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August 16, 2022

VIA email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Subject: File No. S7-17-22

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

Re: ***SEC Notice of Proposed Rulemaking titled "Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices,"***  
***File No. S7-17-22, RIN 3235-AM96, 87 Fed. Reg. 36654 (June 17, 2022)***

Dear Secretary Countryman:

The Alternative and Direct Investment Securities Association (“ADISA”)<sup>1</sup> appreciates the opportunity to provide comments on the Securities and Exchange Commission (“SEC”) notice of proposed rulemaking titled “Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices” and published in the *Federal Register* of June 17, 2022.

ADISA agrees that investment advisors and investment companies claiming that investments consider ESG values should be prepared to articulate how Environmental, Social and/or Governance issues are used in their decision-making processes. However, the proposed rule as written is ambiguous and likely would result in confusing information that unintentionally misleads investors. ADISA recommends several changes that will strengthen the SEC’s stated objective to “create a framework for disclosures about a fund or adviser’s ESG-related strategies”<sup>2</sup> ensuring that the requested information is truly useful to investors, while not creating

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<sup>1</sup> ADISA is the nation’s largest trade association for the non-traded alternative investment space. ADISA represents over 4,000 financial industry members, reaching over 220,000 finance professionals, with sponsor members having raised in excess of \$200 billion in equity in serving more than 1 million investors.

<sup>2</sup> 87 Fed. Reg. 36656 col. 1

such a burdensome requirement that companies are discouraged from employing ESG criteria in their investment strategies.

1. ***The SEC Should Clarify Applicability of the Proposed Rule Only to Those That Consider One or More ESG Factors.***

The purpose of the proposed rule is to address what the SEC concludes is a lack of access to “consistent, comparable, and reliable information among investment products and advisers that claim to consider one or more ESG factors.”<sup>3</sup> The SEC states that the Proposed Rule is meant to “provide shareholders and clients improved information from funds and advisers **that consider one or more ESG factors** [emphasis added].”<sup>4</sup> One can reasonably conclude, therefore, that those funds and advisers that do not consider ESG factors should be exempt from the proposed rule, and the SEC should make this clear and unambiguous. We further suggest that any requirements for descriptions of ESG factors are not required if a fund or adviser affirmatively states that ESG criteria play no, or no material, role in the investment process.

2. ***The SEC Should Codify Informal Assurances in the Preamble.***

In the Preamble to the proposed rule, the SEC suggests that small investment adviser businesses may exempt themselves from the scope of the rule by making no claims about addressing ESG objectives in their work. As pointed out in other comments courts have held that a preamble lacks the full force and effect of law, and that explanatory statements should not be treated the same as a regulation.<sup>5</sup> We ask the SEC add the relevant language now in the Preamble into provisions of the binding rule to make it clear they are intended to have the full weight and effect of the regulation.

3. ***The SEC Should Define the Terms "Environmental," "Social," and "Governance."***

The SEC uses the terms "Environmental," "Social," and "Governance" throughout its Proposed Rule, but does not define these terms. “You have to define [the terms], because there is no common definition.”<sup>6</sup> While that is an arduous task, the SEC’s aforementioned stated purpose to ensure “consistent, comparable and reliable information among investment products and advisers” requires that the investment community use these terms uniformly. Failure to do so not only would undercut the very purpose of the Proposed Rule, but exacerbate a “sustainability ecosystem [already] complex, confusing, and fragmented, with no common metric or disclosure system for comparison by disparate stakeholders. As such,

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<sup>3</sup> 87 Fed. Reg. 36655, col. 2

<sup>4</sup> 87 Fed. Reg. 36655, col. 3 / 36656 col. 1

<sup>5</sup> *St. Francis Medical Center v. Azar*, 894 F. 3d 290, 297 (D.C. Cir. 2018); *AT&T Corp. v. Federal Communications Commission*, 967 F. 3d 840, 857 (D.C. Cir. 2020).

<sup>6</sup> Bloomberg, September 28, 2021, citing Hortense Bioy, global director of sustainability research at Morningstar.

company ESG disclosures are often met with skepticism as to the authenticity of the information.”<sup>7</sup>

ADISA also notes that utilizing terms that are vague potentially raises serious due process challenges to the Proposed Rule. Long-standing legal precedent requires a regulation to be sufficiently clear that an ordinary person will reasonably know and understand what is required or prohibited so as to act accordingly.

For all of these reasons we urge the SEC to define what "Environmental," "Social," and "Governance" mean in the confines of this Proposed Rule.

**4. *The SEC Should Not Require All Funds to Disclose GHG Emissions.***

- a. GHG emissions are not the sole ESG factor. While climate change is a global concern, the SEC has not made clear why an integration fund that considers ghg emissions would be required to provide increased depth of disclosure versus any other ESG factor(s) that the fund may consider. To maintain a balanced landscape for advisors and investment companies to meet investors interests in ESG investments, ghg emissions should not have unique disclosure requirements compared to other ESG factors in an integration fund. This creates a significant reporting burden on advisors and investment companies and the SEC has not made the case for why ghg is the only ESG metric required in this proposal, suggesting no clear value to investors relative to how they are making investment decisions.
- b. Emissions reporting is in its infancy, yielding inconsistent results. The current quality in reporting of ghg emissions is in early stages of development and continues to rapidly evolve; reporting specific quantitative data that potentially is only one of many considerations in a fund strategy will not yield accurate trends or meaningful investment data points until more entities have developed stronger measurement and reporting processes. This is particularly true relative to scope 3 emissions reporting which is still in its infancy of the development process.

Thank you for the opportunity to weigh in on these important issues. ADISA appreciates the work the Commission does for the investors and citizens of the United States and stands ready to assist you in any way in your consideration of this matter.

Sincerely,



Catherine Bowman  
Co-Chair  
ADISA Legislative & Regulatory Committee



John H. Grady  
Co-Chair  
ADISA Legislative & Regulatory Committee

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<sup>7</sup> The Conference Board 2022 Report ‘ESG 101 Landscape and Considerations’