



Franklin Resources, Inc.
One Franklin Parkway
San Mateo, CA 94403-1906

tel (650) 312-2000
franklintempleton.com

Via Electronic Filing

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

Attention: Financial Factors in Selecting Plan Investments Proposed Regulation

Re: Financial Factors in Selecting Plan Investments (RIN 1210-AB95)

Ladies and Gentlemen:

On behalf of Franklin Resources, Inc., thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (“Proposal” or “NPR”). Franklin Resources, Inc. is a global investment management organization operating as “Franklin Templeton”. Headquartered in San Mateo, California, we employ over 9,300 people and have offices in 34 countries. Our common stock is listed on the New York Stock Exchange under the ticker symbol BEN and is included in the Standard & Poor’s 500® Index. As of June 30, 2020, Franklin Templeton had assets under management of over \$622 billion.

Franklin Templeton is a global provider of products and services to retirement clients and manages approximately \$187 billion in assets in the U.S. for individuals saving for retirement through defined contribution plans, defined benefit plans, IRAs and variable annuity products. Through our registered funds, collective investment trusts and other private vehicles, separate accounts, education tools and research information, Franklin Templeton is dedicated to the investment needs of the U.S. retirement community during all phases of the retirement savings and distribution cycles. Franklin Templeton is committed to partnering with the entire retirement community – plan sponsors, plan consultants and advisers, and financial advisers to plan participants and IRA owners – to ensure that it offers products and services that meet the needs of investors saving for and in retirement.

We echo the comments expressed by the Investment Advisers Association, the Investment Company Institute, the Securities Industry Financial Markets Association, The SPARK Institute, Inc., Principles for Responsible Investment (“PRI”), Sustainability Accounting Standards Board (“SASB”) and other trade organizations regarding this Proposal. Further, we strongly urge the Department of Labor (the “Department”) to either withdraw this rulemaking, or otherwise take appropriate steps to address the significant concerns raised by ourselves and the trade organizations. We believe the proposed amendments far exceed the codification of the existing guidance, mischaracterize environmental, social, and governance (“ESG”) investing by implying it is return-concessionary and non-pecuniary, compound

ESG ambiguities, and do not reflect the spectrum of ESG application. Instead of achieving the Department's stated objective of reminding ERISA fiduciaries of their obligations to beneficiaries, we believe the proposed amendments would lead to confusion on the scope of ESG investments, increase the burden of implementation costs, heighten the litigation risk faced by fiduciaries, and limit investor choice.

We agree with the Department's stated objective of reminding ERISA fiduciaries that their obligation to beneficiaries is exclusive; however, we also believe ESG considerations are fundamentally pecuniary, and do not represent a trade-off, but rather are additive to the process. Similarly, we recognize the Department's efforts to provide strong leadership and regulatory clarity with respect to the duties of a fiduciary as they pertain to the incorporation of ESG considerations when selecting investments for a plan. We also acknowledge the rapid industry evolution of ESG as an investment discipline, coupled with the growth in client interest, which has resulted in a growing number of ESG-marketed products. This is all against a backdrop of continued inconsistency in, or even a lack of, uniform ESG definitions and standards.

In our view, the convergence of these factors is creating a heightened risk of what is commonly referred to in the industry as "greenwashing," whereby the ESG credentials of a product are not supported by the valuation and stock selection process. We believe this is a credible risk that warrants greater regulatory oversight and guidance under a principles-based approach.

Franklin Templeton's ESG Approach

While our strong belief is that the Department should not proceed with this rulemaking, if it does, we offer the following information to assist the Department in understanding how investment advisers and other investment professionals consider ESG factors as part of the investment process and how ESG investments are used for the benefit of plan participants and other investors.

Franklin Templeton is committed to deepening the integration of ESG factors across all our investment activities, supported by our active ownership-engagement efforts. We believe material ESG considerations are fundamentally investment-relevant economic issues that are potential drivers of change that can impact the operational resiliency of businesses over the medium to long term, thus impacting investor returns. This makes them relevant for investors to understand from a risk and return lens. In short, our conviction is that assessing ESG issues as part of a fundamental active management process makes us better informed investors and helps us fulfill our fiduciary duties in seeking to provide strong investment performance for our clients.

