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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655

US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

RE: Comment Letter on the Notice of Proposed Rulemaking Regarding Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (RIN 1210-AC03)

Dear Sir or Madam,

Northern Trust Asset Management (NTAM) appreciates the opportunity to provide comments to the Department of Labor (the Department), and generally supports the proposed rule *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* (the Proposed Rule)¹. We do, however, urge the Department to consider certain modifications to the Proposed Rule, as described below. The Proposed Rule would amend the existing regulation² on fiduciaries' investment duties under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, and the use of written proxy voting policies and guidelines. NTAM³ is a service provider to ERISA plans, managing approximately \$230 billion and providing OCIO services for approximately another \$21 billion on behalf of ERISA plans as of September 30, 2021. NTAM supports the long-understood ERISA tenet that, when making decisions on investments and investment objectives for retirement plans, fiduciaries of those plans must focus on the *financial* interests of the

¹ 86 Federal Register 196, p. 57272 (October 14, 2021), "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" can be found at: <https://www.govinfo.gov/content/pkg/FR-2021-10-14/pdf/2021-22263.pdf>

² 29 C.F.R. § 2550.404a-1

³ Northern Trust Asset Management is composed of Northern Trust Investments, Inc., Northern Trust Global Investments Limited, Northern Trust Fund Managers (Ireland) Limited, Northern Trust Global Investments Japan, K.K., NT Global Advisors, Inc., 50 South Capital Advisors, LLC, Belvedere Advisors LLC and investment personnel of The Northern Trust Company of Hong Kong Limited and The Northern Trust Company.

plan's' participants and beneficiaries. Fiduciaries have a responsibility to put the well-being of the participants first, and in so doing, to be guided by risk and return. We believe firmly that a thoughtful integration of sustainable investing data and analytics can be a means of building resilient portfolios. We commend the Department for its leadership in bringing greater clarity to its position that, when considered through an economic lens, environmental, social and governance (ESG) considerations should be treated as any other relevant financial considerations.

Institutional and individual investors are adopting a sustainable investing approach by integrating data and analytics intended to measure and manage material ESG risks and opportunities in a similar fashion that investors seek to measure and manage a broad suite of traditional investment risks. As the Department finalizes the Proposed Rule, we encourage it to support plan sponsors considering material ESG data and analytics as a complement to sponsors' responsibilities under the duties of loyalty and prudence.

Modern sustainable investing strategies can employ a holistic assessment of material ESG investment risks, integrated with traditional investment analysis. For example, ESG analytics can assist in enhancing investment opportunities and managing economic risks such as the evolving regulatory landscape, changing consumer preferences, and the rise of intangible company value. This allows investment managers to compose resilient and robust portfolios consistent with long term investment objectives. ESG issues can be business issues. When managed well, these issues can position a company for success. When managed poorly, these issues can detract from value and brand reputation. Alongside many of our peer organizations and industry associations, NTAM endorses the SASB Materiality Map⁴. This tool, now under the auspices of the International Sustainability Standards Board, serves as an evidence-based, investment focused, and transparent framework for defining material ESG issues. Sustainable investing strategies that integrate material ESG risks can be consistent with best practices for managing risk/return.

The Department's stated objective is to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments. Therefore, plan fiduciaries should have the ability to consider material ESG risks and opportunities, including climate change, human capital management and others, in a manner that is consistent with their duties of loyalty and prudence. Investors can integrate ESG data to create a more holistic view of risks and opportunities, resulting in more informed investment decisions and resilient portfolios. According to a study done by Morningstar, during the market volatility in the first quarter of 2020, 70% of sustainable equity funds ranked in the top halves of their respective categories and 44% ranked in the best performing quartile⁵⁶. More broadly, a comprehensive study analyzed the findings of more than 2,000 previous studies and found that 90% confirmed that

⁴ <https://materiality.sasb.org/materiality.html>

⁵ <https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds>

⁶ <https://www.morningstar.com/articles/1017056/sustainable-equity-funds-outperform-traditional-peers-in-2020>

ESG factors had a neutral or positive relationship to financial performance⁷. Under these tenets, a fiduciary should not accept expected reduced returns or greater risks⁸. Plan sponsors can meet this expectation when integrating material ESG data and analytics.

