

29 July 2020

**VIA ELECTRONIC FILING**

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, *Financial Factors in Selecting Plan Investments* proposed rule

Dear Assistant Secretary Wilson,

I am writing regarding the Department of Labor Employee Benefits Security Administration's proposed rule, *Financial Factors in Selecting Plan Investments*, Regulatory Identifier Number (RIN) number 1210-AB95.

I urge the Department to withdraw the proposed rule. The proposed rule is wrong on the facts and intent. It is out of step with the investment industry. In expansively asserting a particular interpretation of a specific investment approach, the proposed rule is a significant regulatory overreach inconsistent with the Administration's stated policies.

**Wrong on the Facts and the Intent**

Environmental, social and governance factors are material financial considerations. They are being applied across the investment industry to make good investment decisions. The fact that they can be used by values-focused investors to help make decisions consistent with those values does not make them outliers requiring special treatment in this rule.

In a 2018 study, the Sustainable Investments Institute reported that 78% of the S&P 500 issued a sustainability report in their most recent reporting period.<sup>1</sup> The report also noted that a significant number of S&P 500 companies included voluntary sustainability information (beyond traditional corporate governance) in financial reports<sup>2</sup>:

- Companies representing about 40 percent of the S&P 500 now include the concept of sustainability in annual reports or Forms 10-K.
- A total of 191 companies (38 percent) include discussions of corporate responsibility or sustainability in their proxy statements
- A total of 212 companies (42 percent) have a formal board committee overseeing sustainability.

---

<sup>1</sup> Kwon, "State of Sustainability and Integrated Reporting 2018," 3.

<sup>2</sup> Kwon, 6.

The decision of what information to provide, and what to disclose as material within financial reports is the exclusive responsibility of the company. Increasing numbers of companies are documenting and publishing their performance on key environmental, social and governance (ESG) indicators. In so doing, they are asserting the potentially material impact of these factors. Building investment products that incorporate these factors is therefore a reasonable and prudent approach. At the very least, it is our responsibility as investment professionals to consider them in our decisions.

The US General Accounting Office report on disclosure of ESG factors (and options to improve disclosure) published just this month supports this, clearly stating that "Institutional investors with whom we spoke generally agreed that ESG issues can have a substantial effect on a company's long-term financial performance".<sup>3</sup>

Making that case is central to the work I do educating and consulting with other investment professionals. In the last five to ten years, that position has moved from an outlier to the mainstream. In early 2019, the CFA Institute reflected those developments in a position paper clearly supporting the materiality and utility of ESG information in investment decision making.<sup>4</sup> It further, and importantly:

- **Encouraged the consideration of ESG information across the investment spectrum** – “consider ESG factors, where relevant, as an important part of the analytical and investment decision-making process, regardless of investment style, asset class, or investment approach”.<sup>5</sup>
- **Stated that ESG considerations are consistent with fiduciary duty** - “ESG factoring is consistent with a manager’s fiduciary duty to consider all relevant information and material risks in investment analysis and decision making.”<sup>6</sup>

The work of the Sustainability Accounting Standards Board (SASB) demonstrates that ESG information can be tangible and investment decision-relevant. SASB undertook a six-year research and consultation project to develop industry-focused standards to assist companies in disclosing financially-material, decision-useful sustainability information to investors.

This extensive stakeholder-led process involved over 2,800 individuals from reporting companies across all industry sectors, and from investment firms who use company-reported information to make informed investment decisions. The process generated 77 industry standards – varying by industry and sector – and include measurable and reportable indicators that can be incorporated into investment analysis. The standards were released in November, 2018.

950 industry professionals (of whom I am one) have undertaken the FSA (Fundamentals of Sustainability Accounting) credentialing process to apply those standards in evaluating corporate performance on sustainability factors.

---

<sup>3</sup> “Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them.”

<sup>4</sup> “Positions on Environmental, Social, and Governance Integration.”

<sup>5</sup> “Positions on Environmental, Social, and Governance Integration.”

<sup>6</sup> “Positions on Environmental, Social, and Governance Integration.”

Are there immutable and universally agreed upon standards for these factors? Are they precisely measurable with certainty? No, but that is true of all metrics used to assess corporate performance. Many bad investment decisions have been made by relying upon reported numbers for a traditional metric without applying context and judgement. If anything, the lack of false certainty for ESG information drives deeper and more thoughtful analysis.

