

August 16, 2022

Submitted by email

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Enhanced Disclosures by Certain Investment Advisers and Investment Companies
about Environmental, Social, and Governance Investment Practices, Release No.
34-94985 (May 25, 2002)

File No. S7-17-22

Dear Ms. Countryman:

Thank you for the opportunity to comment on the Commission's proposal to require new disclosures from funds and advisers about their ESG strategies.

Founded in 2003, Glass Lewis is a leading independent proxy advisor. Glass Lewis serves more than 1,300 institutional investor clients — primarily public pension funds, mutual funds and other institutions that invest on behalf of individual investors and have a fiduciary duty to act, including through proxy voting, in the best interests of their beneficiaries. As a proxy advisor, Glass Lewis provides proxy research and vote management services to institutional investor clients throughout the world. While, for the most part, investor clients use Glass Lewis research to help them make proxy voting decisions, these institutions also use Glass Lewis research when engaging with companies before and after shareholder meetings. Glass Lewis engages with some 1000 companies in over 40 jurisdictions each year. Many of our clients leverage these engagement meetings, as well as Glass Lewis' related active ownership services, as part of their own stewardship programs. Further, through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis provides investor clients with the means to receive, reconcile, and vote ballots according to custom voting guidelines and record-keep, audit, report, and disclose their proxy votes.

The proposed rules seek to ensure that funds' and advisers' use of ESG factors is transparent and aligned with their stated objectives. In the release's words, the proposed rules are intended "to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry."

As a stewardship service provider to a number of funds and advisers, Glass Lewis strongly supports these goals and commends the Commission for its initiative to standardize and enhance these important disclosures. Institutional investors have increasingly integrated ESG factors into their investment processes. In particular, as the release recognizes, funds' and advisers' approach to stewardship, including their proxy voting and engagement activities, is often a critical element of how they integrate ESG. Many of our fund and adviser clients have already enhanced their disclosures and report on their proxy voting and engagement activities, as well as relevant portfolio company characteristics, under the mandates of the EU and other jurisdictions.

Glass Lewis believes the proposed rules' focus on funds' and advisers' proxy voting and engagement will further enhance the transparency of these activities and highlight the diligent and thoughtful decision-making that institutional investors are already dedicating to their governance programs. Therefore, subject to certain practical considerations explained below, we support the proposed rules.

1. ESG Strategy Overview Table

The Commission proposes to require ESG-Focused funds to disclose a new "ESG Strategy Overview" table in a specified format in the fund's prospectus. As part of this disclosure, ESG-Focused funds that check either the "Proxy voting" or "Engagement with issuers" boxes would explain "[h]ow the Fund votes proxies and/or engages with companies about [ESG] issues." The instructions to this table would specify that this disclosure should include whether the fund has specific or supplemental proxy voting policies and procedures that include one or more ESG considerations and, if so, which ESG considerations those policies and procedures address. Likewise, if an ESG-Focused fund seeks to engage with issuers on ESG matters, the fund must disclose an overview of the objectives it seeks to achieve through its engagement.

Glass Lewis supports these proposed disclosures. As noted above, many of our fund and adviser clients have incorporated ESG factors into their investment processes and, in doing so, have aligned their proxy voting and engagement activities with their overall investment objectives. The Strategy Overview Table provides a convenient, standardized format for funds and advisers to explain such strategies to their retail clients.

2. Annual Report Disclosures

The Commission also proposes that certain ESG-Focused funds disclose additional information about their proxy voting and engagement activities in their annual reports.

A. Proxy Voting

ESG-Focused funds that use proxy voting as a significant means of implementing their ESG strategy would make additional quantitative disclosures about this voting in their annual reports. Specifically, such funds would be required to disclose “the percentage of ESG voting matters during the reporting period for which the Fund voted in furtherance of the initiative.” The proposed rule further provides that a fund “may limit this disclosure to voting matters involving the ESG factors the Fund incorporates into its investment decisions.” Finally, the rule requires such funds to provide a cross-reference or link to their full voting record in Form N-PX.

We support this disclosure, in principle. Many of our clients that offer ESG-Focused funds or strategies use proxy voting as a significant means of implementing their ESG strategy and have developed tailored voting policies to align with their fund’s objective. Moreover, many of these investors already disclose how they vote on relevant ESG issues, either voluntarily or in compliance with one or more jurisdictions’ stewardship and vote reporting requirements.

We do have some practical concerns with the particular metric proposed, however. The Commission’s release asks whether there are “any complexities with calculating the aggregate percentage of fund votes in furtherance of an ESG voting matter.” More specifically, it asks –

[T]o what extent would there be ambiguity as to whether a voting matter involves the ESG factors the fund incorporates into its investment decisions? Are there cases in which it may be unclear whether or not a shareholder proposal that relates to an ESG factor a fund incorporates into its investment decisions advances the particular ESG goal? Could there be situations in which a shareholder proposal may be related to a particular ESG factor the fund incorporates into its investment decisions but the fund nonetheless votes against the proposal, for instance because it believes the proposal would not be a constructive way to address the particular ESG matter?

