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August 16, 2022

Vanessa Countryman
Secretary
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:

J.P. Morgan Asset Management ("JPMAM")[1] is pleased to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") proposal to amend rules and forms under the Investment Advisers Act of 1940 and the Investment Company Act of 1940, to require registered investment advisers, certain advisers that are exempt from registration, registered investment companies, and business development companies, to provide additional information regarding their environmental, social, and governance ("ESG") investment practices (the "proposed rule").[2] JPMAM has $1,644 billion in assets under management (AUM) in the US across mutual funds, ETFs, private funds, and other advisory services. We offer a range of investment products and strategies to our clients, including ESG integrated and sustainable investing strategies that would be covered by the proposed rule.

JPMAM supports the SEC's goal of facilitating enhanced and more consistent disclosure regarding ESG-related products and services by those asset managers that offer them. Investors that may be interested in strategies incorporating ESG elements will benefit from such disclosures, which should help them understand the fundamental characteristics of an ESG fund and/or an adviser's ESG strategy and make more informed investment decisions. To be most effective, the required disclosures should be commensurate with ESG-related services provided, not be overly technical, complex or lengthy, and provide flexibility as strategies evolve.

Below we offer detailed comments on the proposal. Our letter addresses the definitions of the proposed categories for funds that undertake ESG-related considerations and the proposed

[1] J.P. Morgan Asset Management is a marketing name for the investment management subsidiaries of JPMorgan.

[2] Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. 34-94985; IA-6034, IC-34594 (May 25, 2022) 87 Fed. Reg. 36654 (June 17, 2022) ("Proposing Release").

accompanying disclosure requirements, after which we offer comments on the additional proposed investment adviser disclosure, reporting, and compliance date. Key themes include:

- We support the SEC's approach of i) applying its proposed requirements only to those products and services that are held out as incorporating ESG considerations, ii) classifying such products and services on a spectrum based on the extent to which such factors are considered, and iii) increasing disclosure requirements for products and services consistent with the level of consideration given to ESG factors. Ensuring that each category is properly circumscribed will be critical to ensure that similar products are subject to the same requirements, which will enhance investors' ability to compare and also facilitate an effective registration process (*i.e.,* by reducing the opportunity for disagreement between a sponsor and the SEC's disclosure review staff about proper categorization).

- While we strongly agree with the Commission's premise that investors need consistent, comparable and reliable information about how advisers and funds consider ESG factors, we believe that in practice the rule as proposed would result in overly detailed, lengthy and technical disclosures, which would not be decision-useful for investors. We offer a number of suggestions to make the proposed requirements more fit for purpose.

- We recommend a compliance period of 24 months for prospectus disclosure and an additional 6 months for annual report requirements, rather than the 12 months and 18 months, respectively, contemplated by the proposed rule. The rule will require substantial revisions to disclosures for a large number of funds,[3] many of which will involve review by fund boards, operational and system enhancements, notice to shareholders and review by SEC disclosure staff. A longer compliance period is necessary to accommodate this body of work.

I. Proposed Fund Disclosures to Investors

In recognition that registered funds that incorporate ESG factors do so to varying extents, the proposed rule divides such funds into three categories: integrated, ESG-focused, and impact investing. The proposed rule would then apply enhanced disclosure requirements to funds that fit any of these categories. The disclosure is intended to allow investors to identify and compare such funds, and help them make more informed investment decisions.

We are conceptually supportive of this approach. We agree that incorporation of ESG factors exists on a spectrum, and that categorizing and distinguishing such approaches is important as investors

[3] The economic analysis in the Proposing Release identified 333 funds that would meet the definition of "ESG-Focused"; it did not identify the number of Integration Funds but suggested "virtually all" asset managers may currently provide such strategies. Proposing Release at 174.

may have different objectives with respect to ESG. We also agree that the level and content of disclosure should vary depending on the extent to which a fund incorporates ESG considerations.

Below we offer detailed comments on the proposed fund definitions and disclosure requirements. As a preliminary matter, however, we wish to identify two concerns that exist across the three categorizations. First, although the proposed rule contains definitions for each category, it is silent as to how a fund that meets two definitions equally should be treated; as identified below, we believe the proposed definitions contain overlap and some ambiguities. We recommend that the final rule require funds to explicitly identify on its registration statement the category in which they belong.[4] This could be required, for example, in a check box, or alternatively a fund could be required to state the category in its principal investment strategy. This would have the dual benefit of forcing funds to carefully consider the benefits and opportunities of identifying as one category versus another, and preventing allegations of non-compliance due to SEC staff taking different interpretations of a fund's strategy relative to the definitions.

Second, we generally support the proposal's use of layered disclosure – *i.e.,* providing summary information in a fund's summary prospectus with more detailed information available in the statutory prospectus and, if appropriate, statement of additional information (SAI) – to help investors identify key information while making more information available to those who desire it. However, we believe the Commission may have underestimated the level of detail and complexities inherent in how ESG factors are incorporated into investment decision making. Implemented as proposed, the disclosure requirements would be extremely long, detailed and complex, and would not be useful to investors. We offer a number of suggestions below, but as a thematic issue we recommend the Commission consider whether summary information will be more useful to investors than the proposed detailed disclosures.

a. Integration Fund Requirements

1. Integration Fund Definition

The proposed rule defines an "Integration Fund" as a fund that considers one or more ESG factors alongside other non-ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio.

We believe this definition is missing the critical concept of financial materiality, and therefore overemphasizes the issue of the relevant weight given to ESG factors. Integration is commonly understood as the consideration of how ESG factors can materially impact a fund's financial

[4] We support the proposed requirement that a fund identify its category on Form N-CEN, but observe that N-CEN is backward-looking; the election should be made at the time of a fund's applicable registration statement.

outcome, similar to more commonly understood metrics for financial analysis.[5] As with any other factor considered in the investment process, there may be times when an ESG factor or factors *could* be important enough to be a determinative factor in an investment decision – such as, for example, the importance of access to clean water in considering an investment in a beverage company. The critical component is that these factors are considered for their impact on financial outcome, and not for other non-financial purposes. We recommend the SEC revise this definition accordingly. Additionally, to help distinguish Integration Funds from ESG-Focused Funds, we recommend that in the adopting release, the Commission states explicitly that ESG integration does not change a Fund's investment objective, cause it to exclude industries or types of companies, or limit the Fund's investible universe (although such limitations may be added in addition to integration, as disclosed in a fund's prospectus).

2. Prospectus Disclosure

The proposed rule would require an Integration Fund to summarize in a few sentences, in the summary prospectus, how the fund incorporates ESG factors into its investment selection process, including what ESG factors the fund considers. The statutory prospectus would require a more detailed description of how the fund incorporates ESG factors into its investment selection process. Finally, an Integration Fund that considers the GHG emissions of portfolio holdings would also describe how the fund considers the GHG emissions of its portfolio holdings including a description of the methodology used.

While we generally support the proposed approach of layered disclosure, we believe the proposal requires too much detail at each level. We are concerned that the scope and extent of information required could mislead investors by overemphasizing the role ESG factors play in the fund's investment selection process. We recommend that the SEC eliminate both the proposed list of specific ESG factors the fund considers, and the GHG emissions disclosure.

We do not believe that the list of specific ESG factors an Integration Fund considers should be required in either the summary or statutory prospectus. Asset managers may consider a wide variety of ESG factors as part of its integration process. The factors considered may vary across different investments in single fund, and may change over time. A complete list could be long and unwieldy, and not particularly helpful to investors. Perhaps more importantly, identifying individual ESG

[5] *See, e.g.,* Investment Company Institute, Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction, available at https://www.ici.org/system/files/attachments/20_ppr_esg_integration.pdf (Integration "seeks to enhance a fund's financial performance by analyzing material ESG considerations along with other material risks such as credit risk and counterparty risk."); 2021 JPMorgan Chase & Co. Environmental, Social and Governance Report, available at https://www.jpmorgan.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/jpmc-esg-report-2021.pdf (defining ESG integration as "the systematic inclusion of ESG issues in investment analysis and investment decisions. In actively managed assets deemed by [JPMAM] to be ESG integrated under our governance process, we systematically assess financially material ESG factors in our investment decisions with the goals of reducing risk and improving long-term returns").

factors would overemphasize them relative to the other factors considered in the investment process that are not individually listed, which runs counter to the definition of an Integration Fund. To the extent the Commission believes information about specific ESG factors considered by an Integration Funds could be meaningful to investors, we believe a discussion of factors considered could be included in the SAI. Such disclosure could include illustrative examples and indicate that such examples are illustrative only and may not be relevant to a particular investment.

Similarly, we do not support the proposed requirement that Integration Funds that consider portfolio GHG emissions describe how they do so. We are concerned that providing this level of detail may lead investors to believe that GHG emissions play an out-sized role in the fund's investment decisions. Integration Funds by definition have a primary investment objective that pertains to a financial outcome. As these Funds do not provide detailed reporting for factors applied in the traditional investment selection process, we do not believe it would be appropriate to provide detailed reporting regarding GHG emissions.

b. ESG-Focused Fund Requirements

1. ESG-Focused Fund Definition

The proposed rule defines an "ESG-Focused Fund" as a fund that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments, or (2) in its engagement strategy with the companies in which it invests. The proposed definition also explicitly includes (i) any fund that has a name including terms indicating that the fund's investment decisions incorporate one or more ESG factors and (ii) any fund whose advertisements or sales literature indicates that the fund's investment decisions incorporate one or more ESG factors as a significant or main consideration in selecting investments.

Consistent with our comments above, we believe that what distinguishes ESG-Focused Funds from Integration Funds is not whether ESG factors constitute a significant consideration in selecting investments, but whether they are considered for purposes other than or in addition to financial impact. The definition of ESG-Focused Funds should incorporate this concept.

Additionally, we do not believe that a fund should automatically be classified as ESG-Focused by virtue of its engagement strategy. While we may occasionally undertake engagement efforts on behalf of one or more ESG-Focused Funds, as a general matter JPMAM engages with investee companies on behalf of all of our funds, and our discussions with these companies with respect to ESG-related matters are limited to instances where we believe they are financially material to the company. For these stewardship activities, we identify priorities that we believe pose the most significant long-term risks and opportunities to the companies in which we invest. This type of engagement on behalf of a fund should not be sufficient to classify the fund as ESG-Focused.

2. Prospectus Disclosure

The proposed rule would require ESG-Focused Funds to provide an "ESG Strategy Overview Table" that contains three categories of information – Overview of the Fund's [ESG] strategy; How the Fund incorporates [ESG] factors in its investment decisions; and How the Fund votes proxies and/or engages with companies about [ESG] issues – in a standardized, tabular format in the summary section of a fund's prospectus. The Proposing Release explains that the table is intended to provide investors a clear, comparable, and succinct summary of the salient features of a fund's implementation of ESG factors, and to help investors compare and analyze ESG-Focused Funds more easily.[6]

While we applaud the Commission's goal of providing clear, comparable and succinct information to investors, we do not believe the proposed Table will accomplish that goal, and we do not support its inclusion. As discussed in more detail below, we believe in practice the Table would be extremely long, and the text included in each of the rows could be overly detailed and not particularly useful to investors. In lieu of the Table, we recommend more limited narrative disclosure.

i. Overview of the Fund's ESG strategy

The proposed rule would require an ESG-Focused Fund to provide a concise description in a few sentences of the factor or factors that are the focus of the fund's strategy. The fund would also be required to include a specified list of possible methods to implement its ESG strategy, and in a "check the box" style, indicate all strategies in that list that apply. These requirements are intended to help investors compare different funds' area of focus and approaches to ESG investing.[7]

We generally support the proposed concise description of the key ESG elements that are the focus of a fund's strategy. Consistent with our comments on the Integration Fund disclosure, however, we would observe that asset managers may consider a wide variety of ESG factors, the factors considered may differ depending on the investment, and any type of exhaustive list of such factors would be unwieldy and not useful to investors. We recommend that the final rule clarify that the summary is meant to describe key groups of factors, or "themes." For example, an environmental fund might consider greenhouse gas emissions, pollution control, waste management and recycling technologies, and energy efficiency in potential investment targets; we believe this level of detail would be far more useful to investors than the individual data elements (factors) underlying those considerations.

We do not believe that the "check the box" disclosure is helpful. To the contrary, we believe it could compel funds to self-identify into a narrow and overly simplistic set of implementation

[6] Proposing Release at 35.

[7] Proposing Release at 41.

methods, at a time when ESG-oriented investing is relatively novel, and strategies for accomplishing desired outcomes are constantly evolving. Such classifications could limit the development of new strategies or, alternatively, could result in a migration towards the selection of "other," which would make the check-box disclosure less informative. To the extent the SEC wishes to encourage common language to describe the ways in which funds might implement their strategy, the adopting release could enumerate the approaches described in the proposed checklist as examples. Over time, we expect that the industry will arrive at common language around ESG-Focused Funds, as they did with ESG strategies generally.[8]

ii. How the Fund incorporates ESG factors in its investment decisions

In the second row of the ESG Strategy Overview table, a fund would be required to summarize how it incorporates ESG factors into its process for evaluating, selecting, or excluding investments. A fund would provide specific information, in a disaggregated manner, with respect to the enumerated ESG strategies described above including inclusionary/exclusionary screens, internal methodologies and data providers, index tracking, and any third-party ESG frameworks.[9]

As noted above, we believe this information should be provided in the statutory prospectus rather than the summary prospectus. Even so, we are concerned that the Commission may have underestimated the complexity of the methodologies this disclosure addresses and the related detail; compliance with the rule as proposed could result in extremely long, complex and technical disclosures. We address each methodology below and offer suggestions for modifying the requirements to make the disclosure more useful.

Inclusionary/exclusionary screens. If the fund applies an inclusionary or exclusionary screen to select or exclude investments, the fund would briefly explain the factors the screen applies, any exceptions to the screen, and the percentage of the portfolio to which the screen applies if less than 100% of the fund, and if applicable, what exceptions apply to inclusionary or exclusionary screens. The proposed rule would also require a fund to provide, later in the prospectus, a more detailed description of any factors applied by any inclusionary or exclusionary screen, including any quantitative thresholds or qualitative factors used to determine a company's industry classification or whether a company is engaged in a particular activity.

We believe this proposed requirement captures far too much granular information to be meaningful to investors. As a preliminary matter, many funds use exclusionary screens in addition to other means to implement their strategies. For such funds, identifying each exclusion and providing detailed information concerning the operation of the exclusionary process, such as revenue

[8] *See* Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction, *supra* note 5.

[9] Proposing Release at 43.

thresholds and exceptions that may vary by industry, would seem to distract from the primary strategy.

The proposed rule similarly requires too much detail concerning an asset manager's inclusionary process. The investment selection process can be complex, incorporating multiple and varying data points, proprietary research, quantitative information, and qualitative judgments on the part of research analysts and other investment professionals. This information is not likely to be useful to investors.

