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Mr. Eugene Scalia
U.S. Secretary of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington DC 20210

Attention: Financial Factors in Selecting Plan Investments Proposed Regulation

Re: RIN 1210-AB95

Dear Secretary Scalia:

Segal Advisors, Inc., d/b/a Segal Marco Advisors (“Segal Marco”) is pleased to comment on the proposed rule, Financial Factors in Selecting Plan Investments (“Proposed Rule”), which seeks to clarify the scope of ERISA’s fiduciary duties with respect to the selection of plan investments. In our view, the Proposed Rule provides inadequate evidence of the need for change; underestimates the economic impact on ERISA plans; would unduly burden fiduciaries for no benefit; and may discourage investment in entire categories of profitable and otherwise prudent investments, including those sponsored by minority and women-owned firms. In addition, the current regulations for DC plans, particularly those that define QDIA as a safe harbor are appropriate and effective

We therefore urge the Department of Labor not to adopt the Proposed Rule. Should the Department proceed with the rulemaking, we encourage it to remove section (C)(3), which identifies an overly narrow scope of factors that serve as objective risk-return criteria and adds significant costs to the documenting of fiduciary process with no attendant benefit.

Background

Segal Marco is an SEC-registered investment adviser. We provide consulting and related services to more than 700 benefit plans regulated under ERISA. We also provide similar services to more than 100 benefits funds that are not regulated under ERISA but refer to the legislation as

a guide when establishing best practices. Segal Marco also consults to more than 200 defined contribution plans.

In connection with providing consulting and advisory services, our firm has studied the environmental, social and governance (ESG) space from several vantage points over the course of many years. Since 1989, our proxy voting and corporate engagement practice has assessed various ESG topics. We established an ESG Committee in 2012 to integrate ESG across Segal Marco's operations and manager due diligence functions. In 2012, we began querying investment managers on ESG topics. In May of this year, Segal Marco published a survey of investment managers on their internal approach to select ESG issues. Our consultants are in regular communication with clients on their views and approaches to ESG.

Segal Marco's Perspective on ESG

Segal Marco agrees with the Department that ERISA fiduciaries must put the fiduciary obligation to plan participants and beneficiaries at the forefront when considering and selecting plan investments. However, we believe the industry has evolved beyond the contextual framework aptly described by the Department: "The Department is concerned, however, that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries to make investment decisions for purposes distinct from providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan."

Segal Marco's view is that material ESG factors are typically inputs to determining asset selection rather than outputs that are prioritized above financial return. In other words, ESG factors are often part of the investment strategy and investment process rather than the investment goal. We firmly believe financial materiality is paramount to ESG considerations and that the weight of impact is not uniform but rather varies by asset characteristics. However, as a financial professional service provider charged with evaluating investment managers, we believe it is our duty to share with the Department that ESG considerations are embedded in the vast majority of reputable investment managers' approaches to asset selection.

In fact, we would argue that a fiduciary examining only the criteria listed in item (c)(3) of the Proposed Rule—"benchmarks, expense ratios, fund size, long-term investment returns, volatility measures, investment manager investment philosophy and experience, and mix of asset types"—could, to the detriment of plan participants and beneficiaries, ignore other critical factors in a fiduciary's analysis. For example, we have found that the experience, expertise and reputation of individual team members is often indicative of superior performance. Our view is that fiduciary duty requires the consideration of all material factors, including those that fall under ESG categories.

Finally, while we agree with the Department that there is no consensus on what constitutes an ESG investment, investment managers approved by Segal Marco delineate their philosophy and process towards ESG in a deliberate manner that fiduciaries find useful. The entire industry need not be in harmony for fiduciaries to make informed decisions on ESG investments. Similarly, no consensus exists on how to define many terms that categorize the investing universe. Terms such

as growth stocks or value stocks lack universal definition and yet are regularly used to define a collection of assets.

All Things Being Equal Test

The Department requested comment on the “all things being equal” approach on ESG investments. Segal Marco’s view is that the current approach is working effectively and that plan participants will not be better served by the addition of specific requirements to document applications of that test.

Take a circumstance where a fiduciary has a choice of three U.S. large cap equity index fund product offerings and prefers option A because the proxy voting track record of the proposing firm appears the most substantive of the three and in concert with the Department’s long held rule that proxy votes are plan assets. Under the current approach, the fiduciary would assess all three options as being equal and select option A with appropriate documentation. Under the Proposed Rule, the Department charges the fiduciary with documenting how each of the three options are precisely equal at the time of selection and documenting similar conclusions with ongoing monitoring. By way of third party reference, the Department characterizes this exercise as akin to finding a unicorn.

The Proposed Rule would effectively raise the decision threshold for fiduciaries from a neck-in-neck three horse race to a standard the Department describes as nearly impossible to meet. The attendant consequence of the Proposed Rule would be to cause fiduciaries to avoid ESG considerations completely, which could be detrimental to plan participants and beneficiaries. Diversification and forward-looking assessments rather than relying on past performance are key tenets of sound investing. Steering investors away from ESG products may shrink the pool of options hence changing the competitive landscape. In addition, by listing specific and apparently acceptable financial metrics, the Proposed Rule could limit asset managers’ definitions of criteria used in security selection.

The current approach functions effectively and as intended to protect the interests of plan participants and beneficiaries. The Proposed Rule would result in additional costs to plans regulated under ERISA, but would not provide any additional protections to plan participants.

Potential Chilling Effect on Diverse Manager Selection

A final item to highlight is that the Proposed Rule may have an adverse impact on the selection of diverse managers, namely Minority and Women-Owned Business Enterprises (MWBE). Segal Marco evaluates diverse managers and traditional managers with identical criteria. Diversity of thought, gender and ethnicity are key components of our manager assessments. The inclusion of diverse managers within a client’s investment program may yield key benefits, including uncorrelated performance results that mitigate manager concentration risk. Broad investment diversification is a central theme for advisors and plan fiduciaries and is inclusive of investment manager sourcing.

We serve as fiduciaries to a wide range of client types. We consistently strive to meet and exceed our client's investment objectives, goals and custom needs. Our firm's focus is on assisting clients to build a diverse manager program, in response to legal mandates or for other reasons that align with the best interest of the plan participants and beneficiaries, and to assist with including diverse managers as part of a search process if requested. In all cases, Segal Marco applies the same threshold on key investment related factors.

Even so, the Proposed Rule is likely to discourage investment in MWBE firms. Take a circumstance where a client is intentionally seeking out a MWBE firm whose financial performance is neck-in-neck with the competition. The Proposed Rule would create the same unicorn problem. A fiduciary would be tasked with documenting all three options as precisely equal before considering the MWBE status of the firm.

Conclusion

Segal Marco urges the Department to reconsider the Proposed Rule. We do not believe additional regulation on ESG is warranted or would provide any incremental value to the plan participants and beneficiaries.

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Segal Marco appreciates the opportunity to weigh in on this important issue. Please contact me with any questions at 212-251-5262 or jdemairo@segalmarco.com.

Best regards,



John DeMairo
President & CEO