ESG informed Process: Why integrate ESG?

We believe ESG considerations reflect investment-relevant issues, which can result in value impairment and correspondingly value creation. Therefore, in our view, it is in our clients' best interest for us to assess these issues when investing in issuers, as well as for the issuers to manage these matters appropriately.

ESG integration is a widely used and accepted investment practice. Professional investment managers analyse ESG factors precisely because of risk, return, and fiduciary considerations. Several recent industry-recognized studies have listed common reasons for incorporating ESG:¹

- Seeking to manage risks;
- Seeking to improve returns over time;
- Meeting client or beneficiary demand; and
- Fulfilling fiduciary duty.

Additionally, one can equate the growth in the number of PRI signatories as an endorsement of this view. The PRI is an investor-led organization promoting ESG best practices amongst the worlds' largest asset owners and managers. To date, the number of signatories total just over 3000 globally, representing over \$100 trillion in AUM.²

Materiality

At Franklin Templeton, we take a materiality-informed, economic-based approach to ESG. This means we incorporate into our fundamental analysis an assessment of business relevant ESG factors that we think may positively or negatively impact our investments, with the goal of making better informed decisions and providing better outcomes for our clients. The concept of materiality is central to the application of ESG. Not all ESG factors will be material to an investment case. Generally, asset managers such as Franklin Templeton identify those factors that are likely to have a financial impact on the long-term performance of an investment. We are guided in our identification of materiality by industry recognized standards such as those promulgated by the Sustainability Accounting Standards Board ("SASB"), in addition to our own proprietary sources. Franklin Templeton is a strong advocate of SASB standards as providing measurable, comparable, and useful disclosure on ESG metrics. We actively encourage issuers to provide meaningful disclosure informed by SASB's materiality framework.

Practical Application of ESG Informed Investing

ESG informed investing systematically and explicitly integrates environmental, social and governance factors into fundamental analysis. As previously mentioned, materiality guides what business relevant ESG considerations investment managers choose to assess. The channels to embed ESG into fundamental analysis are typically through valuations or forecasted financials.

Some of the ESG considerations an investment manager may analyze include:

¹ See, e.g., 2018 Canadian Responsible Investment Trends Report (Responsible Investment Association); 2018 Report on US Sustainable, Responsible and Impact Investing Trends (USSIF Foundation); 2018 European SRI Study (Eurosif); and 2018 Global Sustainable Investment Review (Global Sustainable Investment Alliance); Funds Use of ESG Integration and Sustainable Investing Strategies: An Introduction (Investment Company Institute, July 2020).

² PRI Update, Q3, 2020.

- Is there a direct impact of material ESG factors on revenues, costs, margins? If yes, can we quantify the impact? For example, what is the capex/cost/margin impact of a mining and extractives company moving to dry processing of iron ore?
- Do material ESG risks threaten the sustainability or reputational risk of the business? Has the company identified these risks through appropriate risk control and compliance standards? If yes, does this lower tail risks, and can we factor this into our scenario analysis? For example, we may assess the risk of banks mis-selling financial products.
- Is the company managing its material ESG risks effectively? Does this lower the cost of capital or increase the analyst's conviction or target multiple?

We would categorize the above approach as being “ESG-informed,” whereby ESG information forms one of the many inputs an investment professional assesses to determine the intrinsic value of an investment. Under this approach, ESG information is treated in the same manner as any other type of research input. As such, we view this approach as covering all active investment strategies, including those that do not necessarily label themselves as “ESG.”

In contrast to ESG informed investing, in an “ESG-driven” strategy specific ESG criteria and thresholds, along with valuations, drive the investment selection and portfolio construction process, and the strategy is held out as an “ESG strategy.” If an issuer’s valuations look attractive, but the company does not meet the fund’s ESG criteria, then that investment would not be selected. Conversely, should the company’s ESG criteria meet the thresholds, but the valuations are not attractive, the investment would not be selected for the strategy.

