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Investing for a Sustainable Future

July 24th, 2020

Jean Klinefelter-Wilson, Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB95: Proposed rule on Financial Factors in Selecting Plan Investments

Dear Assistant Secretary Wilson,

I write today on behalf of First Affirmative Financial Network, LLC in response to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (the "Proposal"). We are concerned that the Proposal dissuades fiduciaries from adequately assessing emerging ESG risks and opportunities and stifles the innovative, forward-looking thinking that is required to respond to changing and challenging conditions. This proposal risks reducing, rather than enhancing the retirement security of plan participants.

First Affirmative is an SEC registered investment advisor with oversight of more than $1 billion in assets under management and advisement, including ERISA governed retirement plans. Clients come to us for our long-term track record of successfully integrating Environmental, Social, and Governance (ESG) factors into the investment management of their portfolios while achieving long-term financial goals.
We consider the integration of ESG issues a fundamental fiduciary duty to our clients and have been guided by this consideration since our inception in 1988.

One of our guiding values is to recognize and actively embrace the direct relationship between individual and institutional financial decision making and the greater good. This guiding value led us to consider corporate performance on issues like corporate sustainability reporting, climate risk, gender diversity, and a host of other issues well before these issues were considered material more broadly by the investment community. Many ESG issues that may be at first considered non-pecuniary by most investors can reflect the presence of externalities that, left unaddressed, become serious systemic risks – climate risk being a prime example.[1] Indeed, under the proposed rule, many of the ESG considerations already broadly deemed material by mainstream investors[2], stock exchanges[3], and Reg S-K[4], would likely have been considered non-pecuniary when early adopters of ESG integration recognized the value of analyzing the impacts of these issues on their investment portfolios.

[1] https://corpgov.law.harvard.edu/2020/06/28/addressing-climate-as-a-systemic-risk-a-call-to-action-for-financial-regulators/
[2] https://www.pionline.com/esg/esg-risks-and-influence-investment-decisions-growing-2-studies
[3] https://www.nasdaq.com/articles/introducing-nasdaqs-esg-reporting-guide-2.0-2019-05-15
[4] https://www.federalregister.gov/documents/2010/02/08/2010-2602/commission-guidance-regarding-disclosure-related-to-climate-change

As with financial factors, managers have different perspectives on when, and how, to weigh emerging ESG factors when making investment decisions. The proposed rule states that "plan fiduciaries are not permitted to sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or any other non-pecuniary goals." This statement seemingly implies a hard line between what is non-pecuniary and what is material when instead it is a spectrum. Just as with financial data, investment managers must be given the leeway to consider the materiality and potential impacts of ESG factors in order to meet their fiduciary duty.

This Proposal appears to have been promulgated without due consideration to the numerous studies showing that the consideration of ESG criteria in investment analysis generally produces investment performance comparable to or better than non-ESG investments. A recent updated Morningstar study of 56 ESG screened index funds indicates not only strong performance, but also that such funds favor companies with healthier balance sheets, stronger competitive advantages, and lower volatility than mainstream counterparts.[5] ESG funds outperformed during the recent downturn precipitated by the emergence of COVID-19, an indication that the use of ESG criteria are consistent with managing risk in pursuit of long-term retirement objectives. [6]

The proposal seeks to restrict ESG options on retirement platforms when those options may be outperforming their indices over time when compared to the non-ESG options that remain, and at a time when participants are increasingly asking for ESG investment options.[7] By prohibiting any funds with ESG criteria from being included as a component of a qualified default investment alternative, there is no accommodation for or acknowledgment of the possibility that some ESG funds may, in fact, be as or more appropriate for participants than traditional options offered as the default.

First Affirmative joins Ceres and the Social Investment Forum in their request for the withdrawal of the Proposal. In the absence of withdrawal, the comment period should be extended from 30 to 90 days to allow impacted stakeholders adequate time to properly evaluate and comment on this Proposal. The Proposal fails to acknowledge that because many ESG issues are material, the fiduciary duties under the US Employee Retirement Income Security Act of 1974 would **require** qualified investment professionals to treat such ESG issues as economic considerations. The investment analysis and documentation requirements for ESG issues should be no different than other material issues that fiduciaries are required to consider.

Thank you for your consideration of our comments.

Sincerely,

Holly A Testa

Holly A. Testa
Director, Shareowner Engagement
First Affirmative Financial Network, LLC

Cc:
Doug Lamborn, US Representative, Colorado District 5
Michael Bennett, US Senator, Colorado

[5] https://www.morningstar.com/lp/esg-indexes-exhibit-attractive-investment-attributes
[6] https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds
[7] https://www.morganstanley.com/press-releases/morgan-stanley-survey-finds-investor-enthusiasm-for-sustainable-/

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