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29 July 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
https://www.regulations.gov/document?D=EBSA_FRDOC_0001-0210

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

On behalf of Brunel Pension Partnership, thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR").

Brunel Pension Partnership believes that, in order to fulfil our fiduciary obligations to our clients and beneficiaries, it is vital to incorporate environmental, social and governance (ESG) factors into investment decision-making. ESG factors enable us to undertake prudent risk management and assess material financial risks.

Whilst we support the need for standards to be established around ESG investing, in order to prevent 'greenwashing', the recent NPR misrepresents ESG integration and does not offer the clarity that is needed for the industry. Furthermore, if introduced, we are concerned that it will dissuade funds from thinking about the full spectrum of financial risks and will place additional burdens on those investment firms that consider ESG factors as a vital component of their risk management process. As well as leading to confusion for investment firms and corporations, the NPR will create negative impacts for plan savers in the form of higher costs and poorer long-term financial returns.

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that ESG factors can be financially material, and integrating ESG factors is core to investment decision-making. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interests of our beneficiaries. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

Despite the aim of providing clarity for ERISA fiduciaries, the Proposal creates confusion. This appears to be, in part, because of a failure to distinguish ESG integration and economically targeted investing (ETI).

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ESG integration is the consideration of ESG factors as part of prudent risk management and a strategy to take investment actions aimed at responding to those risks.

ETIs are investments that aim to provide financial returns as well as collateral, non-financial benefits. For example, ETIs often advertise job creation or climate impact as goals of the investment.

ESG Integration
The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have "selected investments and/or investment courses of action based solely on pecuniary factors." It goes on to state that, "ESG factors and other similar factors may be economic considerations." There is now an extensive body of academic research that makes clear that ESG factors are material investment considerations that not only enhance performance but also reduce risk[1] [2] We believe that integrating ESG factors not only enhances financial returns and reduces risk, but also enables us to protect our clients' interests through contributing to a more sustainable and resilient financial system. This, in turn, supports sustainable economic growth and a thriving society, which helps to explain the basis for our decision to integrate ESG factors into all our investment actions.

A policy by the DOL, alone, that clarifies that fiduciaries must integrate material factors into their investment actions and that ESG factors may be material would be appropriate. We are concerned, however, that the remaining components of the proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

The "all else being equal" test

Brunel Pension Partnership is concerned that the NPR creates new burdens for fiduciaries using the "all else being equal" test that would lead to unnecessary costs for plan participants. It also creates confusion about what activities the DOL is attempting to regulate.

Under the "all else being equal" test, which has been in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options – options that would also meet the financial needs of the fund just.

The Proposal raises questions about whether fiduciaries would, in reality, ever have the opportunity to select between multiple investment options. It proposes the retention of the "all things being equal" test but adds new recordkeeping requirements for fiduciaries to document their analysis that multiple options were

[1] Friede, Busch and Bassen, 'ESG and financial performance: aggregated evidence from more than 2000 empirical studies', Journal of Sustainable Finance and Investment 5(4), pp.210-33, December 2015
[2] https://www.hmc.harvard.edu/sustainable-investing/

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equal and that it was, therefore, appropriate to make a decision based on collateral benefits.

It is a requirement for all fund managers appointed by Brunel Pension Partnership – across all asset classes – to integrate ESG factors throughout their investment process. Our appointed managers not only consider ESG issues in the context of their mandates but are also leading the industry globally.

The Proposal's discussion of the "all things being equal" test is cause for confusion. The test was originally developed to guide the consideration of ETIs and the discussion in the Proposal appears to envision the selection of an ETI investment, yet the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration.

Defined contribution plan investment options

The Proposal clarifies that ERISA fiduciaries may select "ESG-themed funds" as an investment option for a participant-directed plan but that they cannot select an "ESG-themed fund" as the default investment option. This determination appears to be informed by confusion between ESG integration and ETIs. In our view, all investment options should incorporate the integration ESG factors, as part of prudent investment decision-making. In addition, it may be appropriate for ERISA fiduciaries to offer ETIs as options that participants may select in participant-directed plans.

The Department's stated rationale for prohibiting an "ESG-themed fund" from being selected as the default investment option is that it is not appropriate to select "investment funds whose objectives include non-pecuniary goals". This statement shows a fundamental misunderstanding of the purpose of ESG integration, which is to integrate *all* material factors into investment decision-making.

In addition, it is likely to cause confusion for fiduciaries. After all, the Department stated earlier in the Proposal that ESG factors are likely to have a 'material economic considerations', only to later deem ESG factors "non-pecuniary."

We are also concerned that the message conveyed to corporates, however inadvertently, is that the consideration of ESG issues is not important to investors. The research demonstrating that it is, in fact, enormously important, is overwhelming. Take, for example, research published by the Bank of America[3] which clearly demonstrates that companies that take environmental, social and governance (ESG) factors into account may enjoy advantages over companies that do not. We believe there is a clear fiduciary duty to consider such issues in all our investment decision-making.

[3] https://about.bankofamerica.com/en-us/what-guides-us/esg-a-z-report.html#fbid=iSPttssEXMt

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Conclusion

The Proposal mischaracterizes ESG integration and fails to distinguish between ESG integration and economically-targeted investing. This is likely to lead to confusion for ERISA fiduciaries and extra costs for 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 financially material risk factors, while following Proposal guidelines that appear aimed at preventing fiduciaries from taking account of these same risks.

To reiterate our primary point: as institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that ESG factors can be financially material, and that integrating ESG factors is core to investment decision-making. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interests of our beneficiaries. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule.

We would be delighted to follow-up on any of the comments made in our response and provide further support to the review. Please contact our Chief Responsible Investment Officer, Faith Ward on faith.ward@brunelpp.org.uk.

Regards

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Signed by Laura Chappell
CEO, Brunel Pension Partnership Ltd

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