

Re: File No. S7-17-22

Commissioners,

Please consider the following comments on the Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies proposing release. As background, I am a retired securities law attorney and now serve as an investor advocate.

I agree that if an investors holds itself out as investing in a certain manner or consistent with certain principles, it should do so. I also agree that investors, consumers and the whole world should be pushing for improved environmental and social conditions. That said, I do have the followings concerns about your proposal:

- The rule treats ESG different from any other investment strategy or type of investment. ESG is just one of many strategies a fund employs and others can be just as confusing and subject to abuse as ESG. (e.g., preservation). It is unclear to me why ESG is being elevate to some special status.
- While greenwashing may be troubling, I have yet to see clear evidence that it exists. Yes, some environmental funds own oil companies; however, if the reason is clear from the strategy, that is not problematic. (e.g., a fund that invests in the cleanest players in an industry). The Commission touts its BoNY enforcement matter, but that was not greenwashing, it was outright fraud and the Commission did not need a rule to stop that from continuing. The Commission's anti-fraud authority should be sufficient to stop false or misleading statements.
- The proposed disclosure requirements overstate the importance of ESG. A 2025 ESG Target Date Fund or a New York ESG Muni Bond Fund should not be required to include fulsome disclosure of its ESG strategy before other elements of its investment strategy. I would argue that the target date fund or the NY tax-free characteristics would be even more important.
- The Commission should encourage ESG funds and not draft rules that put undue burden on ESG funds.
- Requiring disclosure of GHG emissions is myopic. It is not easy or inexpensive to calculate, it is not always available, and it suggests that it is the most important ESG issue. This might not be the case.
- The release ignores the fact that if investors want ESG, funds will provide ESG data and third service provides will continue to enter the space. So, is government regulation necessary?
- If you require ESG disclosure, you should work with consumer agencies to develop common disclosures for funds, operating companies and consumer products that investors and consumers will understand (like an energy start label).

- Requiring funds, including impact funds to engage with companies is asking hundreds of funds to aggressively cold-call operating companies. Operating companies may take the calls of Vanguard and Blackrock, they will not take the calls (or take them as seriously) as calls from smaller fund shops.
- It is unclear how ESG can be clearly parsed from non-ESG disclosures. For example, if there is an index fund that uses a 6 step process and steps 3 and 5 screen on ESG, how might that be disclosed in your table?
- The difference between screening in and screening out is not clear. They are the same thing. Screening in funds with an ESG score over 50 is the same as screening out companies with an ESG score under 50.
- Requiring disclosure of votes on ESG proxy voting proposals may lead to bad outcomes. There are often hair-brained proposals submitted by investors and a fund may be inclined to vote in favor of it just to improve its metric. The Commission should not push policy that is likely to cause bad outcomes. Proxy voting results are available to investors and under a recent Commission proposal, a fund can explain its rationale. That seems like the best approach.
- The Commission should provide examples of the required disclosures in the comment file so the public can react to the disclosures (as you did in the summary prospectus and shareholder report rulemakings). I have found that intelligent minds can differ on what is intended by brief disclosures in SEC filings.
- The Commission should release and market a short-form investor facing questionnaire (as you have done with other rulemakings) or perform investor testing on these proposed disclosures.
- The one disclosure change I do think should be made, either through guidance or rulemaking, is to make crystal clear that ESG views the fund takes. e.g., Is nuclear power environmental? Does providing/selling contraception take you out of social?
- The Commission should add a marketing element to this rule. The Commission needs to be more cognizant of the fact that most investors do not get a prospectus until after their purchase. They instead rely on marketing materials provided by a fund or an intermediary. These materials must also be regulated to ensure disclosures are not misleading.
- I generally support the idea that ESG should require an 80% test under the names rule.

I also believe that funds with an environmental focus would be a good candidate to permit electronic delivery as the default delivery mechanism for fund documents. These investors have a clear preference to avoid the environmental impact of printing and mailing fund documents.

Sincerely,

Billy Dogwhistle