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Office of Regulations and Interpretations,
Employee Benefit Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20201

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

To Whom It May Concern:

Refinitiv welcomes the opportunity to submit comments on the Department of Labor's (DOL) proposed amendments (the "Proposed Rule") to the "Investment duties" regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to confirm that ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action.

Refinitiv is one of the world's largest providers of financial markets data and infrastructure, serving over 40,000 institutions in approximately 190 countries. It provides leading data and insights, trading platforms, and open data and technology platforms that connect a thriving global financial markets community – driving performance in trading, investment, wealth management, regulatory compliance, market data management, enterprise risk and fighting financial crime. Our key clients include some of the largest asset management firms, global banking institutions, and fund administrators.

We appreciate the desire of the DOL to bring clarity to obligations of ERISA-plan fiduciaries regarding environmental, social, and corporate governance (ESG) investing. We also recognize the steady upward trend in use of the term ESG among institutional asset managers; an increase in the array of ESG-focused investment vehicles available; a proliferation of ESG metrics, services, and ratings offered by third-party service providers; and an increase in asset flows into ESG funds. While the DOL should continue to monitor developments in this space and ensure appropriate guardrails are in place to help safeguard the interests of participants and beneficiaries in the plan benefits, we believe the DOL has based this rulemaking on outdated views of ESG investment and, as a consequence, is more likely to harm the very beneficiaries it seeks to protect.

ESG considerations are critical to managing risk and improving investment outcomes

The Proposed Rule takes an outdated position on ESG considerations. The language of the Proposed Rule implies that ESG-oriented funds are somehow inferior to alternatives when making an investment choice. This perspective – while prevalent in the infancy of ESG analysis – no longer holds true. Aspects of ESG are about avoiding systemic risk associated with future looking events which cannot be demonstrated through backwards, historical regression testing as per usual risk models. The effects of climate change and the decarbonization of the economy necessary to avoid the worst aspects of it are real and can be enormously influential valuation factors in stocks over the next decade. By definition, this will not show up in historical performance analyses up until now so policymakers must not rely on out-dated analyses but rather look to current and future models.

There is an increasing understanding from institutional finance that it actually needs to be considered a fiduciary duty to quantify and factor in meaningful risks and opportunities into the investment decision-making process which emanate from social, environmental, and humanitarian considerations. Investors are increasingly aware that doing good for society can deliver superior risk adjusted financial returns, compared to strategies that don't account for environmental and social factors. A substantial body of scientific evidence supports this. In a review of more than 2000 studies over the last 40 years that examine factors related to sustainable investing, integrating sustainability factors either improves financial performance or has no negative impact upon it. This finding holds true across all asset classes.

If nothing else the coronavirus crisis has demonstrated the impossibility of financial markets to diversify away from or divest from the risks that affect human wellbeing on a grand scale and which directly impact the real economy. We have seen amid the current pandemic that ESG funds have actually outperformed the market. Increased inflows to ESG funds also demonstrate the investor recognition that ESG considerations promote long-term value. This is precisely the wrong time for the DOL to additionally burden plan fiduciaries by limiting their options in choosing funds focused on good governance and sustainability, which have been shown to enhance and protect returns. Integrating climate risk into decision-making is critical to avoiding unwanted risk exposures and missed opportunities stemming from a low-carbon economy.

Proposed Rule creates unnecessary burdens on plan fiduciaries

The broad scope of criteria that the DOL considers problematic is likely to result in increased costs and fees as plan fiduciaries seek to filter for these criteria. DOL claims to promote free market and deregulatory principles, however the Proposed Rule would severely limit the ability of plan fiduciaries to pursue an ESG investment strategy, despite mainstream acceptance that such a strategy is shown to improve long-term financial performance, as discussed above. If the proposed rules are adopted, ESG investment options will likely become more difficult to offer under a 401(k) plan, leading to less availability to plan participants of ESG investment alternatives as part of their retirement portfolios. The Proposed Rule may also have broader ramifications for the asset management industry, which has actively integrated ESG into its product offerings. The global asset management industry has worked closely with regulators in Europe and around the world to promote and adopt the very practices the DOL seems to discourage with this Proposed Rule. The DOL's action to burden and limit plan administrators will only serve to make U.S. ERISA plan beneficiaries unable to enjoy the benefits and returns enjoyed by the rest of the world.

Proposed Rule hampers investor choice

Today, and for many years prior, investors are rightly offered choices around their investment allocation which reflect their personal preferences for exposure to risk and intended return. So long as investors are given clarity as to the implications, investors should be allowed to choose their exposure to social and environmental impact. The Proposed Rule overreaches and imposes on the freedom of individuals to have meaningful choice about how their own capital is allocated in a manner consistent with their wishes.

Conclusion

In closing, Refinitiv urges the DOL to revisit these amendments, which create additional burdens on plan administrators and will ultimately negatively impact the beneficiaries. The DOL should instead be promoting broader adoption of ESG metrics as a critical part of forecasting financial performance and risk management, and to work with other agencies to incentivize improvement to the quality, comparability, and consistency of ESG information.

Refinitiv appreciates the opportunity to comment on the DOL's Proposed Rule. We would be pleased to provide any further information or respond to any questions that the Department or the staff may have.

Sincerely,

Sherry Madera
Chief Industry & Government Affairs Officer
Refinitiv