



July 30, 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:

I am writing to comment on the Department of Labor's proposed rule, "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) (the "Proposed Rule").

I am a partner at Bromberger Law, which works at the intersection of business and philanthropy, representing companies, investors, foundations, family offices, and organizations in activities that range from charitable to commercial. Our firm has been at the forefront of the fourth sector and social enterprise movements that have risen to prominence in recent years. We have seen an increasing demand for investment vehicles that provide both a financial and social return, and our clients rely heavily on Environmental, Social, and Governance ("ESG") criteria in making their investment decisions.

We are opposed to the Proposed Rule, as it incorrectly assumes that ESG considerations (referred to in the Proposed Rule as "non-pecuniary" considerations) are somehow separate from financial or "pecuniary" considerations. Further, it makes the baseless assumption that investments selected based on ESG criteria will have lower financial returns when evidence has shown the opposite to be true. For example, a 2015 report showed that aligning investments with ESG created financial value, and there was no reduction in investor returns for strategies that appropriately and consistently apply ESG factors.<sup>1</sup> Morningstar, Inc. recently found that "sustainable funds comfortably outperformed their peers in 2019. The returns of 35% of sustainable funds placed in the top quartile of their respective categories, and nearly two thirds finished in the top two quartiles." More importantly, sustainable funds continued to outperform during the economic downturn caused by COVID-19. "In the first quarter of 2020, Morningstar reported 51 out of 57 of their sustainable indices outperformed their broad market counterparts,

---

<sup>1</sup> ["Sustainable Investing: Addressing the Myth of Underperformance", Cornerstone Capital, September 2015.](#)

and MSCI reported 15 of 17 of their sustainable indices outperformed broad market counterparts - robust across region and index methodology.”<sup>2</sup>

In the face of a worsening climate crisis and the current economic and social turmoil, fiduciaries should be permitted a wide range of options when assessing risk and making investment decisions. Evaluation of ESG factors should certainly be permitted for this purpose. The Proposed Rule would dissuade fiduciaries from taking into consideration all the available relevant information in making investment decisions. The result will be harmful to plan participants - they will be offered fewer investment options, and those options are likely to be riskier and less profitable than those selected based on ESG criteria.

For the reasons set forth above, I respectfully request that the Proposed Rule be withdrawn. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carly Leinheiser', with a stylized flourish at the end.

Carly Leinheiser  
Partner, Bromberger Law

---

<sup>2</sup> [“Sustainable Investing: Resilience Amid Uncertainty”, Black Rock.](#)