

December 13, 2021

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

Dear Sir/Madam,

Re: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)

The Canadian Coalition for Good Governance (CCGG) welcomes the opportunity to comment on the notice of proposed rulemaking entitled “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights RIN 1210-AC03” (“Proposal”). CCGG encourages the Department of Labor to move forward with the Proposal.

CCGG’s members are Canadian institutional investors that together manage approximately CDN \$5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. A list of our members is attached to this letter as Appendix A. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. Because a significant portion of our members’ assets are invested in U.S. companies, our members also have an interest in the U.S. capital markets and their regulation.

As CCGG noted in its [July 2020 submission](#) to the Department of Labor, we had serious concerns about the 2020 rulemaking proposal which the current Proposal is seeking to revisit (RIN 1210-AB95, the “2020 Rulemaking”). CCGG is strongly supportive of the Proposal in its entirety and believes that the Proposal clarifies the integration of ESG factors into the exercise of ERISA plan trustee fiduciary duties and adequately alleviates the confusion and related chilling effect that were created by the 2020 Rulemaking.

CCGG believes that good governance practices underpin a company's ability to effectively address risks of all kinds and create long-term value for shareholders. CCGG further believes that integrating E&S into corporate governance is a part of the fiduciary duty of investors. In 2018, CCGG released its publication [The Directors' E&S Guidebook](#) (the "Guidebook") in response to growing shareholder emphasis on environmental and social (E&S) factors. The Guidebook approaches E&S issues from a governance perspective and speaks specifically to the board's oversight of E&S factors that are, or may become, material to a company's long-term value. It also addresses the disclosure of those factors to investors.

ESG integration into investment processes

In our response to the 2020 Rulemaking we noted that a policy by the DOL clarifying that fiduciaries must integrate material factors into their investment process and that ESG factors may be material would be appropriate and would be consistent with the approach taken in many global stewardship codes including CCGG's Stewardship Principles, the UK Stewardship Code and the ICGN Global Stewardship Principles¹.

In our view the following elements of the Proposal achieve this outcome and we strongly support their adoption:

- Clarifying that fiduciaries may integrate material ESG matters into their investment processes and the discharge of the investor's duty while maintaining the "bedrock principle" of ERISA's duty of loyalty, which is that a fiduciary may not subordinate the financial interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives or sacrifice investment return/take on additional risk to promote goals unrelated to the Plan, its participants or fiduciaries.
- Clarifying that material climate change and other ESG factors are no different than other "traditional" material risk-return factors and deleting the confusing term "pecuniary factors" from the rule.
- Providing the non-exhaustive, non-mandatory examples of ESG factors that a fiduciary may consider in the evaluation of an investment or an investment course of action which includes climate change-related factors, governance factors and workforce practices. The inclusion of these clear examples addresses concerns with respect to

¹ See for example, [CCGG's Stewardship Principles, May 2020](#) Principle 7 – Focusing on long-term sustainable value: "Institutional investors should make sure they understand the risks and opportunities associated with material sustainability factors, including environmental, social and governance issues, and integrate them into their investment and stewardship activities"; and [2020 UK Stewardship Code](#), Principle 7 – "Signatories systemically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfill their responsibilities". Also see [2016 International Corporate Governance Network Global Stewardship Principles](#), Principle 6 "Promoting long-term value creation and integration of environmental, social and governance (ESG) factors".

confusion and the potential for a chilling effect on investors that were incorporated into the 2020 Rulemaking which cast doubt on the appropriateness of the inclusion of such E&S factors².

- We are also of the view that the Proposal alleviates the concerns expressed by CCGG in our response to the 2020 Rulemaking with respect to alignment with other international jurisdictions. In our view the Proposal is more consistent with evolving regulatory requirements and guidance in other jurisdictions which expect pension fiduciaries to state whether ESG factors are incorporated into the plan's investment policies and procedures and, if so, how those factors are incorporated.

Conclusion

ESG integration is increasingly being used by institutional investors to inform investment decisions driven by expected financial returns. This is the core rationale underpinning the governance-based E&S oversight and disclosure recommendations to corporate boards in CCGG's Guidebook and why investors see integrating E&S into corporate governance considerations as part of their fiduciary duty.

As institutional investors who operate globally, CCGG's members have a duty to act in the best long-term interests of their beneficiaries. Considering this fiduciary role, we believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. As such, we strongly support the Proposal and encourage the DOL to move forward with its implementation.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,

Marcia Moffat

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Chair, Canadian Coalition for Good Governance

CCGG MEMBERS 2021

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund