



INCOME RESEARCH + MANAGEMENT

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
Enhanced Disclosures by Certain Investment Advisers and Investment Companies About
Environmental, Social, and Governance Investment Practices

Dear Ms. Countryman:

Income Research & Management (“IR+M”) respectfully submits the following response to the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule, “Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices” (“Rule Proposal”). We are a privately-owned, independent, fixed income investment management firm that serves institutional and private clients. In addition, we serve as subadviser to certain registered funds. As part of our business, we consider available material environmental, social, and governance (“ESG”) data in advising certain portfolios and welcome additional guidance from the Commission clarifying ESG disclosure.

We support the Commission’s goal of providing clients and investors with enhanced disclosures to make more informed choices regarding ESG investing, however, we note that ESG products and services are but one of many investment offerings provided by an adviser and that rapidly developing ESG metrics and reporting data may not yet meet the proposed disclosure requirements. In addition, ESG cannot be defined by one or even a handful of data points and requires the ability to consider qualitative metrics and disclosures. We also recognize that ESG encompasses broad categories of activity and although we support enhanced disclosure, it would be difficult to apply a one-size-fits-all reporting format for advisers.

Below are IR+M’s selected responses to the Commission’s request for comments.

Question 135 (FR Vol. 87, No. 117, p. 36689): Instead of our proposed narrative ESG disclosures that would be similar in style of presentation to the rest of the brochure, should advisers be required to present ESG-related information in the brochure in a particular format (e.g. a table or chart)? If so, should we require a format similar to the format we are proposing for funds? Should it differ? Should advisers be required to use other formatting and design features to highlight or distinguish ESG-related disclosures from other information provided in any of these Items? For example, should we require advisers to use subheadings or another formatting features designed to identify ESG-related information? Should we consider moving

any of the proposed disclosures to a separate section of the brochure or to a new ESG appendix to the brochure and/or should we require an ESG specific brochures?

Comment to Question 135. Although we agree that certain alignment with fund disclosures is appropriate, particularly with respect to ESG terminology, we believe that advisers should have flexibility to provide ESG disclosures suitable to the adviser's business. We also believe that the enhanced ESG disclosure requirements warrant a separate brochure. An adviser's main brochure would continue to provide clients and investors with all required information including a description of any ESG products and strategies commensurate with the adviser's business in that area. A separate more detailed ESG brochure would be provided by an adviser to those clients or investors interested in ESG-specific investments and strategies, as not all clients and investors will utilize ESG specific products.

Question 139 (FR Vol. 87, No. 117, p. 36689): Similar to our proposal for funds, we are not proposing to define "ESG" or similar terms for Form ADV (the brochure and Part 1A). Instead, our proposal for Form ADV would require advisers that consider ESG factors in any significant strategy or that tailor their advisory services to the individual needs of clients based on clients' ESG preferences, to describe the factors they consider and how they implement them. Is this approach appropriate for Form ADV? Should we seek to define "ESG" or any of its subparts in Form ADV? Are the terms "E," "S," and "G," and "ESG" factors as we refer to the in Form ADV appropriate and clear?

Comment to Question 139. We agree that ESG would be difficult to define and could potentially be more confusing to clients and investors. We believe it would be sufficient for "advisers that consider ESG factors in any significant strategy or that tailor their advisory services to the individual needs of clients based on clients' ESG preferences, to describe the factors they consider and how they implement them." The Commission's proposed categories of ESG strategies (integration, focused, and impact) appear similar to the European Union's Sustainable Finance Disclosure Regulation ("SFDR") ESG classification and we welcome further alignment. Providing a non-exhaustive list of the ESG factors that advisers consider will still assist clients and investors to evaluate both the adviser and the ESG products and strategies offered.

Question 142 (FR Vol. 87, No. 117, p. 36689): Similar to our proposal for funds, should the brochure require differing levels of disclosure for integration and ESG-focused strategies? Or, as proposed, should we permit advisers to respond to the brochure disclosures as applicable to their significant strategy or strategies?

Question 143 (FR Vol. 87, No. 117, p. 36689): Should we, as proposed and similar to the proposed requirements for funds, specifically require an adviser to disclose additional information regarding impacts for any significant strategy that is an ESG impact strategy? Should we modify the application of this proposed requirement to advisers? For example, should advisers include the key performance indicators used to measure progress given that advisers do not have a disclosure that corresponds to the MDFP, where we are proposing to require specific disclosures by Impact Funds on their progress?

