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RIVERWATER PARTNERS

July 27, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

Riverwater Partners LLC is an independent, employee-owned, registered investment advisory firm based in Milwaukee, Wisconsin, serving families, nonprofits, and institutions. We invest in superior businesses with exceptional management teams, attractive valuations, and a focus on social responsibility and sustainability.

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.

We are writing to express our strong opposition to the Department of Labor's (the "Department's") proposed rule, "Financial Factors in Selecting Plan Investments" (the "Proposed Rule"), set forth in the Notice of Proposed Rulemaking ("NPRM").[1] The Proposed Rule would impose significant analytical and documentation burdens on fiduciaries of benefit plans governed by the Employee Retirement Income Security Act ("ERISA") wishing to select (or allow individual account holders to select) investments that use ESG factors in investment analysis or that provide ESG benefits.

We are concerned about the rationale for imposing said burdens on fiduciaries given the lack of evidence cited for assuming that consideration of ESG factors by investment managers necessarily leads to underperformance. A 2015 Meta-Study[2] 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[3]
- Companies with high ESG ratings tend to have a lower cost of capital

[1] Financial Factors in Selecting Plan Investments (RIN 1210-AB95), 85 Fed. Reg. 39113 (June 30, 2020).
[2] Source: DWS, University of Hamburg "ESG and Corporate Financial Performance" (December 2015)
[3] Savita Subramanian, ESG Part II, A Deeper Dive, Equity Strategy Focus Point, June 2017

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.

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, rather than imposing additional analytic and documentation burdens as the Proposed Rule now does.

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. Employers are very interested in attracting and retaining talented young employees who have shown a strong interest in ESG investing. 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.

This Proposal mischaracterizes ESG integration and is likely to lead to confusion for ERISA fiduciaries and cost to plan savers. If the Proposal is finalized in its current form, we are concerned that fiduciaries will struggle to fulfil their obligations to integrate all material risk factors while also trying to respond to the language in the Proposal that appears aimed at preventing fiduciaries from taking account of these same risks.

We encourage the DOL to provide additional opportunities and time to collect information to ensure that the Department and practitioners have a shared understanding of the impact of the rule and how fiduciaries will be required to act in response to it.

Thank you in advance for your consideration.

Kind regards,

Cindy Bohlen, CFA	Adam Peck, CFA	Greg Wait
Chief Mindfulness Officer	Founder & CIO	Partner