



October 5, 2020

Office of Regulations and Interpretations  
Employee Benefits Security Administration (the "EBSA")  
Room N-5655  
U.S. Department of Labor (the "DOL")  
200 Constitution Avenue, NW  
Washington, DC 20210

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Re: RIN 1210-AB91 Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (the "Proposed Rule")

To Whom It May Concern:

High Water Women (HWW) writes to oppose the Proposed Rule. 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 ESBA's prior Proposed Rule on Financial Factors in Selecting Plan Investments (RIN1210-AB95) motivated HWW to comment for the first time on a proposed regulation. This similarly misguided Proposed Rule spurs this encore.

The Proposed Rule states, "It is likely that many of these [environmental and social shareholder] proposals have little bearing on share value or other relation to plan interests..." We strongly disagree with this misunderstanding of ESG considerations, particularly those related to climate change and human capital management.

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 recognizing the *financial* significance of ESG factors. Indeed, the DOL's position is retreating from ESG just as other significant markets -- most notably, the European Union (the "EU") -- recognize their importance to prudent investment management and risk assessment.<sup>1</sup> Inhibiting and burdening information exchange between shareholders and boards of directors related to environmental and social factors would be contrary to these trends and to the benefits of such efforts that various research studies have demonstrated. Further, the Proposed Rule would at best cause confusion for ERISA fiduciaries and at worst cause them to violate their fiduciary duty (too strongly incentivizing deference to boards and management which have a lesser fiduciary duty) and even undermine the existing duty of impartiality (by favouring the short-term interests of older plan participants over the longer-term investment horizons of younger ones).

In the eight years of symposia that HWW has organized and our aggregate professional experiences we have seen the significant evolution and accelerating interest in integrating ESG factors within investment decision-making, in considering the impact of investments and in finding reliable and insightful sources of data and contextual information to advance this decision-making. The Proposed Rule would unnecessarily and counterproductively undermine these developments and their continued market-driven evolution – or, at a minimum disadvantage plan participants compared to other investors. Indeed, as *systemic* risk considerations become more salient as risks that threaten financial returns, pension plan participants could benefit relatively more – barring the Proposed Rule -- from such an advance within investment decision-making. Again, on the basis of our symposia and professional experience, we comment:

- 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.

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<sup>1</sup> In particular, in the EU, the Commission's recent Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) is coming into effect in March 2021, to provide transparency and disclosure, and will be accompanied by amendments to the EU's AIFMD and UCITS directives to require an assessment of sustainability (i.e., ESG) risks in organizational requirements, operating conditions, risk management and disclosure for businesses and funds doing business or raising funds in the EU and should be taken into account by any prudent ERISA plan investing there.

- 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 unnecessarily take away tools 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](mailto:kimleslieshafer@gmail.com) or Alissa Desmarais at [adesmarais@highwaterwomen.org](mailto:adesmarais@highwaterwomen.org).

Sincerely,

A handwritten signature in cursive script that reads "Alissa Desmarais".

Alissa Desmarais  
Executive Director  
High Water Women