Comments to Questions 142 and 143. Advisers should be permitted to have the flexibility to make ESG disclosures more applicable to the adviser's significant ESG strategy, strategies, or customized strategies. Particularly at this point in time, ESG strategies can be very individualized and custom among advisers and providing a one-size fits all ESG disclosure to clients and investors may not be useful to clients and investors.

Requiring specific disclosures such as key performance indicators may not be useful to investors and clients because such disclosures could potentially mislead clients and investors and provide information that they cannot independently verify. We believe that allowing an adviser flexibility in providing appropriate disclosures regarding “impact” products or strategies will be sufficient for the client to assess an “impact” strategy being used by an adviser.

Question 145 (FR Vol. 87, No. 117, p. 36689): As proposed, should we require advisers to describe in the brochure each of their significant strategy or strategies for which they consider ESG factors, and to provide the proposed information about how they incorporate those factors? Should we additionally provide a non-exhaustive list of examples of ESG factors in Form ADV, and allow advisers to add factors as applicable? Are there any other approaches that we should take in providing guidance to advisers as to what constitutes ESG?

Question 146 (FR Vol. 87, No. 117, p. 36689): As proposed, should we require advisers to describe in Item 8 their criteria or a methodology for evaluating, selecting, or excluding investments in their significant strategy or strategies based on the consideration of ESG factors? Do commenters agree with the non-exhaustive list of criteria or methodology we included in this Item? Is it clear and appropriate?

Question 149 (FR Vol. 87, No. 117, p. 36690): Would an adviser with multiple significant strategies that each consider ESG factors differently be able to explain the proposed required information for each significant strategy? Should we require advisers to include our proposed disclosures for all strategies and methods of analysis that consider ESG factors? For instance, an adviser that tailors its advisory services based on the ESG preferences of individual clients generally would explain such tailoring in response to the current Item 4, but may not be required to describe that tailored strategy in Item 8 if the strategy is not significant. In that case, should an adviser disclose the tailored strategy in one or both Items?

Comments to Questions 145, 146 and 149. These questions focus on various detailed disclosure requirements relating to how and where an adviser would provide ESG information to clients and investors. We support the Commission’s goal of providing enhanced ESG disclosure to clients and investors, however, requiring overly detailed ESG information may result in disclosures that: 1) overemphasize ESG strategies in light of all other investment strategies provided by the adviser and may have the inadvertent consequence of providing an inaccurate picture of the size and nature of the adviser’s ESG business; 2) provide limited value to clients and investors; and 3) are difficult and costly for advisers to timely produce and accurately maintain. Allowing some flexibility in providing ESG disclosures will allow an adviser to best serve its clients and investors while still providing fulsome disclosure of the adviser’s ESG criteria and methodologies.

Question 151 (FR Vol. 87, No. 117, p. 36690): Should we additionally require all advisers that consider ESG factors as part of their significant strategies to state that the consideration of ESG factors may lead to the adviser selecting or recommending an investment that may not generate the same level of returns as investments where the adviser does not consider ESG factors? Or, should advisers be required to describe the applicable risks in their own words?

Comment to Question 151. We believe that the current regulatory disclosure framework encompasses the type of risk disclosures contemplated by this question. An adviser is already required to disclose risks applicable to investment strategies and describing risks posed by consideration of ESG factors would be no different and could be incorporated therein.

Question 174 (FR Vol. 87, No. 117, p. 36695): Should we, as proposed, use the terms ESG “integration”, ESG-“focused”, and ESG-“impact” that are the same as we proposed for the brochure and similar to the terms we proposed to define for funds? Would this approach make it easier for advisers to comply with this reporting requirement?

Comment to Question 174. We support aligning the terminology for adviser reporting with fund reporting. We believe that this will be easier and less confusing for clients and investors.

Question 175 (FR Vol. 87, No. 117, p. 36695): Should we, as proposed, require advisers that consider ESG factors for their SMA clients and private funds to indicate whether they consider E, S, or G factors, and permit them to check all that apply? Alternatively, should we require them to select an ESG factor only if the adviser’s strategy or method of analysis considers it to a material degree? If so, how should we define materiality?