Comments on the Proposal and Areas of Change

1) Principles Based Approach

- a. We commend the Department for its efforts to clarify that fiduciaries may consider ESG considerations as they would any other relevant financial considerations, and to clarify that fiduciaries should not be at risk if they include any ESG considerations in the financial evaluation of plan investments.
- b. NTAM encourages the Department to remove the specific references to ESG considerations from the Proposed Rule as this differentiates ESG considerations from broad investment considerations. The neutral application of fiduciary principles and risks should not create a distinction between ESG considerations and other investment and financial considerations as drawing a distinction here may create undue confusion and potentially invite litigation. The Proposed Rule text should be principles-based rather than prescriptive, as this will allow the Proposed Rule to be more durable and relevant over the long term.
- c. The Department should clarify that ESG investments can and should be selected based solely on risk and return as applicable, rather than on collateral factors.

2) Safe Harbor to Satisfy the Duty of Prudence

- a. Considering relevant financially material ESG analytics is consistent with appropriate fiduciary decision making. The proposed safe harbor language supports fiduciaries in considering material ESG insights that are reasonably likely to impact investment outcomes.
- b. A growing suite of academic and industry research supports defining ESG issues as financially material. NTAM publicly supports the transparent, evidence-based approach taken to consider material ESG issues such as is done in the SASB Materiality MapTM.

3) Duty of Loyalty

- a. We affirm the Department's assertion that a fiduciary may not sacrifice investment return or take on additional risk to promote unrelated benefits. The Department should affirm that the adoption of sustainable investing strategies does not inherently entail an ulterior or alternative non-financial goal. Likewise, the Department should affirm that the omission of any particular sustainable investing strategy, does not evidence a per se breach of a fiduciary's investment duties.

4) Tie-Breaker Rule

⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2699610

⁸ *Public Plans Data*. 2001-2020. Center for Retirement Research at Boston College, Mission Square Research Institute, and National Association of State Retirement Administrators.

- a. Provided that a fiduciary is guided by their duty of prudence, a criterion for defining a “tie breaker” should be obsolete. There should not be additional tests or documentation which may be unduly burdensome or costly to plans and would increase costs for plan participants and beneficiaries without a corresponding benefit.

5) Proxy Voting

- a. Voting proxies is consistent with best practices and upholding fiduciary responsibility. Therefore, stewardship functions should be conducted accordingly. We recognize that most often investment managers are responsible for voting proxies as an exercise of their responsibilities over the portfolios they manage. In that light, we believe investment managers should be able to follow proxy voting policies that they develop to align with their investment strategies.

6) Qualified Default Investment Alternatives

- a. We welcome the Proposed Rule’s more consistent approach to considering sustainable investing options across plan investment pools, including qualified default investment alternatives. Formally removing these barriers allows plan fiduciaries to take a consistent view on integrating material ESG analytics on behalf of plan assets, and broadens the selection of investment vehicles and capabilities available to plan fiduciaries to consider across pools. Greater choice will allow plan fiduciaries the ability to conduct due diligence and select from a broad, competitive suite of investment capabilities.

NTAM’s Approach to Sustainable Investing

At NTAM our fundamental belief is that ESG considerations are business relevant issues. They represent potential drivers of change that can be transformative to the competitive positioning of businesses and impact operational resiliency over the medium to long term, thus impacting investor returns. This makes them relevant for investors to understand from a risk and return lens. As such our sustainable investing philosophy is deeply rooted in economics and financial materiality, anchored on three principles-

- Firstly, we view ESG considerations as pre-financial indicators, not non-financial, which when poorly managed can detract from financial performance and when well managed are additive to performance.
- Secondly, ESG considerations combined with quantitative or fundamental analysis results in a more holistic and forward-looking assessment to manage risks and unearth new opportunities.
- Finally, our clients have entrusted us to oversee their capital to protect and enhance their capital to meet their most important financial goals. As such ESG considerations coupled with stewardship to raise ESG standards with the companies we invest in is supportive of long-term financial performance and meeting our fiduciary duties in seeking to provide long term strong investment performance to our clients.

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NTAM appreciates the opportunity to comment on this important topic and welcomes the opportunity to discuss our comments on the inclusion of ESG considerations in the Proposed

Rule. To this end, NTAM is available to collaborate with the Department and provide additional insights and clarifications on the Proposed Rule.

Sincerely,

DocuSigned by:

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Julie Moret

Global Head, Sustainable Investing and Stewardship, Northern Trust Asset Management



Shundrawn Thomas
President, Northern Trust Asset Management