



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
USA

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Subject: ICGN Response to the Department of Labor proposal on Financial Factors in Selecting Plan Investment Proposed Regulation: RIN 1210-AB95

The International Corporate Governance Network (ICGN) is pleased to provide comments to the Department of Labor (DoL) proposal on Financial Factors in Selecting Plan Investment Proposed Regulation: RIN 1210-AB95.

Led by investors responsible for assets under management in excess of US\$54 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 45 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide. Our policy positions are guided by the ICGN Global Governance Principles¹ and the ICGN Global Stewardship Principles,² both of which have been developed in consultation with ICGN Members and as part of a wider peer review. For more information on ICGN please see: www.icgn.org.

Of the \$54 trillion in assets held by ICGN members the clear majority of these funds are invested in pension funds or other forms of retirement savings. By definition, the investment time horizon for these beneficiaries is long-term, if not theoretically infinite. Institutional investors have a fiduciary duty to assess and, where necessary, engage with companies on a wide range of risks and opportunities that may affect company value creation both in the short and long term. Environmental, social and governance (ESG) factors count very prominently among these risks and opportunities as they can impact significantly sustainable value creation at the individual company level as well as the general health and stability of economies and financial markets in a systemic context. At ICGN, one of our seven core stewardship principles relates to the integration of ESG in the investment and stewardship process to protect the long-term financial interests of investor beneficiaries.

¹ See: ICGN Global Governance Principles:
http://icgn.flpbks.com/icgn_global_governance_principles/

² See: ICGN Global Stewardship Principles:
<http://icgn.flpbks.com/icgn-global-stewardship-principles/#p=1>

Against this background, we believe the DoL's proposed rule is fundamentally flawed and retrograde, and betrays a clear, if not cynical, misunderstanding of ESG information, including how and why it is used by investors. ICGN would like to make clear its opposition to this proposal.

The proposal seems to suggest that the use of ESG information by investors is some ways "non-pecuniary," subordinating investment returns for broader social benefits. If there is nothing else you get from this letter, you should rid yourselves of such a notion. As an investor-led body, we know that ESG has become a mainstream issue globally, precisely because it relates to sustainable value creation for investors on behalf of their beneficiaries.

Your proposed rule would suggest that investors that use ESG effectively will have to justify why this is not a hindrance to investment performance. We believe this logic is backwards, and you should instead ask investors who do not use ESG information to explain why this will not impact their returns. In our view at ICGN, particularly for long-term investment strategies, we believe it is a breach of fiduciary duty if investors do not take ESG into account.

The DoL consultation document rightly identified current challenges relating to agreed standards and definitions of ESG data and inconsistent ESG rating outcomes. We are clearly on a journey, where considerable progress has been made and where there is still work to be done. The imperative we face should be to address these challenges constructively—how to make ESG information higher quality and more effective. However, we believe the DoL proposed rule is retrograde by implicitly discouraging or undermining the use of ESG in the investment process.

We take fiduciary duties seriously. We have no support for elevating fiduciary duty beyond the historical prudent man standard and imposing an untenable value maximizing requirement for the use of ESG in the investment process. It is our concern that the use of ESG in the US has become politicised, and that the proposal in place to marginalise the use of ESG data has been motivated at least in part by some companies, who as issuers of public securities, may prefer not to open themselves to investor scrutiny through ESG disclosures. Putting ESG into a "non-pecuniary" silo is not only wrong; it is a cynical and inappropriate tactic to dismiss ESG investing. As a body representing the global investment community, we reject such a perspective as wilful ignorance, ultimately compromising the interests of pensioners as investment beneficiaries.

Roughly 35% of the S&P 500 is held by non-US institutional investors; we would hope the DoL is aware of the importance of the overseas investment base that ICGN represents. Given the advances that ESG is making in other jurisdictions globally, often with government encouragement, it is our reluctant feedback that legislative initiatives of this nature put the US out of step with the rest of the world.

We have also read, and are supportive of, the more detailed group letter to DoL on this topic, drafted by Jon Lukomnik.

We hope these comments are useful in your deliberations. If you would like to follow up with us with questions or comments, please contact our Policy Director George Dallas: george.dallas@icgn.org .

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kerrie Waring', written in a cursive style.

Kerrie Waring
Chief Executive Officer, ICGN

Copy:

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