We recommend that the final rule require a fund instead to summarize its exclusionary and/or inclusionary process, including concepts such as key industries considered for exclusion, and the types of metrics, data points, key performance indicators (KPIs), and/or thresholds used for inclusionary screens, rather than an exhaustive and detailed description.

Internal methodologies and data providers. The proposed rule would require a fund to describe how it uses any internal methodologies, third-party data providers, or combination of both, as applicable. Later in the prospectus the fund would provide, if applicable, a more detailed description of any internal methodology used and how that methodology incorporates ESG factors. If the fund used a third-party data provider, the fund would provide a more detailed description of the scoring or ratings system used by the third-party data provider including how the fund evaluates the quality of such data.

While we support the summary description, we do not think it is appropriate to provide a description of the data providers or their methodologies, or name specific third party entities. Citing specific providers may overemphasize their importance in investment processes, particularly where the information provided is one of many inputs.[10]

Index tracking. The proposed rule would require a fund that tracks an index to briefly describe the index and how it utilizes ESG factors in determining its constituents. Later in the prospectus the fund would provide the index methodology for any index the fund tracks, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors. We do not object to this requirement.

Third party ESG frameworks. The proposed rule would require an ESG-Focused Fund to provide an overview of any third-party ESG frameworks that the fund follows as part of its investment process. Later in the prospectus the fund would provide a further description of any third-party ESG-related frameworks that the Fund follows as part of its investment process and how the framework applies

[10] For Funds that use JPMAM's sustainable investment inclusion process, JPMAM's decisions are informed by a wide set of inputs including external data, proprietary data, information self-reported by companies and internal fundamental research.

to the fund. This would include frameworks such as the United Nations Sustainable Development Goals ("UN SDGs") or the United Nations Principles for Responsible Investing ("UN PRI").[11]

We do not believe that the final rule should require a fund to disclose commitments by the fund's adviser to third party ESG-related frameworks unless the commitment has a meaningful impact on security selection for the fund. For example, UN PRI is not an investment framework, but rather a set of broad principles to which asset managers – not individual funds – may commit.[12] JPMAM has been a signatory since 2007. We find that the principles shape how we undertake ESG integration and implement ESG-focused strategies as a firm, but do not direct our security selection process for any particular fund; we believe the latter should be the focus of prospectus disclosure.[13]

By contrast, certain third party ESG frameworks may impact a fund's security selection process. The UN SDGs consists of 17 goals across a wide range of themes (*e.g.,* good health and well being, affordable and clean energy, reduced inequalities, climate action)[14]; individual funds may choose to align their investment strategy to one or more themes. For example, a sustainable municipal bond fund may focus on investments in hospitals (health and well-being), green transit (climate), and/or utilities (clean energy), guided by specific SDGs. Where this alignment is integral to a fund's security selection process, we recommend that the fund be required to reference the specific goal or goals to which it is aligned, rather than the entire list.

iii. How the Fund votes proxies and/or engages with companies about ESG issues.

If a fund uses proxy voting and/or engagement as a "significant" means of implementing its strategy[15], the proposed rule would require the fund to check the proxy voting and/or engagement boxes in the first row of the ESG Strategy Overview Table and provide a brief narrative overview of how the fund engages with portfolio companies on ESG issues. Later in the prospectus, such a fund would disclose a description of specific objectives of engagement, including the Fund's time

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[11] Proposing Release at 48.

[12] UN PRI's six principals are as follows: Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes: Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices; Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest; Principle 4: We will promote acceptance and implementation of the Principles within the investment industry; Principle 5: We will work together to enhance our effectiveness in implementing the Principles; and Principle 6: We will each report on our activities and progress towards implementing the Principles. https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment.

[13] To the extent these commitments are undertaken by asset managers at the entity level, we would support requiring disclosure of these commitments in item 8A of the adviser's Form ADV. *See infra* §II.e.

[14] https://www.undp.org/sustainable-development-goals.

[15] Described as proactive use proxy voting or engagement with issuers as a means of implementing of their ESG strategy. *See* Proposing Release at 62.

horizon for progressing on such objectives and any key performance indicators that the Fund uses to analyze or measure the effectiveness of such engagement.

We generally support the proposed approach for determining whether a fund must provide enhanced disclosure on its proxy voting and engagement strategy. We believe it should be narrowly construed to apply only to funds for which such activities are specific to the fund and its investment strategy, and have a meaningful impact on the implementation of the strategy.

We would not expect it to apply to a fund that relies on the adviser's firmwide proxy voting policies, or even ESG-specific stewardship guidelines except to the extent they have a meaningful impact on the fund's investment strategy. However, a fund that follows ESG-specific stewardship guidelines may choose to disclose this in its statutory prospectus, and provide further detail in the SAI on the fund's engagement practices and stewardship priorities.