Question 178 (FR Vol. 87, No. 117, p. 36695): Should we collect different amounts or types of information from advisers about their uses of ESG factors in SMA strategies and management of their reported 161 private funds depending on whether the adviser uses an integration or ESG focused approach? Or, as proposed, should we require the same amount and type of information for integration or ESG-focused approaches? If we should require different amounts of information, what should those differences be, and should we further differentiate the information we collect about ESG-impact strategies from the information we collect about ESG-focused strategies?

Comments to Question 175 and 178. We believe advisers should be required to provide disclosures for those SMA accounts and private funds where the adviser’s strategy or method of analysis considers ESG to a material degree. The definition of “materiality” should follow the definitions set forth by the Supreme Court and the attendant cases.¹

In addition, keeping these disclosures to material ESG considerations will be in line with other language in the Rule Proposal that requests information for “significant” strategies or methods of analysis. Furthermore, current disclosure requirements would appropriately necessitate additional more specific disclosure depending on adviser’s use of a focused or impact strategy.

Question 180 (FR Vol. 87, No. 117, p. 36695): As proposed, should we require all advisers to report whether the adviser follows any third-party ESG framework(s), and if so, to report the name of each framework? Are there ways to enhance the information provided? For example, should we allow advisers to report this information only if they follow such frameworks to a certain extent? If so, how should we set such threshold for reporting? Should we also require advisers report this information as it relates specifically to their SMA clients and/or reported private funds, or, as proposed, should we require advisers to provide this information as it relates to any part of their advisory business (without specifying which part)?

Comment to Question 180. Although we agree that providing the name of a third-party ESG framework if used by an adviser makes sense, we believe that in order to avoid being overly burdensome, the disclosure should be limited to the name of the third-party framework. Requiring advisers to provide enhanced disclosure regarding the extent to which the adviser uses the third-party ESG framework or where in its advisory business it uses the third-party ESG framework may not provide useful information to a client or

¹ See among others: *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 96 S. Ct. 2126, 48 L. Ed. 2d 757 (1976) and *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S. Ct. 978, 99 L. Ed. 2d 194 (1988).

investor and could potentially expose proprietary information of an adviser or a third-party provider. Moreover, requiring an adviser to update these disclosures more than annually would be complicated and onerous.

Question 183 (FR Vol. 87, No. 117, p. 36695): Would any of our proposed disclosures reveal non-public information regarding an adviser's SMA strategy and/or a private fund's trading strategies, analytical or research methodologies, trading data, and/or computer hardware or software containing intellectual property? If so, how? Would our proposed disclosures otherwise have the potential to harm clients and investors in private funds or subject them to abusive market practices? If so, should we collect this information another way, such as through Form PF for advisers to private funds? If so, what information should we collect on Form PF versus Form ADV Part 1A?

Comment to Question 183. We support enhanced disclosure to investors and clients on ESG criteria and methodologies, but we request that the Commission balance these disclosures with the needs of advisers to have the flexibility to provide clients and investors with products and services that best serve their interests. With respect to the description of criteria and methodologies, we believe that providing non-exhaustive lists in an adviser's ADV will provide the necessary information to investors and clients without exposing the intellectual property of the adviser and without unduly complicating reporting requirements.

Question 194 (FR Vol. 87, No. 117, p. 36697): Should we, as proposed, provide a one-year transition for affected advisers to come into compliance with the proposed disclosure and reporting requirements in Form ADV Parts 1 and 2? Should the period be shorter or longer? Should the transition period, as proposed be the same for ADV Parts 1 and 2?

Comment to Question 194. We believe it will be a significant challenge for advisers to meet the Rule Proposal's disclosure requirements within the proposed timeframe. Disclosures based on incomplete or inaccurate ESG metrics and information will not meet the Commission's goal of providing consistent and reliable information to clients and investors and could even create confusion and uncertainty. We support the Commission's goal of providing clients and investors with consistent and accurate ESG information, however, the information currently available may be incomplete, not comparable, and in some instances, nonexistent. Therefore, we urge the Commission to consider alternative timeframes that allow for the development of disclosure standards and establishment of appropriate ESG metrics and information.

* * *

Thank you for taking the time to consider our response to the Rule Proposal. Should you have any questions, please reach out to the undersigned at [REDACTED].

Sincerely,



Allison Walsh, CFA
Senior Vice President
Head of ESG and Corporate Sustainability