries' financial health as they are of short-term impacts; 3) ERISA fiduciaries must take account of impacts to the whole portfolio over impacts to individual assets; 4) systemic risks of climate change and other ESG-related systemic risks produce long-term impacts on portfolios; 5) ERISA fiduciaries' duty of care requires reasonable mitigation of long-term systemic risks through investment, engagement and voting; 6) EBSA should provide clear guidance in this regard.

1. I agree with the Supreme Court's statement that "[w]e cannot accept the claim…that the content of ERISA's duty of prudence varies depending upon the specific nonpecuniary goal set out in an ERISA plan….the 'exclusive purpose' to be pursued by all ERISA fiduciaries [is]: 'providing benefits to participants and their beneficiaries…' §§1104(a)(1)(A)(i), (ii). Read in the context of ERISA as a whole, the term 'benefits' …must be understood to refer to the sort of **financial** benefits (such as retirement income) that trustees who manage investments typically seek to secure for the trust's beneficiaries (emphasis added)."[1] ESG-aligned investing, engagement and proxy voting are financial in nature. They are not nonpecuniary.

2. ERISA fiduciaries seeking to maximize financial benefits must delicately balance the needs of current retirees with those of individuals just entering the workforce. While retirees may prioritize short-term market movements, new entrants, who may be drawing retirement income through 2090 and beyond, may be much more cognizant of long-tailed risks. Fiduciaries should consider both groups, and those in-between. Again, as the Supreme Court has opined, "[t]he common law of trusts recognizes the need to preserve assets to satisfy future, as well as present, claims and requires a trustee to take impartial account of the interests of all beneficiaries. See Restatement (Second) of Trusts § 183 (discussing duty of impartiality); id., § 232 (same)."[2]

3. As ERISA fiduciaries exercise their duties of care, they must recognize that their investment decisions are appropriate only if they operate on a portfolio level. ERISA requires that the duty of care include diversification. A well-diversified portfolio will minimize the financial risks arising from holding any specific asset. Here we cite the viewpoint of the Fifth Circuit of the Court of Appeals: "regulations provide that the [ERISA] fiduciary shall be required to act as a prudent investment manager under the modern portfolio theory rather than under the common law of trusts standard

[1] *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014)

[2] *Varity Corp. v. Howe*, 516 U.S. 514 (1996)

which examined each investment with an eye toward its individual riskiness."[3]

4. An ERISA fiduciary who is cognizant of the need to balance portfolio-level short and long-term risk and return, as required by law, must take account above all else of systemic portfolio risk. Systemic risk affects entire portfolios and cannot be diversified away. One of the most salient long-term systemic risks to ERISA portfolios is climate change.[4] For example, the former CEO of one of the world's largest insurance companies has stated, "[i]f you go much further to 2020, 2030, we can clearly say that at a scenario between 3 and 4 degrees [centigrade temperature rise above pre-industrial levels], it's not insurable anymore. Your basement shop in New York, your basement shop in Mumbai will at this point not be insurable anymore."[5] Think of the potential financial markets risk, and the potential damage to retirement income, of an uninsurable world.

Systemic social risks have been surfaced as well through recent academic research. One of these is the systemic financial risk of economic inequality.[6] Another is the systemic financial risk of authoritarianism.[7] And, as we have seen with the Gilets Jaunes Movement, all of these systemic risks are intertwined.

5. ERISA fiduciaries' duty of care extends to the mitigation of long-term systemic risks if reasonable. For example, the International Energy Agency's Net-Zero Emissions Scenario, which is necessary to comply with the Paris Agreement, specifies that "other than fields already approved for

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[3] *Laborers National Pension Fund v. Northern Trust Quantitative Advisors* 173 F. 3d 313 par. 9 (1999).
[4] Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission: "Climate change poses a major risk to the stability of the U.S. financial system and to its ability to sustain the American economy." P.i, https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf#page=7.
[5] https://www.insurancejournal.com/news/international/2018/01/26/478615.htm.
[6] See, for example https://www.brookings.edu/bpea-articles/the-economic-gains-from-equity/; https://eaccny.com/wp-content/uploads/2020/11/Citi-Closing-Racial-Inequality-Gaps-AX2QY.pdf; http://www.pascalpaul.de/wp-content/uploads/2020/03/Paul-2020-Historical-Patterns-of-Inequality-and-Productivity-around-Financial-Crises.pdf; https://scholar.harvard.edu/files/straub/files/mss_richsavingglut.pdf.
[7] See, for example https://www.nber.org/papers/w20004; https://www.deakin.edu.au/__data/assets/pdf_file/0010/404767/2006-04eco.pdf; https://www.v-dem.net/media/filer_public/d3/f1/d3f1799a-5d50-4653-8440-1e9547144c0f/wp_111_final.pdf.

development, no new oil fields are necessary."[8] Voting against Directors at oil exploration companies that don't restrict discovery and development of new fields could restrain these companies from contributing to violation of the Paris Agreement. Insofar as this could lower the systemic risk of climate change, it is a reasonable, if not required, action on the part of the fiduciary. Restricting discovery and exploration of new fields may create negative impacts on the stock prices of companies whose growth depends on such activities. We assert that ERISA fiduciaries must place systemic risks to their whole portfolios above the risk to any individual company, however. Idiosyncratic risks to individual companies may be diversified away; systemic risks to entire portfolios cannot.

6. We urge that EBSA produce clear guidance to ERISA fiduciaries, that they must place paramount importance on mitigating systemic portfolio risk in their duty of care to beneficiaries. In this way EBSA can fulfill President Biden's goal that each cabinet department do its share to slow or even stop climate change before it is too late for all of us.

Respectfully submitted,
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[8] https://iea.blob.core.windows.net/assets/beceb956-0dcf-4d73-89fe-1310e3046d68/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf, p.101.