I cannot say it better than Jon Lukomnik and at least 30 other experts in the field.
The proposed rule is internally inconsistent. The Departments' proposed regulation is wrong in its assumptions about what ESG is, wrong about the efficiency and effectiveness of ESG considerations, and wrong about the relationship between ESG considerations and overall shareholder value. We are confident that the proposed rule would lead to a decline in investment performance and a decline in plan assets to address systematic ESG risks, even though the potential benefits to such actions are generally held to be substantial. We believe that the proposed regulation would fail to improve the performance of the capital markets but, instead, harm its participants and the economy as a whole.

The proposed rule is based on a woefully incorrect analysis of ERISA fiduciary duties by ignoring the duty of impartiality, and plan fiduciaries to violate their duty of care by placing an impost to their examination of systematic risks. The Department of Labor's proposed regulation is unsupported by facts and does not address the actual benefits of ESG considerations. The Department's regulatory approach to ESG issues is strikingly at odds with the actual benefits of ESG considerations and is inconsistent with the actual benefits of ESG considerations. The Department's proposed regulation is, in fact, a misapplication of ERISA's fundamental trust law legal principle, recognized in §227 of the Restatement (Third) of Trusts, that: 

"in all cases of trust, the one who is in control of the trust property is held to be under a duty to conduct himself as a good and prudent person would act in the circumstances, if he were acting for another person of prudence, skill, and experience who was subject to the like duties."

The proposed rule is also internally inconsistent. The Department's proposed regulation is wrong in its assumptions about what ESG is, wrong about the efficiency and effectiveness of ESG considerations, and wrong about the relationship between ESG considerations and overall shareholder value. We are confident that the proposed rule would lead to a decline in investment performance and a decline in plan assets to address systematic ESG risks, even though the potential benefits to such actions are generally held to be substantial. We believe that the proposed regulation would fail to improve the performance of the capital markets but, instead, harm its participants and the economy as a whole.

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