GRAHAM L. COPLEY

Houston, Texas

July 20, 2020

Mr. Jason DeWitt
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1210-AB95

Mr. DeWitt:

Thank you for this opportunity to offer my thoughts on the Department of Labor's newly proposed rule concerning the role of ESG investing, "Financial Factors in Selecting Plan Investments". The Department should be commended for this important and powerful change to ERISA plan fiduciary regulation. My comments below explain the fiduciary pitfalls of ESG investing.

The discussion with respect to ESG investing comingles responsible investing with maximizing investor returns in a confusing manner. ESG investing is a reaction to decades or poor governance, believed societal injustices, and concerns regarding sustainability – but often at a cost. But ESG investing remains in its infancy in one important respect, which should make integrating ESG into overarching fiduciary responsibility full of risk.

Fiduciaries and money managers exercising governance over comingled pension funds must focus on maximizing returns to those pension funds; and lack of clarity with respect to ESG funds presents the roadblock. There remain too many definitions of ESG, too many metrics provided by too many companies for any investor to be sure that what he or she is buying even has the right basis from an E, S, and G perspective. One metric provider's star "G" company may not be on another metric provider's "G" list, for example. Today, you can drive a truck through the range of possible definitions and the logic behind different fund construction. The investment industry wants more clarity and consistency, but it is not here yet.

As a money manager, it is vital that you can support the investment decisions that you have made because when stocks, bonds, or funds underperform (which is inevitably the case even for the best investors), you need to be able to articulate why you made the decisions you made. When it comes to ESG funds, until there is more standardization around definition and measurement, explaining why you chose to own a fund has degrees of intangibility that are unquantifiable. Did you buy the fund because you believed that the manager is using the right measures for E, S and G, and why? This is not the same with, for example, a dividend fund or a low volatility fund, as these are constructed on the basis of empirical analysis as opposed to opinion. Several companies may have the same dividend, volatility, and valuation profiles, but no two companies have the same ESG characteristics, especially when there are dozens of companies providing different rankings and different answers.

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An individual can defend his or her decision to buy an ESG fund; they have an altruistic bias to their choice and they are willing to take the risk that there might be an inconsistency in the way the fund they have chosen is constructed versus others that claim the same exposure.

As a fiduciary, bound by ERISA rules, you may be right if you assume that the market will move towards a greater and greater focus on ESG over time. But until there is more structure and more empirical analysis to support the decision to buy an ESG fund, you run the risk of an indefensible position if you forfeit client returns by choosing one ESG fund over another or over a more general fund.

Similarly, I offered the following comment to the Securities and Exchange Commission on its proposed rule last year (S7-22-19) regarding proxy voting advice:

> "This is primarily an issue of mandate versus emotion and altruism… As ESG becomes a larger question and a center for debate beyond corporate governance, there is clearly a temptation to take a view on the E and S components of ESG as they appear in investor questions and activist debates, leading to motions brought before corporate shareholders. With no common agreed basis for measuring either of the E and S components within ESG, despite a desire to have one, the proxy advisory companies must look at these motions, as they arise, only through the lens of what will maximize shareholder returns."[1]

Investment that has a more acute focus on the environment, sustainability, and corporate governance is unlikely to be just a fad. Investment managers that are bound by ERISA standards, however, will need to advocate for a consistent, standard, and widely accepted set of definitions and metrics for each piece such that they can make investment decisions with assumptions that are defensible.

Having formerly served as a board member, chief executive of a publicly traded company, and global head of research for a multi-national financial institution, I know too well the biases of ESG investing. As such, I applaud the Department's efforts to ensure ERISA plan fiduciaries are focused solely on strengthening the returns of their plans' participants.

Sincerely,

Graham L. Copley
Former Board Member
Macquarie Securities USA

[1] Copley, Graham, SEC Comment Letter: "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice", December 13, 2019, https://www.sec.gov/comments/s7-22-19/s72219-6542183-200581.pdf.

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