



July 29, 2020

Ref: 200730ERISA-Minerva

Office of Regulations & Interpretations  
Employee Benefits Security Administration  
Room N-5655 200  
United States Department of Labor  
200 Constitution Ave. NW,  
Washington, DC 20210

Dear Employee Benefits Security Administration:

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

I am writing on behalf of Minerva Analytics to express our strong reservations in connection with the Department of Labor's proposed rule: "Financial Factors in Selecting Plan Investments" (RIN 1210-AB95) ("Proposed Rule").

Minerva Analytics is a UK-based firm which provides services to institutional investors and asset managers to support their stewardship responsibilities. We provide data, research, analytics, and proxy voting support services. Our clients include funds such as NEST, the UK's default auto-enrolment pension scheme, USS, the Universities Superannuation Scheme and BlueSky Group, one of the Netherlands' largest pension schemes.

Minerva has over 25 years' experience of supporting pension fiduciaries and during this time we have seen an evolution in the way that pension schemes approach investment, in particular their consideration of Environmental, Social and Governance (ESG) factors which can support long-term sustained investment success.

In 2018 the UK introduced a series of regulatory updates which required trustees to include in their Statement of Investment Principles (SIP):

- How financially material considerations (including, but not limited to, ESG considerations including climate change), over the time horizon of the scheme, are considered in the selection, retention, and realisation of investments.
- The extent (if at all) that non-financial matters (e.g. members' ethical views) are taken into account.<sup>1</sup>
- Engagement and Proxy Voting policies, including details on monitoring, and engaging.<sup>2</sup> This includes engagement with managers employed by the trustees.
- An annual Implementation Statement setting out, amongst other things, how the SIP has been followed over the year.

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<sup>1</sup> The statutory guidance refers to "the extent (if at all) to which members' views on non-financial matters (including ethical views, views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme) are taken into account. Source: [The Pensions Regulator](#)

<sup>2</sup> Issues for monitoring include, but are not limited to, matters concerning issuers of debt or equity, including their performance, strategy, risks, social and environmental impact, and corporate governance.

As the Pensions Regulator (TPR) guidance explains, pension schemes need to understand the implications of the systemic risk of climate change on their investment decisions, further noting that consideration of ESG factors allows investors to evaluate the short and long term financial risks – and opportunities – presented by their investee companies. Examples of the issues to be considered include Environmental considerations such as carbon emissions and water management, social considerations including employee or local community relations, and governance considerations might include board diversity and remuneration. TPR has also endorse the recommendations of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures ([TCFD](#)) as reference point for developing policies and procedures.

The Proposed Rules stand in stark contrast to many OECD markets and appear to contradict decades of guidance from the DoL which has allowed ERISA-regulated retirement plans to invest responsibly and take ESG factors into account, under appropriately strict conditions.

Our understanding is that the purpose of ERISA is to protect the long-term interests of pension fund savers and sets a high bar for fiduciary responsibility, requiring trustees to *"act with due care, skill, prudence and diligence, and to avoid conflicts of interest"*.

ESG considerations have frequently been framed as political or socially motivated factors incompatible with Modern Portfolio Theory. Herein lies a problem – MPT is just that, a theory, not an iron-clad law of physics. The Friedman Doctrine exhorted that the only responsibilities of a corporation are to its shareholders – so long as they stay within the rules of the game. In the past 50 years the game has changed, as have the spectators – the shareholders. The growth of transparent data and information has enabled them to understand that companies which are not mindful of environment and social rules or treat their employees badly lose their licence to operate and ultimately fail.

Over the past 25 years we have seen an increasing volume of academic and actuarial studies and regulatory frameworks which have concluded that adding ESG considerations to the investment strategy is positive beneficial to long-term risk adjusted returns.

The Proposed Rules would, we believe, actively deter otherwise prudent fiduciaries from taking account of ESG factors in their investment decision making. Indeed, such is the value of ESG factors that increasing numbers of investors are applying sustainability considerations to their entire investment strategy as a default option. The Proposed Rules, would, therefore, create an unnecessary burden and interference in a well-managed, risk-aware investment process.

For these reasons, therefore, we strongly encourage you to reconsider the Proposed Rules and enable responsible fiduciaries to exercise their skills and judgement to protect the long-term interests of their beneficiaries.

Thank you for your consideration.

Yours sincerely,

A handwritten signature in cursive script that reads "Sarah Wilson".

Sarah Wilson  
**Chief Executive**