In our experience, there are such situations. At a basic level, there may be different views on whether a ballot item relates to a particular ESG factor. For example, some institutional investors consider shareholder proposals calling for political spending disclosure, at least at certain companies, to relate to environmental considerations, while others consider those proposals to present governance issues.

Moreover, shareholders may differ on whether a particular proposal advances a shared goal. For instance, climate-focused investors have taken different approaches to management and shareholder proposals to establish a policy of annually voting on a company’s climate disclosure or strategy, or so-called “Say on Climate.” Some shareholders believe that supporting these proposals will help ensure their investee companies adequately consider the risk to their businesses from climate change, while others oppose them because they believe they will

detract from the board’s accountability to oversee and manage that same risk.¹ In these and comparable situations, different shareholders — although both committed to an environmental or social initiative — may make reasonable, good faith determinations to support or oppose the same proposal.² Under the proposed rule, fund shareholders in these situations may each report that their votes were “in furtherance of the initiative,” compromising the comparability of the metric across funds.

To avoid this problem, we believe that any required metric should be as objective as reasonably possible. One alternative would be to build on the proposed categories and sub-categories that Form N-PX filers would select and apply to all ballot items pursuant to the Commission’s proposed changes to that form.³ ESG-Focused funds could disclose which of these categories or sub-categories correspond to the ESG factors they consider and disclose how they voted with respect to ballot items in those categories/sub-categories.⁴ For votes in a particular category or sub-category, funds could be asked to disclose what percentage of the time they voted for and against management. This alternative would avoid preparer judgment about which proposals were “in furtherance of the initiative,” thereby promoting comparability, while also simplifying the reporting process and better aligning it with Form N-PX (assuming the Commission adopts some form of categorization in Form N-PX).⁵

¹ See Courteney Keatinge, Glass Lewis Blog, “Say on Climate Votes: Glass Lewis Overview,” (April 27, 2021) (discussing the variety of these proposals and different investors’ perspectives on them), available at <https://www.glasslewis.com/say-on-climate-votes-glass-lewis-overview/>.

² Cf. U.S. Securities and Exchange Commission, Regulation of Communication among Shareholders, Release No. 34-31326 (Oct. 22, 1992) (“Of course, much commentary concerning corporate performance, management capability or directorial qualifications or the desirability of a particular initiative subject to a shareholder vote is by its nature judgmental. As to such opinions, there typically is not a ‘correct’ viewpoint.”), 57 Fed. Reg. 48,276 at 48,278 (internal quotations omitted).

³ U.S. Securities and Exchange Commission, Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Release No. 34-93169 (Sep. 29, 2021) [86 Fed. Reg. 57478 (Oct. 15, 2021)].

⁴ Framing the disclosure around such categories or sub-categories would also avoid having to use the potentially ambiguous term “ESG voting matters.” Since every ballot item at companies’ annual and special meetings relates to company governance in some way, this phrase arguably includes all proxy votes. Because limiting this disclosure to ESG factors the fund considers appears to be discretionary — the proposed rule text says that funds “*may* limit this disclosure to voting matters involving the ESG factors the Fund incorporates into its investment decisions” (emphasis added) — a fund could arguably comply with this requirement simply by reporting its overall voting percentage on all proxy voting matters, which is not what we think the Commission intended.

⁵ We and other commenters have expressed concern with the specificity and static nature of the Form N-PX proposed sub-categories. We believe that this proxy voting metric could work at the category level and funds could always supplement any required disclosure with additional, more specific metrics or qualitative disclosure. For example, a fund might want to also disclose what percentage of its votes

The Commission also seeks comment on whether a narrative discussion of the fund’s proxy voting should be required in addition to, or instead of, this quantitative disclosure. We believe it would be important for the Commission to at least allow and encourage narrative discussion of the funds’ voting in conjunction with any required quantitative disclosure. Given the number of factors that go into proxy votes, context will often be critical to understanding a shareholder’s proxy votes on a particular issue or set of issues. Narrative explanation of a quantitative metric will therefore almost always be more informative than the metric alone. As noted above, some other jurisdictions require that certain investors report in a narrative format on their proxy voting results.

B. Engagement Meetings

The SEC also proposes that ESG-Focused funds that use engagement as a significant means of implementing their ESG strategy make additional quantitative disclosure about such engagement. Specifically, such funds would be required to disclose progress on any key performance indicators for such engagement, as well as “the number or percentage of issuers with which the Fund held ESG engagement meetings and total number of ESG engagement meetings.”

For these purposes, the SEC has proposed a prescriptive and circumscribed definition of an “ESG engagement meeting.” The proposed rules define that term as “a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with the issuer regarding this goal.” The release explains that a “‘meet and greet’ between a fund’s adviser and the management of an issuer in the fossil fuel industry where the topic is mentioned, but only at a high level would be unlikely to meet the definition, even if the adviser and the issuer’s management do discuss transitioning away from fossil fuels.” On the other hand, the SEC notes that –

[I]f a fund adviser met with management of an issuer in the fossil fuel industry to urge the issuer to divest carbon intensive assets by the year 2030 due to their impact on the environment, with a list of measurable interim steps that could be made in each period and a follow-up meeting scheduled with management in six months to discuss progress toward that goal, the[n] each such meeting would be an ESG engagement meeting under the proposed definition.

