

May 16, 2023

Ms. Vanessa A. Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (File No. S7-17-22)

Dear Ms. Countryman:

The Investment Company Institute (ICI)¹ is writing to reiterate our concern with the prospect of the Securities and Exchange Commission requiring certain registered investment companies (funds) to disclose their carbon footprint and weighted average carbon intensity (WACI)² *before*

¹ The [Investment Company Institute](#) (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Its members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. Its members manage total assets of \$29.9 trillion in the United States, serving more than 100 million investors, and an additional \$8.1 trillion in assets outside the United States. ICI has offices in Washington, DC, Brussels, London, and Hong Kong and carries out its international work through [ICI Global](#).

² *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Release No. IC-34594 (May 25, 2022) (Fund ESG Proposal), available at <https://www.sec.gov/rules/proposed/2022/33-11068.pdf>. Under the Fund ESG Proposal, an ESG-Focused Fund that considers environmental factors (environmental funds) would be required to use a hierarchy of data sources from which to calculate the carbon footprint and WACI metrics utilizing Scopes 1 and 2 data: regulatory reports, information publicly provided by the portfolio company, and, if such information is unavailable, a "good faith estimate" of the portfolio company's emissions. In addition, if a portfolio company reports its Scope 3 emissions in a regulatory report or provides it publicly, then an environmental fund also would be required to report separately the carbon footprint metric based on the Scope 3 emissions data.

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public companies must disclose their greenhouse gas (GHG) emissions,³ the very data used to calculate carbon footprint and WACI.

ICI commented comprehensively on both the Fund ESG Proposal⁴ and the Public Company Climate Proposal.⁵ We note that the Commission's most recent Regulatory Flexibility Analysis indicated that the final Public Company Climate rule would be issued *before* the Fund ESG rule (*i.e.*, April 2023 for the Public Company Climate rule and October 2023 for the Fund ESG rule).⁶ As there have been no other public communication as to when any final rules might be issued and how the Commission will sequence them, we are filing this letter to express our strong view that – if the Commission adopts the Public Company Climate Rule and the Fund ESG Rule – the compliance date for a final Fund ESG rule *not* precede the compliance date for any final Public Company Climate rule.

We commented on the importance of proper sequencing in our Fund ESG Proposal letter and discussed the topic with the Commission and its staff prior to the Public Company Climate Proposal and Fund ESG Proposal being issued. Chair Gensler has explained the benefits to investors of receiving comparable, consistent climate-related information, stating that,

[h]undreds of companies are already disclosing [climate-related risks and opportunities] ..., pursuant to disparate frameworks, in a manner that lacks consistency and reliability. Thus, the SEC has issued proposals to help bring investors greater consistency, comparability, and decision-usefulness to such

³ See *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33-11042 (March 21, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf> (Public Company Climate Proposal).

⁴ See Letter from Eric J. Pan, President & CEO, and Annette M. Capretta, Associate General Counsel, ICI to Vanessa A. Countryman, Secretary, SEC, regarding Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (Aug. 16, 2022) (Fund ESG Proposal letter), available at <https://www.sec.gov/comments/s7-17-22/s71722-20136279-307345.pdf>.

⁵ See Letter from Eric J. Pan, President & CEO, and Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, ICI to Vanessa A. Countryman, Secretary, SEC, regarding The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 16, 2022), available at <https://www.sec.gov/comments/s7-10-22/s71022-20131852-302300.pdf>.

⁶ See SEC Agency Rule List – Fall 2022, *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode&showStage=active&agencyCd=3235.

disclosures and enhance the conversation that is already going on between issuers and investors.⁷

Allison Herren Lee, then Commissioner, similarly stated that,

[a]s we move forward on climate initiatives, [o]ne very important role the SEC serves is to help ensure that decision-useful information gets into the markets in a timely manner by, among other things, setting public company disclosure standards.⁸

These goals would be best met by the Commission *first* requiring public companies to provide comparable, consistent, and reliable information. Doing so will equip any environmental fund⁹ to be able to provide fund investors with its carbon footprint and WACI based on information that appears in public company regulatory reports.

We are concerned that, given that the Fund ESG Proposal would require environmental funds to estimate the GHG emissions of their portfolio companies that do not report GHG emission data, the Commission conceivably could issue a final Fund ESG rule requiring such funds to disclose their portfolios' carbon footprint and WACI even before the Commission issues, and requires compliance with, a final Public Company Climate rule. But doing so would not assure that carbon footprint and WACI information rises to the level of standardization that the SEC is attempting to provide to retail investors with the Fund ESG rule and simply would be irresponsible.¹⁰

We note that the experience of the European Union in recent years provides the Commission with a real-life example of the difficulties created by regulators requiring fund disclosure before

⁷ See Chair Gary Gensler, *Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs* (September 15, 2022), available at <https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522>.

⁸ Commissioner Allison Herren Lee, *Remarks at the PRI/LSEG Investor Action on Climate Webinar* (October 20, 2021) available at <https://www.sec.gov/news/speech/lee-remarks-prilseg-investor-action-climate-webinar-102021>.

⁹ See Note 2, *supra*, describing which funds would be considered “environmental funds.”

¹⁰ For example, a portfolio company that does not report Scopes 1 and 2 GHG emissions information in a regulatory report but provides it publicly may use different methodologies for Scope 1 and 2, some including offsets, and others not doing so.

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public company disclosure. In Europe, asset managers and funds had to resort to relying on data primarily from third-party data providers to comply with the EU Sustainable Finance Disclosure Regulation (SFDR). Commission staff indicated to us that they are aware of the problematic issues raised by the EU's sequencing approach.

Our position on sequencing is simple: funds should not have to comply with a requirement to report data in a regulatory filing that is dependent on portfolio companies' data unless the portfolio companies *first* have to comply with a corollary requirement to report the data in their own regulatory reports.

Press reports have indicated that any final Public Company Climate rule may be subject to challenge in the courts.¹¹ If compliance with a final Public Company Climate rule is delayed due to such litigation, our recommendation remains the same: compliance for public companies with any final Public Company Climate rule must be required *before* funds are required to report their portfolios' carbon footprint or WACI.

We urge you to consider our views as you work towards finalizing these rules and look forward to further dialogue with you on this important and timely matter. If you have any questions, or if we can be of assistance in any way, please contact either one of us.

Sincerely,

/s/ Eric J. Pan

/s/ Dorothy M. Donohue

Eric J. Pan
President & CEO

Dorothy M. Donohue
Deputy General Counsel, Securities Regulation

cc: Chair Gary Gensler
Commissioner Hester Peirce

¹¹ See, e.g., Jean Eaglesham and Paul Kiernan, *SEC Considers Easing Climate-Disclosure Rules After Investor Pushback*, WALL STREET JOURNAL, Feb. 3, 2023, available at <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111> (stating that the Public Company Climate Proposal is expected to face legal challenges).

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Commissioner Caroline Crenshaw

Commissioner Mark Uyeda

Commissioner Jaime Lizárraga

William Birdthistle, Director

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Division of Investment Management

Erik Gerding, Director

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