

Via email to rule-comments@sec.gov

August 15, 2022

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

RE: "ESG Disclosures for Investment Advisors and Investment Companies" (File No. S7-17-22)

Dear Ms. Countryman:

On behalf of *As You Sow* I welcome the opportunity to provide this comment letter in response to the Notice of Proposed Rulemaking "ESG Disclosures for Investment Advisors and Investment Companies" (File No. S7-17-22) ("Proposal"). [As You Sow](http://www.asyousow.org) is the nation's leading shareholder advocacy nonprofit, with a 30-year track record promoting environmental and social corporate responsibility and advancing values-aligning investing. Our issue areas include climate change, ocean plastics, environmental health, racial justice, workplace diversity, and executive compensation.

In 2015 we developed the [Invest Your Values platform](https://www.asyousow.org/invest-your-values) to rate and rank mutual funds and ETFs on seven ESG criteria including fossil fuels, deforestation, weapons, prisons, and gender equality. We update this platform every month with new fund and ETF holdings. This gives us a unique expertise on fund naming as we see every mutual fund and ETF that calls itself "ESG" in its name and/or prospectus yet many fail our ESG criteria.

I write in support of the rationale behind the Proposal to ensure that investors are provided with information that helps them understand the environmental, social and governance considerations included in a fund. That being said, we believe the final rule needs to improve upon this proposal in several areas, which we discuss below.

Recommendations to strengthen the proposal

Remove Fund Categories

As drafted, the Proposal creates fund categories we believe the SEC staff will have trouble utilizing. The category into which a fund places itself determines the disclosures it would have to make under the Proposal. Integration Funds would be required to summarize in a few sentences how they incorporate ESG factors into the investment process, including which ESG factors they consider. ESG-Focused Funds ("Focused Funds") would have much more extensive obligations; each such fund would be required to identify in an ESG Strategy Overview summary table the ESG strategies it follows, such as screening; reliance on third-party data and ratings; and brief descriptions of how ESG factors are incorporated and how the proxies are voted and/or how fund managers engage with companies. The Proposal would also require Focused Funds to provide more detailed information about relevant strategies later in the prospectus. Impact Funds would have to disclose more extensive information including: the impact(s) it is pursuing, how it seeks to achieve the described impact(s), how it measures impact, and the time horizon over which impact is measured and tracked.

We are concerned that the Proposal’s division of funds into three separate categories does not reflect the reality of how fund managers incorporate ESG factors in investment and stewardship decision-making, which could increase compliance costs. Sustainable investing strategies do not always fit neatly into an “ESG Integration” or “ESG Focused/Impact” box. Any inconsistency between the discrete categories used in the Proposal and funds’ own approaches could create difficulty for funds seeking to determine which compliance regime applies to them, resulting in compliance costs that are higher than those contemplated by the Release.

We also believe that, because many ESG-Focused funds are seeking specific outcomes or impacts, having impact funds as a subset of ESG-Focused funds could be duplicative, particularly in the public markets.

The SEC should require all funds that consider ESG factors to disclose the same information to investors. Investors should be able to compare funds across ESG approaches. Further, eliminating the Proposal’s fund categories would simplify compliance, avoid investor confusion stemming from unequal disclosure across fund categories, **and eliminate the incentive for funds to place themselves in the Integration Fund category to take advantage of its minimal disclosure obligations.**

- I. All funds utilizing ESG criteria should disclose:
 - a. An overview of fund strategy
 - b. How the fund incorporates ESG criteria into investment decision making
 - c. The use of 3rd party data, scoring, or ratings
 - d. The use of an index and how the index uses ESG criteria
 - e. The impact objective of the fund, if any
 - f. How the fund engages with portfolio companies on ESG issues (including but not limited to the taxonomy of engagement activities outlined by the Impact of Equity Engagement Initiative)¹
 - g. Disclose the greenhouse gas (GHG) footprint and the weighted average carbon intensity as defined in the Proposal.

Greenhouse gas emissions

The SEC should require that all funds, not just funds that utilize ESG criteria, disclose standardized GHG emissions metrics. This will allow investors to compare funds across all categories on this critical dimension.

Disclosures on engagement practices need improvement

Shareholder engagement can be an important component of a fund manager’s sustainable investment strategy. Understanding what methods a fund manager uses in the engagement process with portfolio companies will provide a more complete picture of the fund’s strategy.

However, the Proposal oversimplifies the engagement process by requiring only one metric, the number of company meetings. The Impact of Equity Engagement Initiative (IE2) identified 14 activities that

¹ Evaluating the Impact Of Shareholder Engagement in Public Equity Investing, The Impact of Equity Engagement Initiative, 2014 at p. 9. https://croataninstitute.org/wp-content/uploads/2021/05/IE2_Report.pdf

shareholders use when engaging companies.² It is our recommendation that the disclosures required for engagement practices should require fund managers to describe their engagement activities more broadly than the current proposal does.

Additional ESG disclosures on Form ADV are unnecessary

The Proposal would require registered investment advisors to provide additional disclosures about their ESG strategies and methods of analysis. We believe these disclosures are already required in Part 2A of Form ADV 3.

Thank you for considering these comments.

Sincerely,


Andrew Behar
CEO

² IBID