

28 July 2020

Subject: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary,

Robeco is an international asset manager with USD 160 Billion under management. We wish to start by thanking you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR").

Robeco has long believed that the safeguarding of economic, environmental and social assets is a prerequisite for a healthy economy and the generation of attractive returns in the future. Sustainability is a long-term driver for change in markets, countries and companies which in turn can impact future performance. Based on this belief, we consider sustainability as one of the value drivers in our investment process, similar to the way we look at financials or market momentum.

We undertake extensive research to define those environmental, social and governance ('ESG') factors which are material to each investee companies business, and factor these into our investment process in the belief that this positively contributes to risk return, and therefore contributes to our clients financial goals, and subsequently to fulfilling our fiduciary duty towards them.

We appreciate the role which the Department of Labor plays in providing guidance to ERISA fiduciaries, to create clarity and, where possible, reduce costs for market participants. However, in this instance, we believe the proposed rule would in fact have the opposite effect.

Firstly, we believe it is important to clarify how we, and many others within the industry, view the distinct difference between ESG Integration within the investment process, and more targeted 'impact investing' (economically targeted investing (ETI)).

ESG Integration vs Impact Investing

We view ESG Integration as the structural integration of information of ESG factors into the investment decision making process. The goal of this process is solely to contribute positively to risk return and does not seek to achieve any impact on society. With the exception of a limited number of exclusions, the investment universe for these strategies is not limited and is diversified across sectors and regions.

The Proposal states that an ERISA fiduciary has fulfilled its obligations if they have “selected investments and/or investment courses of action based solely on pecuniary factors.” It goes on to state that, “ESG factors and other similar factors may be economic considerations.” In this instance, we believe that we are aligned with the proposal, given that with the strong materiality of ESG criteria, these can indeed be considered economic considerations, given their impact on risk return. However, where we feel the proposal begins to create confusion, is in the mixing of ESG Integration as described above, and impact investing (ETI) as described below.

Impact investing is the process of intentionally making investments with the aim of creating a measurable beneficial impact on the environment or society, as well as earning a positive financial return. This is a separate investment concept, and as such we believe should be kept entirely separate in this discussion.

All else being equal

We believe that a clear delineation between the two concepts above is especially important when considering the “all else being equal test”, which has been in place since 1994, and was originally developed to guide the consideration of ETIs. However, it appears that this concept would now in fact be broadly applied, given that the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration.

We believe that, as currently constituted, fiduciaries would in fact be denied the opportunity to select between multiple investment options, given the restriction in fund universe which would result. Succinctly, by applying a test originally designed to a small ‘niche’ set of funds designed to achieve specific impact goals (and which in some cases may involve sacrificing some level of return), to a much broader, and very mainstream, investment concept, the universe of investment opportunities available to ERISA fiduciaries will be unnecessarily restricted.

We are therefore concerned that the NPR creates new burdens for fiduciaries using the “all else being equal test” that would lead to unnecessary costs for plan participants.

ESG-themed funds

Likewise, we believe that similar confusion exists in reference to the proposal that ERISA fiduciaries may select “ESG-themed funds” as an investment option for a participant-directed plan but that an “ESG-themed fund” cannot be selected as the default investment option. Here, we also see the need for a clear separation between those funds which integrate ESG, and those which target a specific impact goal (ETI’s).

The Department’s stated rationale for prohibiting an “ESG-themed fund” from being selected as the default investment option is that it is not appropriate to select “investment funds whose objectives include non-pecuniary goals.” We believe that whilst the above definition could be applied to impact funds and funds that target very specific themes with narrow investment universes, it is not an appropriate label for funds pursuing ESG integration of financial material issues into the investment process, and without a mandate to pursue such non-pecuniary goals. Likewise, we believe further confusion is created given the language earlier in the proposal which states that “ESG factors and other similar factors may be economic considerations.”

In summary, we believe that the text of the proposal is likely to lead to confusion for ERISA fiduciaries and additional cost to plan savers. Furthermore, we believe that complicating the ability of fiduciaries to consider financially material ESG criteria into their selection process can in fact make it more difficult to fulfil their own fiduciary duty due to significantly limiting the universe of available funds.

As long term, responsible investors, we therefore believe that the existing rules should be maintained, and that the language of the current proposal may in fact act contrary to its stated purpose. As such we believe that the best course of action is to maintain the existing guidance and not move forward with the proposed rule.

Alternatively if changing the guidance is deemed necessary we would strongly suggest to better define the different concepts: ESG integration, Impact and ESG-themed funds to make sure that funds that integrate ESG to make better informed investment decisions and generate excellent investment returns will still be eligible.

We wish to thank you again for the opportunity to provide comment on the proposal, and for taking the time to consider this feedback.

Yours faithfully,



Victor Verberk, Chief Investment Officer a.i. Robeco