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Via: https://beta.regulations.gov/comment/EBSA-2020-0004-0002

Assistant Secretary Preston Rutledge
EBSA
Department of Labor
200 Constitution Ave, NW, Ste S-2524
Washington DC 20210

**RE: RIN 1210-AB95 NPRM: Financial Factors in Selecting Plan Investment**

Dear Assistant Secretary Rutledge,

This letter is being submitted to provide feedback on the Department of Labor's proposed rules regarding the inclusion of environmental, social and governance ("ESG") considerations in private-sector retirement plan investment selection.[1] We welcome the opportunity to share our perspectives on these matters.

We believe that the existing ERISA regulatory framework provides appropriate protection for employee benefit plan participants, and that on the contrary the proposed rule risks harming plan participants.

Ivy Investment Management Company is an investment manager responsible for approximately $67 billion of assets under management in client funds. Since 1937, our organization has served millions of "Main Street" retail investors.[2] As a fundamental active manager and long-term investor on behalf of our clients, we believe that acting as an engaged, knowledgeable steward is an integral component of our value-add to our clients.

As investors looking to deliver strong returns to our clients, we agree with the Department's statement that prudent fiduciaries should consider "pecuniary (or "risk-return") factors affecting the economic merits of the investment". However, we are concerned that the Department's proposed amendments to the "Investment Duties" regulation under ERISA could have unintended negative consequences, undermining those very objectives.

As fundamental active investors, we believe that sound investment decision-making requires a broad set of information. Our goal as investors is to make prudent judgments regarding the future prospects for any given investment. For investment decisions related to corporate securities (stocks and bonds), that information set typically includes a very broad scope, including such matters as management leadership

[1] https://www.federalregister.gov/documents/2020/06/30/2020-13705/financial-factors-in-selecting-plan-investments
[2] Approximately 2.7 million mutual fund accounts as of June 30, 2020

and accountability, corporate governance, relationships with regulators, resource usage and operational efficiency, value-add to customers, human resources and employee engagement, to name but a few. These matters have been part of the fabric of fundamental active investment decision-making for many decades, and generations of investors, prior to the establishment of ERISA, and prior to the usage of the acronym ESG, precisely because these matters can impact the bottom-line of corporate profitability and investment returns.[3]

In recent years, many of these issues have become characterized by the acronym "ESG" (referring collectively to Environmental, Social, and Governance considerations, as distinct from traditional financial statement considerations). While the uptake of the acronym ESG by investors has been broad, the interpretations and investment process approach to ESG integration is wide and varied, and lacks any singular definition—as is the case with "fundamental active investing," for that matter.

As with any number of investment processes, some are successfully implemented and drive strong performance for fund shareholders, and others do not. That is the nature of markets, and of active management, and of fund manager selection.

We believe that principles-based regulation, to protect plan participants, rather than proscriptive rules-based regulation, can allow the markets to most effectively serve participants. The DOL does not take a rules-based plan selection role with regard to the myriad forms of fund management available, whether active or passive, fundamental or quantitative, or otherwise. And so, to set the bar higher, or lower, for any given investment approach, is concerning, and risks chilling competitive market forces that serve plan participants.

As just one example, factor-based quantitative investing has become widespread well after the current DOL language was crafted. In the investment field, "factors" are generally viewed as orthogonal quantitative inputs to multivariate systematic investing models. Some versions of factor investing have thrived, and benefitted shareholders, while other versions have performed poorly, for particular time periods. In any event, factor-based investing has grown to be a widely used tool for both investors and in plan selection. Meanwhile, in the proposed rule, repeated use of the expression "ESG factors" we think is confusing and misses the point: while ESG characteristics may include quantitative factors, ESG characteristics in many instances are more generally simply part of the qualitative informational inputs to fundamental investment decision making.

We have seen the positive value to fund shareholders of integrating ESG considerations in investment decision-making. Numerous academic and practitioner studies provide evidence that ESG integration can

[3] Hanson, Dan, "ESG Investing in Graham & Doddsville" (Summer 2013). Journal of Applied Corporate Finance, Vol. 25, Issue 3, pp. 20-31. Available at SSRN: http://ssrn.com/abstract=2371473.

contribute to favorable risk-adjusted returns.[4] Further, we believe that the Department's comment mechanism has to date generated a wealth of insight on the matters at hand, which collectively raise myriad concerns regarding potential unintended detrimental consequences of the proposed rule.

We are concerned that unintended consequences of the proposed rule, and heightened scrutiny on any particular investment approach, including approaches to ESG integration, will ultimately negatively impact plan participants.

For these reasons we respectfully ask the Department to reconsider the proposed rules. We would welcome the opportunity to share our views and contribute to a continuing dialogue on these matters.

Sincerely,

Daniel P. Hanson
Chief Investment Officer
Ivy Investment Management Company

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

[4] For example, numerous studies are cited by Hanson in "The 'Science' and 'Art' of High Quality Investing" (Spring 2016). Journal of Applied Corporate Finance, Vol. 27, Issue 2, pp. 73-86. Available at the University of Delaware John L. Weinberg Center for Corporate Governance: https://www.weinberg.udel.edu/irrci/research/895 ; further, several recent practitioner studies are cited in this note: "DOL Proposes New Rules Regulating ESG Investments": https://corpgov.law.harvard.edu/2020/07/07/dol-proposes-new-rules-regulating-esg-investments/