Our Comments on the Proposal

Given the spectrum of ways in which ESG is applied, we strongly urge the Department to define precisely what it means when it refers to “ESG” within the context of the proposed regulation and to narrow the scope of the proposed rulemaking to products that are “ESG driven”.

ESG as currently referenced in the proposal is overly broad and would implicate a wide swath of funds that follow an investment process that is “ESG informed”, whereby an ESG analysis is integrated into the process to help better assess the risk/return of investments, as described above.

If the Department intends to sweep into its proposal funds that follow an ESG informed process, then the resulting impact, burden, and collateral consequences of the proposed amendments could be tremendous. For example, such consequences could include increased compliance costs as a result of a fiduciary or investment manager continuously monitoring plan and/or fund investments for the potential need to divest any portions that could now or later be viewed as including an “ESG” factor. A sweeping application of this regulation would also serve to limit investor choice. Retirement savers will benefit from having access to a sufficient variety of investment products and strategies to meet their

goals. Accordingly, we strongly urge the Department to acknowledge that ESG factors are pecuniary to address the confusion in the crafting of the existing proposal, which infers ESG factors are non-pecuniary and concessionary to returns.

The “All Else Being Equal Test”

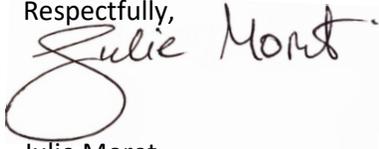
The proposed “economically indistinguishable” test is unworkable because it requires the fiduciary to extensively document why the investments with ESG considerations were determined to be indistinguishable and why it was selected. We appreciate the Department’s desire to focus on the primacy of a fiduciary’s consideration of pecuniary factors as part of ensuring that a fiduciary’s actions are consistent with the duty of loyalty. However, we are concerned that the additional burden the proposed amendments would place on fiduciaries who select an investment with ESG considerations would actively discourage their use owing to the higher hurdles of documentation and associated costs. This is problematic because it will have the effect of discouraging fiduciaries from ever considering investments with ESG considerations due to concern over the additional administrative burdens and costs, even if such an investment may have ultimately been in the best interest of participants. We also believe it would result in limiting investor choice. Our view is that the existing responsibility that fiduciaries must follow a prudent process when making investment decisions already accounts for the type of documentation that the Department proposes to codify in the regulations. As such, we strongly urge the Department to drop this test and the additional documentation requirements for investments with ESG considerations.

Defined Contribution Plan Investment Options

The proposed amendments would prohibit an “environmental, social, corporate governance, or similarly oriented investment mandate alternative” from being added as a plan’s qualified default investment alternative (“QDIA”), or as a component of a QDIA. We believe this proposal reflects a misunderstanding of ESG factors as being non-pecuniary. Imposing a blanket prohibition on ESG in QDIA’s could put plan sponsors in a position of violating their fiduciary duties under ERISA. For example, it is possible that a fiduciary could, after following a prudent process that examines investment alternatives based only on pecuniary factors, determine that an investment option that includes ESG-related assessments or judgments is the best option to serve as the QDIA or is shown to have superior performance. Under the proposed amendments, the fiduciary would be prohibited from selecting that best option as the QDIA. We would strongly urge the Department to eliminate this prohibition entirely.

We strongly believe that, rather than proceed with this rulemaking, the Department should further study current data and practices in ESG investing and the consideration of ESG factors in the investment process. As explained above, we are concerned that the DOL’s proposal will produce a number of unintended consequences, including harming retirement investors and imposing significant burdens and costs on plan fiduciaries. We also believe if the DOL adopts this Proposal in its current form, it will unnecessarily limit investment choice for plan participants and beneficiaries. We appreciate the Department’s consideration of our comments and would be happy to provide any additional information that may be helpful.

Respectfully,

A handwritten signature in black ink that reads "Julie Moret". The signature is written in a cursive style with a large, prominent loop at the beginning of the first name.

Julie Moret
Global Head of ESG

A handwritten signature in blue ink that reads "Jennifer M. Johnson". The signature is written in a cursive style with a large, prominent loop at the beginning of the first name.

Jennifer M. Johnson
President and Chief Executive Officer