CAMBRIDGE

VIA ELECTRONIC MAIL: rule-comments@sec.gov

August 16, 2022

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

Re: **File No. S7-17-22**

Dear Ms. Countryman:

Cambridge Investment Research Advisors, Inc. ("CIRA"), a Securities and Exchange Commission ("SEC" or the "Commission") registered investment adviser ("RIA"), appreciates the opportunity to comment on the proposed rules regarding Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (the "Release"). CIRA recognizes that environmental, social, and governance ("ESG") factors have become increasingly prevalent in clients' investment strategies. CIRA also understands and appreciates the necessity of providing clear disclosures to investors.

With respect to the Release, CIRA generally supports the goals of the Commission but requests the Commission consider the following recommendations and concerns related to the Release.

I. SUPPORT FOR ENHANCED INVESTMENT COMPANY DISCLOSURES

As an initial matter, CIRA appreciates the importance of providing sufficient disclosures to investors and supports the Commission's efforts to enhance disclosures provided to investors. While CIRA generally supports the Commission's efforts, CIRA believes ESG-related disclosures would be best provided by investment companies. However, the Release broadly encompasses all RIAs, regardless of the complexity of the RIA and the level of its ESG-related investment strategies. Absent RIAs who utilize one or a small number of investment strategies, RIAs are not well-positioned to comply with the Release, as proposed.

As it relates to ESG factors, CIRA believes that enhanced disclosures by investment companies would provide more reliable and transparent information to investors who wish to invest based on ESG factors. Currently, the information and data made available by investment companies is not consistent and is difficult for investors and investment advisor representatives ("IARs") to understand. Often, it is unclear what methodologies are utilized by the investment company. This lack of consistent and reliable data may deter investors and IARs pursuing investing based on ESG

factors. Further, similar concerns may arise from RIAs whose sole investment strategy, or primary investment strategies, consider ESG factors.

CIRA believes enhanced disclosure requirements for investment companies would address the concerns of the Commission with respect to providing transparent and more detailed information to investors looking to invest in ESG strategies. Enhanced material and data made available by investment companies would provide investors and IARs with the information needed to understand ESG strategies and investments available. Additionally, enhanced material would allow investors, IARs, and RIAs to have a clearer understanding of the key differences between ESG strategies and available investments. Similarly, enhanced disclosure requirements for RIAs whose primary investment strategies are ESG-related would provide greater transparency for investors interested in investing based on ESG factors.

If the Commission proceeds with the Release as currently proposed, CIRA believes that additional clarification is necessary to assist investment companies and RIAs with compliance with the proposed rule. Further, CIRA believes that the Release has broader consequences for RIAs, particularly larger RIAs with complex business strategies, that is not addressed within the proposal.

II. DEFINE THE TERMS "ENVIRONMENTAL", "SOCIAL," AND "GOVERNANCE"

The Release proposes additional disclosures by RIAs and investment companies with respect to ESG factors. However, rather than define the key terminology at the heart of the proposed rule, the Commission notes in the Release that they are not proposing a definition of ESG or similar terms.

For RIAs and investment companies to comply with a rule relating to ESG, it is important for those terms to be defined. Without definitions, it would be difficult for RIAs and investment companies to determine with certainty what is considered to be ESG, such that it would be subject to the new disclosure requirements. In addition, the lack of a definition of ESG will create uncertainty in the applicability and enforcement of the rule, as each review conducted by the Commission for compliance with the rule may foster inconsistent approaches to the rule. One RIA or investment company may be reviewed and, based on the lack of a formal definition of ESG, may be determined to be in compliance with the rule, while another RIA or investment company may utilize similar disclosures but may be found to be out of compliance with the rule due to the use of a different definition of ESG.

Similarly, the lack of a codified definition of ESG will ultimately establish a "rule-by-enforcement" environment, as RIAs and investment companies will be subject to enforcement actions as the Commission determines what constitutes ESG after the rule is in effect. Rather than create this type of adversarial "rule-by-enforcement" environment, CIRA urges the Commission to define the terms "environmental", "social", and "governance" with respect to this proposed rule. Definitions of these terms essential to the rule will enable RIAs and investment companies to meaningfully comply with the proposed rule. Absent definitions of these terms, RIAs and investment companies will be forced to speculate and guess on the Commission's intent for these terms.

III. CLEARLY ARTICULATE REVIEW STANDARDS

As noted above, the Release generally proposes new disclosure requirements for RIAs and investment companies relating to ESG practices. However, the Release does not articulate the standards of review the Commission will utilize in enforcing the rule. Establishing a clear framework of what is required under the rule and what review criteria will be utilized in enforcing the rule will better assist RIAs' and investment companies' compliance with the disclosure requirements.