3. Annual Report

The proposed rule would require an ESG-Focused Fund to provide additional information in the management's discussion of fund performance ("MDFP") section of the fund's annual shareholder report. As a preliminary matter, we recommend that the proposed additional information should be provided in a new section of the shareholder report following the discussion of board approval of advisory contracts and the statement regarding the fund's liquidity risk management program, as applicable. The MDFP contains disclosure of factors that materially affected performance of the fund during the prior year, yet the proposed additional information would not generally relate to performance results. Moving the proposed additional information to a new subsection of the annual report would avoid diluting the MDFP and unduly focusing investors on factors not related to performance.[16]

i. ESG Proxy Voting Disclosure

An ESG-Focused Fund that indicates that it uses proxy voting as a significant means of implementing its ESG strategy would be required to: 1) disclose the percentage of ESG voting matters for which the fund voted in furtherance of the initiative, and 2) include a cross reference to its most recent complete voting record filed on Form N-PX. The Proposing Release describes that the disclosure would allow an investor to see the extent to which the fund was voting in favor of

[16] To the extent that ESG proxy voting, ESG engagement, and GHG emissions metrics materially affected a fund's performance, this information would be discussed in the MDFP. Our proposed approach to establish a new section separate from performance-related disclosure required in the MDFP is consistent with Investment Company Liquidity Disclosure. See, e.g., Item 27(d)(7)(b) of Form N-1A.

relevant ESG-related initiatives, while directing investors to the more detailed disclosure filed on Form N-PX.[17]

We believe that the proposed quantitative metrics could be misleading, and would not be useful to an investor in understanding how a fund's proxy voting record advanced its investment strategy. A fund's voting record in isolation, without further context, does not reflect the extent to which it adheres to its ESG-related strategy. We evaluate each shareholder resolution on its own merits and may vote against a proposal that is not well formulated or that is inconsistent with the fund's investment strategies, even if the proposal addresses one of the fund's stewardship priorities. For example, we may vote against an ESG-related resolution that pressures a company to implement an overly prescriptive or unrealistic business strategy on an unreasonable timeline. Given the unique situation of each vote, and the vast number of votes cast each year, it would not be practical or useful to investors to provide additional context on each of these situations in an annual report.

As an alternative, we recommend that a fund that uses proxy voting as a significant means of implementing its strategy to provide a narrative explanation of how it determined to cast its votes on ESG matters. This could include a discussion of how proxy voting impacted the implementation of the fund's investment strategy.

ii. ESG Engagement Disclosure

The proposed rule would require an ESG-Focused Fund that indicates that it uses ESG engagement as a significant means of implementing its ESG strategy to: 1) discuss the fund's progress on any key performance indicators (KPIs); and 2) disclose the number or percentage of issuers with which the fund held ESG-related engagement meetings and the total number of ESG-related engagement meetings. The Proposing Release explains that this disclosure would reduce the potential for exaggerated claims of engagement, and allow investors to understand better whether these funds are accomplishing their objectives.

We support the proposed disclosure concerning KPIs and the number of engagements for funds that indicate that engagement is a significant means of implementing their strategy. Such disclosure should identify the engagements under firm-wide processes separate from engagements that were specific to the Fund.

iii. GHG Emissions Metrics Disclosure

The proposed rule would require an ESG-Focused Fund that considers environmental factors (except if it affirmatively states in the ESG Strategy Overview table that it does not consider the

[17] Proposing Release at 78.

GHG emissions of portfolio companies) to disclose the carbon footprint and weighted average carbon intensity (WACI) of the portfolio for the reporting period.

We agree with the SEC that investors in environmental strategies are increasingly interested in funds' emission metrics, and that consistent and comparable GHG emissions metrics may help these investors make better informed decisions. We are supportive of the approach, including the limited application to ESG-Focused funds that consider environmental factors, subject to the comments provided below. We also appreciate that the GHG emission methodologies are generally aligned with the TCFD framework and the PCAF standards,[18] which we are working to implement across the globe. To ensure that we can deploy a consistent approach, we recommend that the final rule and adopting release remain consistent with these standards.

Given the acknowledged limits on available emissions data,[19] we would strongly support a safe harbor from liability for calculations based on non-regulatory company reports and good faith estimates.[20] Given the nascent state of company data and GHG metrics methodologies, good faith estimation methodologies may vary and can produce varying results for the same company. The safe harbor should be available if the calculation was performed on a reasonable basis and disclosed in good faith.

We also recommend certain modifications to the methodology. First, we recommend that all derivatives instruments be excluded from both assets and emissions. The Proposing Release explains that a fund could invest in certain derivatives (e.g., an equity total return swap) instead of cash instruments to improve its GHG metrics while maintaining its desired market exposure. While we acknowledge this possibility, it is not clear how derivatives contribute to financing additional GHG emissions in the underlying reference company. Additionally, a derivative instrument does not provide for stewardship opportunities.[21]

Second, given the general lack of verifiable and reliable Scope 3 data, we recommend that funds not be required to disclose Scope 3 metrics at this time. The proposed rule would require funds to disclose Scope 3 emissions to the extent this data is reported by investee companies. Although the Commission has proposed a rule addressing issuers' Scope 3 emissions, disclosures would only be made under certain circumstances and companies would have the option to report information in

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[18] Task Force on Climate-Related Financial Disclosures ("TCFD") and the Partnership for Carbon Accounting Financials ("PCAF").

