

July 30, 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

To be submitted electronically via www.regulations.gov

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

To Whom It May Concern:

On behalf of High Water Women (HWW) we are writing to comment on the Proposed Regulation. Since 2013, HWW has been a pioneer in bringing leaders together to demonstrate the power and effectiveness of deploying capital in ways that drive economic, social and environmental profits. We know that investing with impact, which includes environment, social and governance ("ESG") and other strategies, is designed to produce better returns, stronger businesses and a more resilient economy.

HWW is a New York based non-profit that provides programs that educate, engage, support and connect investors and professionals in finance to promote the empowerment of women and underserved youth. The High Water Women Foundation Inc. is a 501(c)3 organization founded in 2005 by women in the hedge fund and financial services industries; its core programs include its annual Investing with Impact Symposia and various financial literacy trainings. With a network of nearly 1,400 people who have participated in its symposia to date, HWW seeks to empower and expand this base.

The consideration of ESG factors in investment decision making is broadly becoming accepted as an established part of prudent management and fiduciary duty. Investors and capital market participants around the world are recognising the financial significance of ESG factors. The 2019 bankruptcy of California based utility PG&E, a result of liabilities incurred from forest fires tied to the impact of climate change, that eliminated \$30 billion in equity value for shareholders is but one of a myriad of examples of the financial materiality of ESG factors to investor portfolios.

We strongly agree with a variety of other comment letters that assert and indeed demonstrate that the Proposed Regulation: mischaracterises ESG integration, misunderstands the benefits that ESG considerations provide within the investment process, reveals an arbitrary and unsubstantiated bias against ESG analysis, would

burden asset managers without providing commensurate benefits, would at best cause confusion for ERISA fiduciaries and at worst cause them to violate their duties of care and loyalty, would undermine the existing duty of impartiality¹ and would harm plan savers by discouraging options they frequently and increasingly prefer. Given the larger resources of others to provide such comments in greater detail and the inappropriately short 30-day comment period, we refrain from repeating their citations of numerous studies and more fulsome legal explications.

Instead, we provide the following more general comments based on the eight years of symposia that HWW has organized and our aggregate professional experiences:

- Myriad investment opportunities exist with asset managers who see opportunities for and have achieved market rates of return (sometimes outperforming) while focusing on environmental and social considerations in the analysis of their investments.
- Employing diverse teams to manage assets and investing in companies whose boards of directors have (at least minimal) diversity have also shown to produce superior returns.
- ESG data are a more holistic set of data by which to make investment decisions, rather than an alternative method for decision-making.

When the Proposed Regulation questions the validity of ESG, or merely inhibits its application through regulatory hostility and recordkeeping burdens, it is questioning the validity of numerous studies that show that diverse boards, management, and teams lead to better business decisions and performance; that sustainability strategies produce equivalent or superior returns for investors; and, that social considerations often yield long term financial benefits missed by more short-sighted approaches.

The Proposed Regulation fundamentally would take away preferences that investors have, doing harm to markets, our economy and our country. We strongly recommend that the Proposed Regulation be withdrawn.

If High Water Women can be of further assistance, whether to amplify or to provide citations to studies that support the above, please contact Kim Leslie Shafer at kimleslieshafer@gmail.com or Alissa Desmarais at adesmarais@highwaterwomen.org.

Sincerely,

HIGH WATER WOMEN

¹ Looking myopically only at short-term considerations rather than longer term investment horizons would unfairly favor older plan participants over younger ones.