

ROBERT A. MOSS

25 Glenbrook Road
Suite 332
Stamford, CT 06902

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Submitted via regulations.gov

Hon. Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1210-AB95 Proposed Rule

Dear Secretary Scalia:

I am pleased to submit the following comments concerning this Proposed Rule.¹ In addition, thank you for the extensive work Mr. Jeffrey Turner, Mr. Jason DeWitt, the Department's staff, and you have done on this rulemaking effort. When finalized, it will significantly strengthen retirement savings by providing needed reform aimed at ensuring pension fund fiduciaries remain committed to maximizing their plan participants' financial returns. The Proposed Rule also strikes at the heart of an escalating debate in the financial community: performance versus ideology.

Roughly 10 years ago, a representative of my team traveled to Chicago to pitch a pension fund on behalf of our business. He was armed with copious amounts of data showing how our firm had been generating returns in excess of 20 percent annually. A few days after the meeting, we were notified that we were not selected to service the pension fund. We were told that the main reason we did not secure the business was because of our political ideology being "different" from theirs, not based on performance. This is a salient example of how fiduciaries can stray from their "eye single" mandate. Moreover, this dilemma is readily apparent more so today as certain pension managers promote ideologically driven environmental, social, and governance (ESG) objectives by way of their investment decisions.

The Department of Labor's Employee Benefits Security Administration is in a unique position to address this issue. For the past 46 years, the Employee Retirement Income Security Act (ERISA) has set standards for most established retirement plans in private industry to provide protection for individuals in these plans.² Using its authority under ERISA, the Administration can make great strides in ensuring that performance (i.e.,

¹ Employee Benefits Security Administration (EBSA), Department of Labor, Proposed Rule, Financial Factors in Selecting Plan Investments (RIN 1210-AB95), June 30, 2020, <https://beta.regulations.gov/document/EBSA-2020-0004-0002>.

² U.S. Department of Labor, ERISA, <https://www.dol.gov/general/topic/health-plans/erisa>.

prioritizing pecuniary considerations above all else) trumps ideology. This Proposed Rule, "Financial Factors in Selecting Plan Investments", represents such an improvement.

Unfortunately, and perhaps unsurprisingly given our political climate, the Department's important efforts to properly advance performance over ideology have come under ideological attack. Sen. Patty Murray, Sen. Tina Smith, and 11 of their Democratic colleagues wrote a letter to you on July 15 regarding this ruling.³ Per POLITICO, these Members argue "that financial advisers must be allowed to consider [ESG] factors as part of the national reckoning with racism."

We as a nation are working to address racial injustice. That said, allowing pension plan managers to incorporate their individual views on race into their investing strategies for plan beneficiaries is the definition of a non-pecuniary consideration. ERISA law forbids such consideration for pension funds. I applaud you for standing up to their ideological approach.

I began my career as a trader in 1973. In the ensuing decades, I went on to trade in 30 different markets worldwide across seven economic sectors. For more than 27 years, I also led my own private investment firm that executed a quantitative investment model and a sound comprehensive risk management philosophy into a single, integrated strategy. Going forward, the Department can further its mandate to hold pension managers accountable and mitigate future risk to retirees' savings by providing the increased oversight of plan selections regarding ESG investing in this Proposed Rule.

Cities across our country are being wrecked in the name of social reform. I am hopeful that with this Proposed Rule, the Department of Labor ensures that retirees' investment savings do not experience the same type of carnage by ESG investing fads.

Thank you again for your consideration of my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Moss". The signature is stylized with a prominent vertical stroke and a horizontal line extending to the right.

Robert A. Moss
Former President
RAM Management Group, Ltd.

³ Office of Sen. Tina Smith, "Murray, Smith Urge Labor Department to Withdraw Proposal That Would Discourage Financial Advisors From Supporting Racial Justice", July 15, 2020, <https://www.smith.senate.gov/murray-smith-urge-labor-department-withdraw-proposal-would-discourage-financial-advisors-supporting>.