[19] The proposed rule proposes a data hierarchy for sources of GHG emissions information, *i.e.*, regulatory reports, followed by other public reports, and then "good faith estimates" of the portfolio company's emissions.

[20] *See* Proposing Release at 119.

[21] We also note that the PCAF methodology does not currently provide guidance on GHG calculations for derivatives. To avoid inconsistent results, we think industry standards are necessary before requiring the inclusion of any derivatives in GHG metrics.

ranges.[22] While we expect that Scope 3 methodologies and coverage will improve over time, this data is not yet widely available or reliable.

c. Impact Fund Requirements

1. Impact Fund Definition

The proposed rule defines an "Impact Fund" as an ESG-Focused Fund that seeks to achieve a specific ESG-related impact or impacts. We support a third fund category of funds that seek to promote ESG-related outcomes, but we recommend identifying them as "Outcome-Oriented" rather than "Impact," and revising the definition accordingly. As discussed below, industry-led efforts to define and promote "impact" investing have begun to coalesce around a narrower definition, which registered funds may only be able to meet in extremely limited circumstances. We believe there is benefit in preserving the narrower definition and avoiding investor confusion.

The emerging industry definition of an "Impact Fund" is generally distinguished from other ESG investing strategies based on three key characteristics: 1) intentionality towards making positive ESG-related impact; 2) the ability to measure inputs, outputs and outcomes to demonstrate progress; and 3) an additionality in positive benefits that would not have occurred without the fund's investment.[23] At present, we believe that registered funds, which primarily invest in publicly traded securities, would generally not be able to measure the outputs and outcomes that resulted from their specific financial investment. As issuer disclosure continues to evolve, we can envision, for example, that a green bond issued to finance a specific project may provide sufficient reporting on sustainability outcomes for inclusion in an Impact Fund. However, in light of the ongoing development and evolution of ESG issuer disclosures and investment products, we recommend that the Commission not establish an Impact category at this time.

We instead recommend that the final rule identify the third category as "Outcome-Oriented," defined as an ESG-Focused fund that seeks to achieve an ESG-related outcome(s). An Outcome-Oriented fund would be required to demonstrate intentionality in promoting ESG-related outcome(s) and provide KPIs on key activities that demonstrate contributions towards the intended

[22] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478 (March 21, 2022) 87 Fed. Reg. 21334 (April 11, 2022).

[23] *See, e.g.,* Global Impact Network, About Impact Investing, available at https://thegiin.org/impact-investing/ (defining Impact investing as "investments made with the intention to generate positive, measurable social and environmental impact alongside a financial return."); Impact Frontiers, Five Dimensions of Impact, available at https://impactfrontiers.org/norms/five-dimensions-of-impact/ (describing that Impact investing includes investors' consideration of "whether their efforts resulted in outcomes that were likely better than what would have occurred otherwise.").

outcome. Unlike Impact Funds, such a fund would not be expected to establish a quantifiable outcome, nor a causal link between the fund's investment and any outcome(s).

2. Prospectus Disclosure

In addition to the ESG-Focused disclosures described above, the proposed rule would require an Impact Fund to provide in the row "How the Fund incorporates ESG factors in its investment decisions" an overview of the impact(s) the fund is seeking to achieve, and how the fund is seeking to achieve the impact(s). The overview must include (i) how the fund measures progress toward the specific impact, including the key performance indicators (KPIs) the fund analyzes, (ii) the time horizon the fund uses to analyze progress, and (iii) the relationship between the impact the fund is seeking to achieve and financial return(s). The fund would provide a more detailed description later in the prospectus to complement the overview provided in the Table. We offer the following comments consistent with our recommendation to rename this category to Outcome-Oriented.

We support the proposed requirement in the summary prospectus to provide an overview of the outcome(s) the fund is seeking to achieve, how the fund is seeking to achieve these outcome(s), and the relationship between the outcomes sought and financial return(s). We also support providing a brief discussion of how the fund measures progress, the time horizon for analysis, and relationship to financial return. However, we do not think it is realistic for such funds to identify and report on KPIs that establish and measure a casual link between a fund's investment and certain outputs (even under the proposed Impact Fund definition), in either the summary prospectus or prospectus.

We believe the Commission underestimates the complexity of strategies that might fall into this category and the relevant metrics used to execute them. The Proposing Release offers an example of a fund that pursues "investment opportunities that finance the construction of affordable housing units," and suggests that such a fund could disclose that it uses the number of units financed annually as a KPI. This example is overly simplistic. As a preliminary matter, such an investment product would likely be highly concentrated and not likely to exist as a registered fund. However, a fund may invest in securitized products backed by mortgages provided to underserved communities, or pursue an outcome-oriented strategy that promotes affordable housing outcomes through investment in a range of activities along the value chain, such as in companies that manage low-income properties and retirement communities, build modular homes, and produce component goods such as insulation. Each of these investments could contribute to affordable housing, but it would be nearly impossible to arrive at an outcome measure such as "units financed." Rather, the management team is likely to have a set of qualitative and quantitative assessments that vary by investment type, industry, sector, and investment sub-themes, which they apply to potential investments at the time of investment to evaluate them over time.

