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October 5, 2020

Employee Benefits Security Administration  
Department of Labor  
Room N-5655, 200 Construction Avenue NW  
Washington, DC 20210  
Attention: Financial Factors in Selecting Plan Investments Proposed Regulation

**Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)**

Dear Sir or Madam,

This letter responds to the Department of Labor's ("DOL") proposed rule entitled "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (RIN 1210-AB91). While DOL's request for comment covers a range of issues, we comment only on the particular points where we believe MSCI's expertise and experience in environmental, social and governance ("ESG") ratings and data, indexes, and portfolio and risk analytics are most relevant. Contrary to the DOL's premise that there is "mixed" evidence of economic benefit to support plan fiduciaries' voting proxies<sup>1</sup>, we believe with respect to ESG-related proxies that there is increasing evidence and research supporting the integration of ESG in the investment process as a financial or pecuniary factor. In MSCI's July 30, 2020 response to the DOL's proposed rule entitled "Financial Factors in Selecting Plan Investments (RIN 1210-AB95)"<sup>2</sup>, we described how there is a meaningful link between a company's ESG characteristics and financial performance. This link supports plan fiduciaries being able to vote for ESG-related proxy proposals without any need for the DOL's proposed additional regulatory requirements.

We refer to paragraph (e)(2)(ii), which states that plan fiduciaries must, "Not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any nonpecuniary objective, or sacrifice investment return or take on additional investment risk to promote goals unrelated to those financial interests of the plan's participants and beneficiaries or the purposes of the plan."<sup>3</sup> While this paragraph does not explicitly cite ESG issues, the supplemental guidance attached to this proposal repeatedly associates ESG investing with exactly such "nonpecuniary" objectives. For example, "The Department is now concerned that some fiduciaries and proxy advisory firms—in part relying on the Avon Letter—may be acting in ways that unwittingly allow plan assets to be used to support or pursue proxy proposals for environmental, social, or public policy agendas that have no connection to increasing the value of investments used for the payment of benefits or plan administrative expenses, and in fact may have unnecessarily increased plan expenses."<sup>4</sup> Additionally, the guidance indicates that "The

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<sup>1</sup> 85 Fed. Reg. 55222 & fn 39

<sup>2</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00601.pdf>

<sup>3</sup> 85 Fed. Reg. 55242 § 2550.404s-1

<sup>4</sup> 85 Fed. Reg. 55223

Department's concerns about plans' voting costs sometimes exceeding attendant benefits has been amplified by the recent increase in the number of environmental and social shareholder proposals introduced. It is likely that many of these proposals have little bearing on share value or other relation to plan interests."<sup>5</sup>

MSCI respectfully directs the DOL to a substantial and growing body of detailed empirical research into the ESG investment marketplace that has identified meaningful links between a company's ESG characteristics and financial performance. This is discussed in MSCI's July 30, 2020 response to the DOL's proposed rule entitled "Financial Factors in Selecting Plan Investments (RIN 1210-AB95)".<sup>6</sup>

In January 2020, MSCI published *The MSCI Principles of Sustainable Investing* (the "Principles")<sup>7</sup>, in which we note that there are three general approaches to ESG investing (values, impact and ESG integration) which have different objectives. ESG integration means assessing the long-term financial risks and opportunities related to ESG issues for the specific purpose of enhancing long-term risk-adjusted returns. Such integration requires that ESG risk and opportunity assessments are a core component of the portfolio construction process. When ESG considerations are so aimed at enhancing long-term risk-adjusted returns, evidence from both research studies and real-world performance shows that the investor may be able to achieve above-benchmark, risk-adjusted returns. This can be achieved while also incorporating impact or values criteria.

We highlight that MSCI's research has shown that the ESG factors included in the MSCI ESG Ratings model have been consistently associated with both higher investment returns, and lower investment risk, compared to standard market benchmarks.<sup>8</sup> This study provides compelling evidence of the pecuniary benefit of ESG investing, in marked contrast to the DOL's view that such considerations have "little bearing on share value or other relation to plan interests."<sup>9</sup>

Just as institutional investor holdings in U.S. corporate equities have grown considerably, the share of those holdings being allocated to ESG investments has grown from approximately 18% of total managed assets in 2014 to 26% in 2018.<sup>10</sup> In our experience plan fiduciaries are committing resources to ESG issues, including the casting of votes on ESG-related shareholder proposals, not only out of a desire to, "further political or social causes"<sup>11</sup>, but rather as a means for increasing their investment returns, for minimizing investment risk and for ensuring the sustainability of those returns over an "investment horizon consistent with the plan's investment objectives."<sup>12</sup>

The MSCI ESG Ratings model is well-aligned with such objectives, and is one of several highly effective tools available to institutional investors for the identification and assessment of potential risks and opportunities. Such signals are nonetheless real or important for falling

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<sup>5</sup> 85 Fed. Reg. 55229

<sup>6</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00601.pdf>

<sup>7</sup> <https://www.msci.com/documents/10199/16912162/MSCI-ESG-House-View-FINAL.pdf/63bba1a1-aecf-ba80-aa49-7910748ed942>

<sup>8</sup> Giese, G., Lee, L.-E., Melas, D., Nagy, Z., and Nishikawa, L. 2019a. "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk and Performance." *Journal of Portfolio Management* 45 (5): 69–83

<sup>9</sup> 85 Fed. Reg. 55229

<sup>10</sup> ["2018 Global Sustainable Investment Review". Global Sustainable Investment Alliance](#)

<sup>11</sup> 85 Fed. Reg. 55221

<sup>12</sup> 85 Fed. Reg. 55224

outside the scope of older or more traditional investment assumptions. When employed with sufficient rigor and transparency, as exemplified by our ESG offerings, these tools have helped plan sponsors achieve a reliable combination of higher returns and lower risks, even under such unprecedented circumstances as the current pandemic.<sup>13 14</sup>

Integration of ESG considerations into portfolio and risk management will continue to grow as an essential component of advanced and modern risk and portfolio management. In our view the current proposal would impose an unnecessary regulatory burden on plan sponsors. In considering whether plan sponsors should continue to determine their own voting decisions regarding ESG-related proxy proposals, we respectfully urge the DOL to consider the substantial and growing body of empirical evidence that ESG integration is a financial or pecuniary factor in portfolio construction that can be used to consistently reduce risk and enhance returns over periods of time.

Sincerely

/s/ Remy Briand  
Managing Director, Global ESG Products  
MSCI Inc.

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<sup>13</sup> Giese, G. and Nagy, Z.. 2020. "[MSCI ESG Indexes during the coronavirus crisis](#)" MSCI Blog. Similar returns have been reported indexes through August 31, 2020.

<sup>14</sup> See Appendix 1.

# Appendix 1

## Relative performance of select MSCI ESG Indexes to MSCI ACWI Index

