RIA Opens Up About DOL ESG Inquiries

BY NEVIN E. ADAMS, JD | SEPTEMBER 09, 2020

REGULATORY COMPLIANCE

The Labor Department has been probing ESG investment decisions, both by plan sponsors and those who counsel them—and now a recipient of those inquiries has stepped up to not only share those inquiries, but also provide insights on how they’ve approached the issue.

Those letters and that follow-up conversation preceded the issuance of a proposed rule in June by the Labor Department widely seen as designed to dampen enthusiasm for ESG investments by ERISA plans—one that has since received more than 1,500 comments during the 30-day comment period following issuance of the proposal, many harshly critical. Asked at the time about the plan sponsor ESG information outreach campaign in May and the timing of the proposal, senior Labor Department officials said the two were “separate, unrelated” initiatives.

In late July, Leafhouse Financial Advisors, LLC received one of those inquiries from the Labor Department. Similar in both tone and inquiry to those sent to plan sponsors earlier in the year, there were some differences that pertained to the role the firm plays in offering “environmental, social, and governance (ESG) themed investment services and/or funds to ERISA covered plans and/or entities holding plan assets recommending those investments.” Leafhouse is working with their longtime ERISA counsel Tom Clark of The Wagner Law Group to respond to the information request from the Labor Department. “Our firm has decades of experience working constructively with the DOL on behalf of our clients. While the request may be breaking new ground, demonstrating to the DOL how our clients meet their fiduciary responsibilities is not,” said Clark.

The ‘Asks’

The Labor Department asked that the firm provide documents “sufficient to identify and ERISA clients,” “sufficient to identify and describe any ESG factors and/or strategies used in providing services to ERISA clients” all “investment policies or guidelines concerning the use of ESG factors” in developing strategies, selecting investments or monitoring their performance, as well as:

- Documents sufficient to identify any ERISA Client investment strategies, holdings or transactions which were based in whole or part on the consideration of ESG factors.
- Asset listings or portfolio statements for any ERISA client whose investment holdings are in whole or part based on the consideration of ESG factors.
- “For each strategy or investment recommended or selected for ERISA clients based in whole or in part on the consideration of ESG factors: any documents reflecting calculations or disclosures of gains or losses; all reports or summaries of performance or returns; all financial statements or audits, all documents that evidence due diligence prior to investment; and all disclosures, marketing materials, communications or other documents describing operations, objectives, investment strategies and risks, management, expenses, valuation, benchmarks or performance provided to ERISA Clients,” as well as “documents sufficient to show the names, addresses, and responsibilities of all persons or entities with responsibility for making investment decisions, or providing investment advisory or consulting services that take into account ESG factors.”

Oh—and all this for the period Jan. 1, 2015 to the present—by “no later than Aug. 13, 2020.”

The Response

Neal Weaver, Chief Executive Officer of Leafhouse, explains that the firm had been incorporating ESG in its evaluations for a few years now. “We designed the Leafhouse Investment Sustainability Technology™ (LIST™) specifically to address DOL guidance to allow incorporation of ESG into our investment lineups if necessary or needed,” he explains.

“As a fiduciary to thousands of plans we saw the demand as clients were asking for ESG solutions. We also felt ESG solutions weren’t prevalent and Leafhouse wanted to continue to be a thought leader in the space similar to how we pioneered the FlexFiduciary system for 401(k) investment management,” he continued. Moreover, he found that both plan sponsor clients and advisors were asking about ESG solutions.

The Process

Acknowledging that there is some uncertainty and fluidity in definitions of ESG, Adrian Ramirez, Senior Investment Analyst at Leafhouse, explains that the firm’s Investment team relies on the prospectus to indicate whether or not the strategy is ESG, while also considering data points such as the Morningstar Portfolio Sustainability Score, Morningstar Sustainable Investment-Overall, and MSCI ESG Fund Metrics-ESG Score.

The firm’s approach—compiled and documented in conjunction with The Wagner Law Group—was designed with an eye toward the Labor Department’s 2018 Field Assistance Bulletin, and the “all other things equal” criteria outlined there. “DOL guidance has stipulated that selection of an ESG investment must not be to the
Despite the timing, amount and specificity of information requested, Weaver says the firm was “excited to be thought leaders and share with the DOL our process to further solidify data the DOL could use for more significant guidance.”

**Editor’s Note:** Representatives from LeafHouse will participate on a special workshop titled “Social “Standing: What About ESG?” on Friday, Sept. 11, at noon ET at the NAPA 2020 401(k) Cyber Summit. More information is available at [https://napasummit.org/schedule/#september](https://napasummit.org/schedule/#september).

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    Arlington, VA 22203

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✉️ 703.516.9308

✉️ CustomerCare@napa-net.org

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