Although the Proposing Release is not clear on what additional detail would be required, we would not support providing a list of individual measurements the fund considers and how the information

is evaluated. This information would not be useful to investors. We recommend the final rule require an overview of the methods used to identify investments that provide the stated outcome, the types of information the fund considers, and how the information is evaluated.

3. Annual Report

The proposed rule would require an Impact Fund to summarize briefly the Fund's progress on achieving its specific impact(s) in both qualitative and quantitative terms during the reporting period, and the key factors that materially affected the Fund's ability to achieve the specific impact(s), on an annual basis in the annual report.

We agree that investors should have information to evaluate the extent to which an Impact (or "Outcome-Oriented") Fund is advancing its ESG goals. However, the proposed requirement to summarize a Fund's "progress on achieving" an impact implies that ESG impacts or outcomes can be measured at the portfolio level. As discussed above with respect to an "affordable housing" strategy, except in a highly concentrated fund, there are likely to be a number of different measures that contribute to the intended outcome in various, and in some cases non-direct, ways. Outcome-oriented strategies often invest in the supporting ecosystem as well as the direct contributors to targeted outcomes; as another example, a fund that seeks to expand broadband access in rural communities may invest in local cable/internet companies, along with companies that produce low-cost laptops, semiconductors, network routers, and other hardware. Providing a description of how each investment or category of investment contributed to the outcome would require lengthy detail about various industries and measurements, which may not be useful to the investor in evaluating the fund as a whole.

We recommend instead that a fund describe provide KPIs on key activities that demonstrate contributions towards the intended outcome (e.g., the provision of laptops, semiconductors, and other hardware in an internet access fund) to the fund's stated outcome. This may include qualitative and quantitative analysis, including KPIs, for each investment theme.

II. Adviser Disclosures

The proposed rule would require new ESG-related disclosure requirements to Form ADV Part 2A (the adviser brochure) and Form ADV Part 1A (the adviser report) regarding Integration and ESG-Focused strategies, including Impact strategies. We support the Commission's effort to provide investors with additional information from investment advisers[24] that choose to provide ESG-related strategies. We are concerned, however, that the level of detail required under the proposed

[24] Our comments on investment adviser disclosure focus on the proposed requirements applicable to registered investment advisers.

rule may result in lengthy, technical and detailed disclosure that may be disproportionate to the role ESG factors play in portfolio construction. Our specific recommendations are set forth below.

a. Item 8: Methods of Analysis, Investment Strategies and Risk of Loss

The proposed rule would require the adviser to provide a description of the ESG factor or factors the adviser considers and how the adviser incorporates these factors when advising clients with respect to investments. The proposal also provides definitions for ESG integration, focused and impact strategies an adviser may use that are similar to the proposed definitions for registered funds.

Consistent with our comments above, we would observe that investment advisers may consider a wide variety of ESG factors, and any type of exhaustive list of such factors would be unwieldy and not useful to investors. We recommend that the final rule clarify that advisers may provide groups of factors, or "themes" the adviser incorporates. We also recommend incorporating our recommendations regarding the definitions of Integration and ESG-Focused funds, and renaming the third strategy to "Outcome-Oriented" consistent with our comments above.[25]

b. Item 10: Other Financial Industry Activities and Affiliations

The proposed rule requires the adviser to describe material arrangements that the adviser has with any related person that is an ESG consultant or other ESG service provider. We support this requirement and believe it is consistent with the existing ADV disclosure regime. This information may be useful to clients' evaluation of how advisers use information in evaluating ESG factors and providing ESG investment strategies.

c. Item 17: Voting Client Securities

The proposed rule would require an investment adviser that has specific voting policies or procedures that include one or more ESG considerations when voting client securities to include in their brochures a description of which ESG factors they consider and how they consider them.

We are concerned that a description of individual ESG factors and how they are considered would be too extensive and detailed, and not useful to clients. In addition, shareholder proposals are evaluated on a case-by-case basis, and it would not be possible to identify every ESG consideration the adviser may consider.

We instead recommend that the adopting rule permit an investment adviser provide a summary of specific ESG voting policies, if any. The adviser may also provide a link to such voting guidelines

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[25] *See supra* §I.c

for clients who desire more detail, as well as provide any such clients voting information applicable to their account.

d. Wrap Fee Brochure (Form ADV Part 2A, Appendix 1)

The proposed rule would require advisers that consider ESG factors in their wrap fee programs to provide a description of what ESG factors they consider, and how they incorporate the factors under each program, including any ESG factors they consider. We are concerned that wrap fee sponsors would not have sufficient information to provide this disclosure. For example, the Proposing Release describes that a wrap fee sponsor that uses a third party data provider to evaluate portfolio managers would describe the nature of the third party's review, including the relevant ESG factors it uses to score portfolio managers and how it arrives at its scores. Wrap fee sponsors may not have access to ESG factors considered by third parties or their methodologies. We recommend that the final rule not require granular information on methodologies from third parties, and instead require wrap fee sponsors to disclose the extent to which their processes are reliant on third party providers.

e. Adviser Report (Form ADV Part 1A)

The proposed rule would add new questions to Form ADV Part 1A to require an adviser to report whether it considers ESG factors, and if so, whether it employs an integration, ESG-focused or ESG-impact approach. We are concerned that the proposed amendments would not provide for comparability across advisers or provide useful information to clients and potential clients. Given the routine consideration of ESG factors, particularly the consideration of governance matters, we believe that most advisers will answer the Form ADV Part 1A questions in the affirmative. This would not aid potential clients in evaluating the types of ESG services that an adviser offers and may have the unintended consequence of overemphasizing the importance of ESG integration. For these reasons, we recommend elimination of the proposed additions to Form ADV Part 1A.

