

July 29, 2020

Office of Regulations and Interpretations US Department of Labor
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

RE: Proposed rule on Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

To whom it may concern:

As institutional investors taking ESG factors into consideration in our investment strategies, we strongly oppose the proposed rule on financial factors in selecting plan investments (RIN 1210-AB95).

We, Bâtirente, Hexavest and the RRSE, are long-term shareholders representing more than US\$15 billion in assets under management. With the support of Æquo Shareholder Engagement Services, we engage directly with portfolio companies on critical environmental, social, and governance (ESG) issues, to enhance the long-term value of these companies. We write to provide comments in response to the Department of Labor’s proposed rule, “Financial Factors in Selecting Plan Investments” (RIN 1210-AB95) (the “Proposal”).

The Department of Labor fails to articulate a rational connection between the relevant facts and the proposed rule. The Proposal reveals a fundamental misunderstanding of how professional investment managers use environmental, social and governance (ESG) criteria as an additional level of due diligence and analysis in the portfolio construction process. Investment managers increasingly analyze ESG factors precisely because they view these factors as material to financial performance. We believe that:

- A. The proposed rule assumes ESG strategies sacrifice financial returns, but current research findings show ESG strategies’ outperformance¹**
- B. The proposed rule assumes ESG considerations are not material, but the Sustainability Accounting Standards Board standards adoption process is based on financial materiality legal standard²**

¹ From 2014-2019, sustainable funds did well in both up and down markets relative to conventional peers. “When markets were flat (2015) or down (2018), the returns of 57% and 63% of sustainable funds placed in the top half of their categories. When markets were up in 2016, 2017, and 2019, the returns of 55%, 54%, and 65% of sustainable funds placed in the top half of their categories.”- [“US ESG Funds Outperformed Conventional Funds in 2019”, Morningstar, 2020](#)

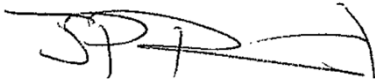
² SASB framework is underpinned by the legal basis of materiality in the US. Its standards have undergone vetting by industry experts, comprising a balanced group of ⅓ corporate professionals, ⅓ investors, and ⅓ other

- C. The proposed rule assumes ESG considerations could violate fiduciary duty, but other jurisdictions' regulatory interpretations support prudent investor consideration of ESG factors as material and within fiduciary duty³**
- D. The proposed rule assumes that ESG considerations are not material to corporate success, but the Business Roundtable Statement on Corporate Purpose demonstrates broad issuer acceptance of materiality as integral to corporate long-term success⁴**

The Proposal is likely to have the perverse effect of dissuading fiduciaries, even against their better judgment, from offering options for their plans that consider ESG factors as part of the evaluation of material financial criteria. As a result, it will unfairly, and harmfully, limit plan diversification and perhaps compel plan participants to choose options that are either more risky or less profitable.

I respectfully request that the Proposal be withdrawn. Thank you for your consideration of these comments.

Sincerely,



Jean-Philippe Renaut
CEO
Æquo, Shareholder engagement services



Daniel Simard
CEO
Bâtirente



stakeholders. Its determinations are guided by its core objectives to provide the users and providers of financial capital with material, decision-useful, cost-effective disclosure. - [SASB Conceptual Framework](#)

³ See for example: [The UK Pensions Regulator](#); [The Brazilian National Monetary Council](#) (CMN); The National Assembly of South Korea; The Federal Government of Norway; [The European Commission](#); Article 173 of the French Energy Transition Law; [China, Hong Kong, India, Singapore, Malaysia, and South Korea](#).

⁴ Business Roundtable Statement on Corporate Purpose recognizes corporations' role in creating a strong and sustainable economy, environment, and society. In this statement, companies commit to delivering value to customers, investing in employees through fair compensation, development, and DEI initiatives, supporting the communities in which they work by respecting the community and protecting the environment, and generating long-term value for shareholders and committing to transparency and shareholder engagement. - [Business Roundtable Statement on Corporate Purpose](#)



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