



July 30, 2020

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

Dear Director Canary,

On behalf of Terra Alpha Investments LLC, a Washington, DC based investment manager, thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (“Proposal” or “NPR”). Our firm was founded on the premise that the thoughtful integration of material environmental, social, and governance (ESG) factors into our investment process will lead to improved investment outcomes for our investors. Hence, we see the use of material ESG information and data as essential to fulfill our fiduciary obligations to engage in appropriate risk management. We believe that the NPR misconstrues ESG integration and would lead to confusion and costs for retirement plan fiduciaries. We, therefore, urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

ESG Integration

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.” There is now an extensive body of research that makes clear that ESG factors are material investment considerations. This is the basis for our decision to integrate ESG factors into our firm’s investment actions.

A policy by the DOL, alone, that clarifies that fiduciaries must integrate material factors into their investment actions and that ESG factors may be material would be appropriate. We are concerned, however, that the remaining components of the proposal create confusion and could cause fiduciaries to believe they are not permitted to consider material ESG factors in their investment analysis.

The “all else being equal test”

Terra Alpha Investments LLC is 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. It also creates confusion about what activities the DOL is attempting to regulate.

Under the “all else being equal test,” which has been in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options that would meet the financial needs of the fund just as well.

The Proposal raises questions about whether fiduciaries would, in reality, ever have the opportunity to select between multiple investment options. It proposes the retention of the “all things being equal” test but adds new recordkeeping requirements for fiduciaries to document their analysis that multiple options were equal and that it was, therefore, appropriate to make a decision based on collateral benefits.

In our own investing, we have demonstrated that our approach to incorporating material environmental information and data into a fundamental research process enhances returns as our strategy has generated higher returns than the comparable benchmark over its first five years. We see growing interest in investment strategies that recognize the benefits of material ESG information and data potentially mitigate risk and improve returns.

The Proposal’s discussion of the all things being equal test is cause for confusion because, while the test was originally developed to guide the consideration of ETIs and the discussion in the Proposal appears to envision the selection of an ETI investment, the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration.

Conclusion

As institutional investors, we have a duty to act in the best long-term interests of our investors. In this fiduciary role, we believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interest of our beneficiaries. As such, we urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

Sincerely,



Timothy Dunn
Managing Member and Chief Investment Officer
Terra Alpha Investments LLC