The emergence and rapid uptake of new sources and types of data on corporate performance is a clear indication of demand and utility. ESG data is providing a window into aspects of corporate performance that were not previously visible. That creates opportunities for improved decision making by fiduciaries.

### **Out of step with the investment industry and its clients**

The world's largest Asset Manager (Blackrock) and the world's largest pension fund (Japan's GPIF) have unequivocally made consideration of ESG issues and factors a core element of their business and investment models.

They are not alone and this is not a passing fad. It has been building slowly and deliberately over the last eight to ten years that I have been directly involved in working with investment firms and other investment professionals on these issues. Ten years ago, a list of firms considering ESG issues would have been a short one; today, a list of firms not considering ESG issues would be equally short.

That there is not universal agreement on a single set of ESG standards does complicate the work investment professionals assessing the materiality and relevance of ESG issues in their investment recommendations. It can also be a challenge in communicating those recommendations to investors. But the depth and breadth of work on these issues by academics, investment professionals and firms, financial information providers, stock exchanges, regulators, industry associations and others is incontrovertible evidence of the relevance and importance of ESG issues to the investment decision-making process.

Within the investment profession, interest in and use of ESG factors extends across approaches/styles (bottom-up, top-down macro, quantitative, factor-based), asset classes (equities, fixed income and alternatives - real estate, private equity, venture capital, distressed assets, special situations, commodities) and all geographies. That simply does not happen unless there is financially-relevant, substantive information to be had.

### **Regulatory Overreach**

Section 404a-1 describes the investment duties of the fiduciary. It clearly and effectively lays out the core considerations - projected risk, projected return, diversification and liquidity.

In creating investment strategies and products, investment professionals select a set of factors and criteria for making decisions on buying, holding and selling securities. This is a core competence for investment professionals, requiring skill and judgment. The results are not deterministic – there are many valid choices. Nor are they static - innovation and changing economic circumstances yield new and unanticipated developments.

Wisely, Section 404a-1 does not and has not previously attempted to address the myriad individual factors or clusters of factors that may be considered. Instead, Section 404a-1 provides consistency and comparability by requiring those choices to be clearly explained in terms of the core considerations of portfolio objectives, projected risk, projected return, diversification and liquidity.

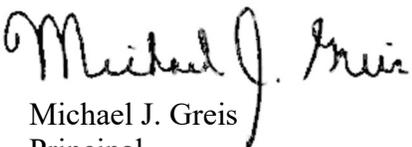
The proposed rule violates this approach. In an attempt to selectively address one specific set of factors - environmental, social and governance – it nearly doubles the size of the rule, overriding this consistent, comparable and powerful guidance that this rule provides.

Thoughtful, goals-based regulation is a hallmark of making markets work effectively. I strongly support this type of regulation to ensure the best outcomes for investors. The selective and inconsistent approach of this proposed rule, however, is the epitome of regulatory overreach.

There is much work to be done to refine and improve the use and presentation of ESG factors in investment management, and in communication with clients. This has been true whenever new approaches to investment management, and new sources of investment-relevant information, have emerged. The volume of activity and options in this space is evidence that the market is working.

I therefore urge the Department to abandon this proposed rule. Plans subject to ERISA guidelines are vital to the long-term financial well-being of millions of Americans. They should not be deprived of the potential benefit of innovative solutions that are already at work for institutional and other investors.

Sincerely,



Michael J. Greis  
Principal  
Riverbend Advisors

## References

- Kwon, Sol. "State of Sustainability and Integrated Reporting 2018." Sustainable Investments Institute, 2018. <https://www.weinberg.udel.edu/IIRCiResearchDocuments/2018/11/2018-SP-500-Integrated-Reporting-FINAL-November-2018-1.pdf>.
- "Positions on Environmental, Social, and Governance Integration." CFA Institute, January 10, 2019. <https://cfainstitute.org/-/media/documents/article/position-paper/cfa-institute-position-statement-esg.ashx>.
- "Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them." United States Government Accountability Office, July 2020. <https://www.gao.gov/assets/710/707949.pdf>.