

Submitted via regulations.gov

July 28, 2020

Office of Regulations and Interpretations  
US Department of Labor  
Room N-5655  
200 Constitution Avenue NW  
Washington, DC 20210

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

To whom it may concern:

North Berkeley Wealth Management submits these comments in response to the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposal").

We are an independent registered investment advisory firm in Berkeley, CA representing more than \$400 million in client assets. We manage investments and provide financial planning for our clients at all cycles of their lifetimes with a strong emphasis on creating a sense of calm. Our work centers on client wellbeing, from personal financial planning to development of investment strategy. We offer clients a range of investment strategies representing full market exposure to a low carbon portfolio that includes screening of companies based on environmental, social and governance considerations. We have seen an increase in client requests over the last several years for investments that strengthen the markets toward a more sustainable and inclusive economy, and reduce participation in companies that contribute to climate change. We layer these considerations on top of fundamental analysis of investments and their suitability for our clients.

The Proposal reveals a fundamental misunderstanding of how professional investment managers use environmental, social and governance criteria as an additional level of due diligence and analysis in the portfolio construction process. **Investment managers increasingly utilize ESG factors precisely because they view these factors as material to financial performance.** In the US SIF Foundation's 2018 survey of sustainable investment firms in the United States, 141 money managers with aggregate assets of more than \$4 trillion responded to a question on their motivations for incorporating ESG criteria into their investment process. Three-quarters of these managers cited the desire to improve returns and to minimize risk over time. Fifty-eight percent cited their fiduciary duty obligations as a motivation.

To site a specific example, the SPDR S&P 500 Fossil Fuel Free ETF (SPYX) is a greener version of the world's first and largest ETF, the SPDR S&P 500 ETF Trust (SPY). SPYX, which excludes companies from the S&P500 with fossil fuel reserves, was formed in December 2015, the same month 193 countries came together in Paris to set goals toward a lower carbon economy to survive a warming planet. SPYX outperformed SPY with less risk as of June 30, 2020 in the year to date, one year, 2019, and three year categories. (Performance as measured by total return, 11.18% for SPYX and 10.65% for SPY and risk as measured by standard deviation, 16.57 SPYX and 16.84 SPY.) While we do not yet have a full five year record since that monumental meeting, the trend is clear that by excluding companies that owned fossil fuel reserves, investors received a higher return for less risk. **Prudent investment selection with fiduciary care merits inclusion of these considerations, if even to offer options alongside conventional counterparts.**

We believe that ESG considerations are material to our client's portfolio goals. Within our own firm and the development of portfolios that incorporate these considerations, we note that they have outperformed their conventional counterparts on a year to date as well as on the one year and three basis. More widely in the industry, numerous studies indicate that companies with strong ESG scores outperform their peers. We evaluate each investment relative to fundamental characteristics in addition to these goals which both we and our clients consider material.

We see no evidence in our analysis to support the proposal's claims that ESG is not material and to not include ESG in considering suitable investments. On the contrary, by knowing that these investments delivered superior performance with less risk than the full market AND our clients have asked for that consideration, we would not be fulfilling our fiduciary duty to them to exclude such consideration.

Our view is that ESG considerations are material for anyone's future and retirement who breathes air, walks on the earth and drinks water. Shareholders themselves have provided strong indications in 2020 with majority votes at six companies requesting materials compliant with environmental and social corporate reporting standards published by the Sustainability Accounting Standards Board.<sup>1</sup> Industry itself acknowledges this important shift in corporate purpose and awareness, with large investors like Blackrock and State Street Global Advisors committing to the SASB standards. Over 200 companies have joined that clear signal of support for inclusion of environmental and social metrics in reporting standards.

In performing fundamental analyses, we are steered toward ESG investments, not away from them. They are not contrary to one another but rather work in tandem. Further, by not having ESG investment options in a retirement plan line-up, the Proposal would restrict worker's rights to access investments that have outperformed the market with less exposure to risk. You also restrict their ability to choose an investment that avoids material harm to their future. If a participant does not want to invest in fossil fuels because they believe it is causing harm to their future, AND there are options that deliver value to them comparable or better than the full market, it seems against both the participant's interest and rights and well as our fiduciary duty to not include such options.

**The Proposal is likely to have the chilling effect of dissuading fiduciaries, even against their better judgment, from offering options for their plans that consider ESG criteria in addition to more traditional financial criteria. As a result, it will unfairly, and harmfully, limit plan participants' options and diversification opportunities.**

We respectfully request that the Proposal be withdrawn.

Thank you for your consideration of these comments.

Sincerely,

North Berkeley Wealth Management

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<sup>1</sup> Paul Rissman of Rights CoLab, and Andrew Behar of As You Sow, "[A Successful Season for SASB-Based Shareholder Resolutions](#)," *Harvard Law School Forum on Corporate Governance*, June 12, 2020.