Similar to the issues described above with respect to the definition of ESG, absent articulation of the review criteria, RIAs and investment companies will find themselves in a "rule-by-enforcement" environment. It is challenging for RIAs and investment companies to enhance their ESG disclosures to comply with the rule without understanding the review framework that will be utilized by the SEC in enforcing the rule. Absent clear standards of review, RIAs and investment companies will be forced to speculate and guess when creating supervision standards to meet the Commission's review expectations for disclosure requirements.

Additionally, articulated review standards would assist in ensuring consistency of approach in enforcing the rule. A review framework would ensure that the rule is applied consistently by the Commission in reviewing RIA and investment company compliance with the rule, once enforced.

IV. FORM ADV PART 2A AND THE DISCLOSURE OF SIGNIFICANT INVESTMENT STRATEGIES

The Release proposes to add sub-Item 8.D to the Form ADV Part 2A, which would require RIAs to provide a description of the ESG factor or factors it considers for each significant investment strategy or method of analysis for which the RIA considers any ESG factors. However, in proposing this addition to Form ADV Part 2A, the Commission does not take into consideration RIAs with different, complex business models.

As proposed, the additions to Form ADV Part 2A seem to assume that all RIAs utilize one investment strategy or a small number of investment strategies that are particularly focused on ESG investing. However, larger, and often more complex, RIAs typically offer a large variety of investment strategies, which may include ESG strategies. Additionally, larger RIAs often utilize many third-party money managers, each of whom perform their own analysis of ESG factors. Further, larger RIAs typically allow their IARs to create their own investment strategies, including investment strategies with a focus on ESG factors. Ultimately, large RIAs may have available hundreds, if not thousands, of ESG-related investment strategies which may be utilized by IARs with their clients. The proposed rule, in its current form, appears to be aimed at small RIAs primarily focused on ESG investing, but also encompasses large RIAs who will be unable to meaningfully comply with the rule without significant time and cost.

CIRA urges the Commission to review the scope of the Release and provide greater guidance regarding the applicability of the Release to large and/or complex RIAs. As an alternative to the Release as proposed, the Commission should consider whether large RIAs with complex business structures, as described above, are the RIAs intended to be within scope of the rule. If the SEC intends to encompass large RIAs with complex business structures, the Commission could

consider adding additional language to the rule to clarify the types of investment strategies or methods of analysis for ESG factors which RIAs must disclose in the Form ADV Part 2A. Such clarification would assist large RIA compliance with the rule while also considering the significant time and cost of otherwise complying with the proposed rule.

V. ASSESSMENT OF COSTS

As noted above, the Release, if adopted, will create significant costs for RIAs with complex business structures to comply. Large RIAs with complicated business structures would be tasked with disclosing hundreds, if not thousands, of ESG-related investment strategies that the RIA may make available through third-party money managers or investment strategies created by IARs.

In the Release, the Commission's assessment of costs for RIA compliance with the rule is general in nature and broadly notes that advantages for large RIAs may be less applicable. However, no further assessment of costs is provided.

For RIAs to meaningfully analyze the proposed regulation, a deeper analysis of the costs RIAs would incur should this regulation be adopted is needed. For example, generally larger RIAs may be able to better comply with proposed regulations due to their larger compliance programs. However, with respect to the Release, large RIAs with complex business structures would have greater difficulty in complying with the rule due to the potentially large volume of investment strategies or methods of analysis relating to ESG factors that large RIAs would be tasked with disclosing in the Form ADV Part 2A.

Additionally, due to the significant volume of investment strategies or methods of analysis that would need to be disclosed within the Form ADV Part 2A, any changes made with respect to any individual investment strategy or method of analysis would require an update to the RIA's Form ADV Part 2A. Large RIAs could be in the position of continually updating the Form ADV Part 2A throughout the year and re-providing the Form ADV Part 2A to clients. The Commission's cost analysis does not appear to consider the compliance costs associated with the greatly increased frequency of Form ADV Part 2A updating and delivery. CIRA respectfully requests the SEC perform a more detailed analysis of the costs associated with RIA compliance with the proposed rule. A detailed cost analysis would assist RIAs in understanding the proposed rule's impact to the RIA and the costs associated with maintaining compliance with the rule.

CIRA appreciates the opportunity to offer comments regarding the proposed rule to enhance disclosures by RIAs and investment companies about ESG practices. CIRA would be happy to discuss further any of the comments or recommendations outlined in this letter.

Sincerely,

/s/ Seth Miller
Seth Miller
General Counsel
Chief Risk Officer