We have some concerns about the exclusive use of this metric, particularly when combined with the narrow, proposed definition of an “ESG engagement meeting.” While the SEC’s goals of enhanced transparency and accountability in this context are laudable, we encourage the Commission to consider whether the proposed definition of an “ESG engagement meeting”

within a broader category (e.g., Board of directors) furthered the relevant ESG initiative or to at least provide a narrative discussion of how, in their view, their votes within a particular category furthered that initiative.

adequately reflects the range of activities shareholders and their representatives undertake to substantively and meaningfully engage with companies on relevant ESG issues.

Engagement, of course, is still an evolving practice and there is no one model for effective engagement. As the Commission's release itself recognizes, "forms of engagement other than ESG engagement meeting as we propose to define the term may be a valuable part of a fund's engagement strategy." Active owners often pursue a range of activities as part of their engagement program, from press releases to general or company-specific letters to in-person meetings.⁶ In fact, many such owners only escalate to a direct, in-person engagement meeting with the sort of timelines and measurable, interim progress required by the Commission's proposed definition if and when that is necessary to achieve their engagement objective. While the Commission notes that its proposed rules "would not preclude a fund from also discussing these other [engagement] efforts," the inclusion of the sole "ESG engagement meeting" metric may suggest to retail clients that this is the only — or at least most important — engagement activity. This could present a potentially skewed picture of the funds' overall engagement program, as well as discouraging funds from first pursuing other, potentially more efficient modes of engagement.

It is also not clear whether the proposed metric would credit the efforts of funds and advisers that work with a service provider or participate in collaborative engagements.⁷ As the UK Stewardship Code recognizes, an asset owner or managers' engagement may be "undertaken directly or by others on their behalf." In fact, that Code has a dedicated set of principles to be reported against for service providers who support asset owners and managers' stewardship responsibilities, including their engagement.⁸

⁶ See, for example, UK Stewardship Code 2020, Principle 9 ("Examples of engagement methods include but are not limited to: • meeting the chair or other board members; • holding meetings with management; • writing letters to a company to raise concerns; and • raising key issues through a company's advisers."); see also The Investor Forum, "Collective Engagement: An essential stewardship capability" (Nov. 2019) ("Investor Forum White Paper on Collective Engagement") (distinguishing 12 types of engagement, seven of which "involve some level of interaction and collaboration with other shareholders"), available at <https://www.investorforum.org.uk/wp-content/uploads/securepdfs/2019/11/The-case-for-collective-engagement-211119.pdf#page=8>.

⁷ The proposed rules state that, "If personnel of the Fund's adviser hold an ESG engagement meeting with an issuer on behalf of multiple Funds advised by the adviser, each Fund for which the meeting is within its ESG strategy may count the ESG engagement meeting." Absent clarification, this provision could be read to imply that other situations where personnel of the fund or adviser itself do not themselves directly meet with the issuer do not qualify as "ESG engagement meetings" under the proposed rule.

⁸ UK Stewardship Code 2020, Principles for Service Providers ("Activities service providers undertake to support their clients' stewardship may include, but are not limited to, engagement, voting recommendations and execution, data and research provision, advice, and provision of reporting frameworks and standards.") As noted above, Glass Lewis provides such support for some of our clients' engagement programs and, as such, reports against these UK Stewardship Code principles on an annual

Likewise, collaborative or collective engagement is a widely recognized and encouraged governance practice. Principle 5 of the UN Principles for Responsible Investment (“PRI”) encourages investors to work together with other signatories to enhance their effectiveness in implementing the Principles. As the PRI notes, “[c]ollaborative engagement, when done well, can enhance investors’ influence, build their expertise, and improve efficiency of the engagement process by sharing the workload and costs.”⁹ Using a service provider, or participating in collaborative engagements, may not only be the most efficient, but also the most effective way for many funds and advisers, particularly those that are not the very largest, to engage with their investee companies. Any mandatory engagement metric should include these sorts of engagement activities.

Thank you for your consideration of our comments.

A handwritten signature in black ink, appearing to read "Nichol Garzon". The signature is fluid and cursive, with a large initial "N" and "G".

Nichol Garzon
Chief Legal Officer, SVP Corporate Development
ngarzon@glasslewis.com

basis. See Glass Lewis, 2020 UK Stewardship Report, available at https://www.glasslewis.com/wp-content/uploads/2021/09/2020-UK-Stewardship-Report_Glass-Lewis-FINAL.pdf.

⁹ PRI, Getting Started with Collaborative Engagement (Sept. 1, 2013), available at <https://www.unpri.org/stewardship/getting-started-with-collaborative-engagement-/482.article>; see also UK Stewardship Code, Principle 10 (“Signatories, where necessary, participate in collaborative engagement to influence issuers.”); Investor Forum White Paper on Collective Engagement (“collective engagement represents the approach that is most likely to combine the critical success factors to reflect the effectiveness of both the engagement approach and of any investor group. The approach adds an extra dimension to the most impactful private engagement.”).