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VIA Electronic Submission - RIN 1210-AB95

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Amendments to the “Investment Duties” Regulation
Title I of the Employee Retirement Income Security Act of 1974
Comments of the North American Coal Corporation

Dear Sir or Madam:

The North American Coal Corporation (“NACoal”) appreciates the opportunity to furnish comments on behalf of our coal mining operations as well as our subsidiaries, Catapult Mineral Partners (“Catapult”) and North American Mining (“NAM”). These comments are submitted in response to the U.S. Department of Labor’s (“DOL”) proposed rule amending the investment duties regulation under Title I of the Employee Retirement Income Security Act. NACoal owns and/or operates surface coal mines in Mississippi, North Dakota, Texas, and on the Navajo Nation in New Mexico that supply approximately 28 million tons per year of coal, on a long-term contractual basis, to electric generating units in those states, as well as mines that provide lignite as feedstock for carbon activation operations in Louisiana and Texas. Catapult specializes in royalty producing mineral interests (i.e. oil and gas) while NAM provides contract mining services in the metal/non-metal market. In total, NACoal employs approximately 2,400 people across all the individual operations. Additionally, NACoal is the plan administrator of a 401(k) plan with approximately \$662 million in plan assets and five defined benefit pension plans with approximately \$242 million, collectively, in plan assets.

As summarized in a recent news article from S&P Global Market Intelligence the coal sector is being targeted by environmental, social, and corporate governance (“ESG”)

activists¹. It is reported that as of 2019, 17 of the world's largest insurance players have rolled out coal exit commitments including moving away from investments in coal. As a result, NACoal welcomes the DOL proposal to require private-sector employee benefit plans invest prudently as well as diversify plan investments to minimize the risk of large losses. ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits and “[a] fiduciary’s evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan’s articulated funding and investment objectives.”

As discussed in the preamble of the rule, “Available research and data show a steady upward trend in use of the term ESG among institutional asset managers, an increase in the array of ESG-focused investment vehicles available, a proliferation of ESG metrics, services, and ratings offered by third-party service providers, and an increase in asset flows into ESG funds. This trend has been underway for many years, but recent studies indicate the trajectory is accelerating. For example, according to Morningstar, the amount of assets invested in so-called sustainable funds in 2019 was nearly four times larger than in 2018. As ESG investing has increased, it has engendered important and substantial questions and inconsistencies, with numerous observers identifying a lack of precision and rigor in the ESG investment marketplace.”

NACoal agrees with DOL’s statement that providing a secure retirement for American workers is the “social” goal of ERISA plans and that “plan assets may not be enlisted in pursuit of other social or environmental objectives”. NACoal also supports the desire of the DOL “to make clear that ERISA plan fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of nonpecuniary objectives.”

As the plan administrator of various retirement plans subject to ERISA, NACoal must diligently perform its duties of loyalty and prudence in selecting and monitoring investment alternatives. Promulgating regulations that clearly state pecuniary objectives trump non-pecuniary objectives will help NACoal, and all plan administrators, fulfill these ERISA fiduciary duties. Evaluating an investment alternative through pecuniary measures provides for a quantitative and objective analysis of the investment. However, evaluating whether an investment alternative provides ESG non-pecuniary benefits is difficult without relying on an ESG rating system, which NACoal agrees with the DOL that fiduciaries should be skeptical of ESG rating systems. We believe that investment alternatives that practice good governance will reflect pecuniary benefits that can be measured quantitatively.

¹ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/insurers-pledging-to-abandon-coal-sector-doubled-in-2019-activists-report-55772765> (last accessed 7/29/20).

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NACoal appreciates the DOL's rulemaking efforts and the opportunity to submit these comments. The proposed amendments to the investment duties regulation are a welcome step to protecting American's retirement funds in the age of ESG investing.

Very truly yours,

THE NORTH AMERICAN COAL CORPORATION

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