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Environmental, Social and Governance Factors Get Further Attention by OECD, International Pension Supervisors

International bodies involved with pension regulation continue to advance the consideration of environmental, social and governance (ESG) factors in pension investing.

Background

As reported last year, the European Commission, under the Institution for Occupation Retirement Plans revision (IORP II), has begun calling for pension plans to further take into account ESG factors in pension investing. (More information on IORP II can be found here: http://www.groom.com/resources-1078.html.)

And at the time of the December 2016 meeting of the Working Party on Private Pensions (WPPP) of the Organisation for Economic Cooperation and Development (OECD), the OECD had promulgated a paper on the subject, "Investment Governance and the Integration of ESG Factors", including arguments for moving away from the traditional fiduciary rule as it may be hindering the application of ESG factors in pension investing and towards the "universal owner" theory of investing (investing to support "global economic health") as an alternative to modern portfolio theory. That paper was published by the OECD in 2017 and is now available online at http://www.oecd.org/pensions/Investment-Governance-Integration-ESG-Factors.pdf. We reported on this meeting in this prior alert, found here: http://www.groom.com/resources-1095.html.

Recent Meeting

In June 2017, the WPPP met in conjunction with the International Organisation of Pension Supervisors (IOPS), an organization made up of the pension regulators of over approximately 70 countries (not including the US, however), and one of its topics was revisions to the joint OECD/IOPS "Principles of Private Pension Supervision" . These are to be the guiding principles for the regulation of private pension plans, and one of the more substantive proposed changes raised is to add a provision that pension supervisors identify, monitor and analyze ESG factors that may impact pension funds and pension markets and use this information in the supervision of the funds.

Room Documents at the meeting commented that these changes relate to developments such as the Paris Agreement, as well as IORP II in the EU. These documents suggest that institutional investors concerned about climate issues could disinvest from carbon investments. Another option is the disclosure of climate related information.

Discussion was held on the proposed changes. Comments by some countries included concerns about whether any requirements might water down the financial health of retirement plans and participants as being paramount, though it would be reasonable to take ESG benefits into account as "tiebreakers" when investments are otherwise equal with respect to their economic and financial characteristics. Comments were also made that there is a lack of common understanding on what ESG factors are, which makes it difficult to understand what plan managers and their regulators are supposed to do with respect to them, and further that it was not clear that there had been adequate consideration of whether the costs imposed by consideration of ESG factors provided "value for money". Earlier in the day, a separate paper had been presented to WPPP and IOPS on measures to contain costs of running funded private pension plans that emphasized that expenditures demonstrably provide value for money.

No decision was taken at the meeting, but IOPS meets again in October, so further decisions may be made by that group at that time. Those interested in these issues may wish to review the relevant papers and submit comments. If you have any questions, please contact the author, David Powell, or your usual Groom lawyer.