The proposed rule would also require an adviser to report: 1) whether it follows any third-party ESG framework(s), and if so, to report the name of the framework(s); and, 2) whether it conducted other business activities as an ESG provider or has related persons that are ESG providers. We recommend that disclosure concerning ESG frameworks be included response to Item 8A of Form ADV. As discussed above, the fact that an adviser is a signatory of UN PRI may not be relevant to an individual fund (or strategy) but could provide important information to potential clients concerning broad principles that inform the advisers' ESG approach. Including this information in Item 8A allows the adviser to provide context concerning how frameworks such as UN PRI are used, without overemphasizing such frameworks' importance to a particular strategy. Similarly, information concerning whether an adviser or its related persons are "ESG providers" should be included in response to Item 8A and Item 10 rather than as a check box in Part 1A. This information, by itself, does not provide clients meaningful information about whether an adviser's

services as an ESG provider informs the "methods of analysis" described in response to Item 8A or is part of a "material arrangement" requiring disclosure under Item 10.

III. Reporting

a. Form N-CEN

The proposed rule would require a fund to disclose on Form N-CEN whether it is an Integrated or ESG- Focused fund. If ESG-Focused, the fund would indicate if it is an Impact Fund and which factors (i.e., E, S, and/or G) it considers, and the method it uses to implement its ESG strategy among the same check-the-box options as indicated in the proposed summary prospectus requirements. The proposed amendments would also require the Fund to identify ESG service providers by name and legal entity identifier if the adviser considers ESG information or scores from such service providers.

We recommend that the Commission adopt only the requirement to disclose the type of fund. We believe the overlap across E, S, and G is substantial, and interpretations vary widely (*e.g.,* a fund focused on companies with a diverse board could be S or G or both), such that this data would not be meaningful. Additionally, as discussed above, we do not think check-the-box approach to methods for implementing ESG-related investment strategies is helpful.[26] Finally, we do not believe it is appropriate to name ESG service providers in Form N-CEN given the wide variety of inputs and information asset managers consider in implementing their ESG-related investment strategies.

b. Inline XBRL Data Tagging

The proposed rule requires Inline XBRL tagging of the new ESG disclosures in fund registration statements and in the fund annual report. Registrants are dependent upon their service providers to perform Inline XBRL tagging. As part of its regular filing process, JPMAM's project planning takes into account the time necessary for the vendor to perform the necessary Inline IXBRL tagging. The proposed compliance dates should similarly recognize the additional work generated by Inline IXBRL tagging of new disclosures as recommended below.

IV. Transition Period and Compliance Date

The proposal would provide for a compliance date of one year following the effective date of the rules. This is insufficient. We recommend that the SEC provide a minimum of 24 months for prospectus disclosure and an additional 6 months for annual report requirements.

[26] *See supra* §1.b.2.i.

The proposed requirements, together with the provisions of the concurrently proposed amendments to the Investment Company Names proposal,[27] will impact a large volume of disclosures. [28] In some instances, these rules will require changes to Fund investment policies and strategy disclosures that will require review by Fund boards, notice to shareholders, and review by SEC disclosure staff as part of the registration statement process. In connection with their registration statement review, the SEC staff may request additional changes to disclosures such as further refinement of an ESG-Focused Fund's 80 percent investment policy or an ESG-Integration Fund's disclosures. These changes may warrant additional board review and, for certain changes, additional notice to shareholders. The registration statement timeline must also allow time for print vendors to perform the necessary IXBRL tagging.

Finally, we note that a two-year compliance period for prospectus disclosures may provide optionality for registrants to consider whether disclosure changes could be implemented as part of the regular annual update process for a Fund's registration statement and the adviser's Form ADV, which could create efficiencies for funds and advisers as well as SEC disclosure review staff.

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JPMAM appreciates the opportunity to comment on the Commission's proposed rule. We would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Very truly yours,

/s/ Jennifer L.C. Wu

Jennifer L.C. Wu

Cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
William A. Birdthistle, Director, Division of Investment Management

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[27] Investment Company Names, Release No. 33-11067; 34-94981; IC-34591 (May 25, 2022) 87 Fed. Reg. 36594 (June 17, 2022).

[28] *See supra* note 3. Given that funds with ESG-related names will have new disclosure obligations under both rules, it makes sense for them to be implemented concurrently; however, non-ESG funds may also be scoped in under the names rule, increasing the volume of disclosure amendments that must be undertaken by fund advisers and reviewed by the SEC staff.