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Submitted electronically through: https://www.sec.gov/rules/submitcomments.htm

Ms. Vanessa A. 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 Number S7-17-22**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposed amendments that would require registered investment advisers and investment companies to provide additional information regarding their environmental, social, and governance ("ESG") investment practices (the "Proposal" or "Proposed Rule").[2]

Fidelity agrees with the Commission that investor interest in ESG strategies has increased in recent years and is supportive of the Commission's goals of promoting consistent, comparable, and decision-useful information for investors on the ESG investment practices of funds and advisers. As an investor, Fidelity believes that ESG factors that are financially material to companies and industries can enhance investment decision-making and stewardship efforts. We also support the Commission's decision to not define "ESG" in the proposal, which allows for future innovation in this evolving space.

We are concerned, however, that a number of aspects of the Proposal would have the unintended consequence of overstating the importance of ESG to the investing process for many funds and advisers, thereby undermining the SEC's goals. Further, we are concerned that the Proposal is too prescriptive in nature and would result in extensive and technical disclosures that would be of limited use to investors. Many aspects of the Proposal represent a significant

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[1] Fidelity is one of the world's largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 40 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Management & Research Company LLC, the investment adviser to the Fidelity family of mutual funds, and certain of its investment advisory affiliates.

[2] *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. 33-11068; 34-94985; IA-6034; IC-34594, RIN 3235-AM96 (May 25, 2022) ("Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2022/33-11068.pdf.

departure from traditional approaches to investment strategy disclosures that have long served investors well.

I. EXECUTIVE SUMMARY

Fidelity's comments, detailed below, offer the following observations and recommendations:

- The Proposal divides funds that consider ESG factors into three categories: Integration, ESG-Focused, and Impact. The proposed definitions for each category are overly broad and could ensnare funds that do not belong and do not intend to be included in such category. Fund complexes may struggle with determining which category their funds fall into. This could result in ESG being overemphasized in fund disclosure documents, which may be misleading to investors and contrary to the SEC's goal to combat "greenwashing."

- The Commission should abandon the Integration Fund category in the final rule. We believe existing disclosure rules and standards adequately cover any obligation a fund would have to disclose the use of an investment strategy like ESG, if material to such fund.

- We agree that ESG-Focused Funds and Impact Funds should be subject to some level of ESG-related prospectus disclosure requirements. However, the proposed requirements do not align with the goals of a summary prospectus, are too prescriptive in nature, and inappropriately employ a "one-size-fits-all" approach, which could result in misleading disclosures.

- The Commission should revise the definition of an Impact Fund, focusing instead on a fund's stated investment objective. Additionally, any disclosure requirements related to proxy voting or engagement should only apply to Impact Funds and should be qualitative in nature.

- The Commission's proposed rule on public company greenhouse gas ("GHG") emissions disclosure (the "Public Company Proposal")[3] should be finalized and effective before the SEC considers requiring any metrics specific to funds. This would avoid the problems experienced in Europe where climate-related disclosures were imposed on issuers and funds simultaneously, creating significant confusion for investors and lack of necessary data.

- The proposed requirements for investment advisers should be updated in line with any changes made to the requirements for investment companies.

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[3] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042; 34-94478, RIN 3235-AM87 (Mar. 9, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11042.pdf.

- The Commission should extend the implementation period from one year (or, in certain cases, 18 months) to 24 months.

II. INTEGRATION FUNDS

Under the Proposal, an Integration Fund is one 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."[4] Integration Funds would be required in their summary prospectus (in response to Item 4 of Form N-1A)[5] to summarize how the fund incorporates ESG factors into its investment selection process, including the ESG factors the fund considers, with more detailed disclosure in their statutory prospectus (in response to Item 9 of Form N-1A).[6] Additionally, if an Integration Fund considers GHG emissions of its portfolio holdings as an ESG factor in its investment selection process, then the fund would be required to describe in its statutory prospectus how it considers the GHG emissions of its portfolio holdings, including the methodology the fund uses for this purpose.

We strongly urge the Commission to abandon the Integration Fund category and the related disclosure requirements in the final rule, as we believe the category is not necessary. To the extent a fund has a principal investment strategy of considering ESG factors in its investment selection process, the current disclosure rules and standards already require a fund to disclose this in either Item 4 or Item 9 disclosure, depending on the extent of its use and materiality to the overall investment strategy. The definition of Integration Fund would treat any fund that considers ESG, even for a very small portion of the portfolio, as deserving of Item 4 disclosure. We believe that a new fund category, with prescriptive "one-size-fits-all" disclosure rules, is unnecessary, unlikely to benefit shareholders and potentially misleading. Accordingly, the Commission should limit any prospectus disclosure requirements to ESG-Focused Funds and Impact Funds.

Because the definition of an Integration Fund does not include a materiality qualifier, it could result in many funds being required to overstate the importance of ESG-related investing relative to other investment strategies utilized by the fund. Integration Funds, by their definition, consider ESG factors alongside other non-ESG factors, and funds may not describe all of the factors they consider in their prospectus. However, the summary prospectus requirements (and similarly the statutory prospectus requirements) would require the fund to detail how it incorporates ESG factors into its investment selection process, including what ESG factors the

[4] Proposing Release at p. 316-317.
[5] Item 4(a) of Form N-1A currently requires a fund, based on the information given in response to Item 9(b), to "summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries."
[6] Item 9(b) of Form N-1A currently requires a fund to "[d]escribe how the Fund intends to achieve its investment objectives." A fund must "[d]escribe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest" and "[e]xplain in general terms how the Fund's adviser decides which securities to buy and sell".

fund considers. This may result in the discussion of ESG and the ESG factors being more prominent than the discussion of non-ESG factors that are also considered by the fund.

Additionally, the GHG emissions disclosure requirements would emphasize one environmental factor over all other ESG and non-ESG factors considered by the fund as part of its investment selection process; however, GHG emissions may not be the primary factor considered by the fund or may only be considered with respect to a small portion of the fund's portfolio. The Commission notes that funds may be incentivized "to overstate the extent to which portfolio company emissions play a role in the fund's strategy…."[7] However, requiring disclosure for a fund that merely considers GHG emissions among a myriad of other factors would do just that and would imply to investors that GHG emissions is more important to the fund's investment process than is actually the case.

Many firms, including Fidelity, have incorporated ESG-related information into the overall investment research process. A company's ESG profile, like other factors such as earnings per share or a company's competitive positioning, is part of the mosaic of fundamental data available for managers to consider as part of the investment process. ESG research is widely available to all managers. Some may consider ESG factors to a lesser or greater extent; some may not consider ESG at all. For funds that are not focused on ESG, it becomes another tool in the fundamental toolbox that managers can use or ignore at their discretion. As a result, it may be challenging for a firm with ESG as a centralized part of its overall investment research process to determine which funds truly are Integration Funds and which are not. Because ESG is available to every manager, and therefore theoretically available for consideration, a firm may determine that it has no choice but to categorize all of its traditional funds as Integration Funds. Not only would such an approach render the Integration Fund category meaningless, but it would also be unhelpful to investors trying to understand the actual role that ESG plays in a particular portfolio when a large swath of funds are painted with so broad a brush, making it difficult, if not impractical, for investors to distinguish among funds.

Other aspects of this Proposal, as well as the Commission's proposal pertaining to fund names ("Names Rule Proposal")[8], address the Commission's concerns on potential "greenwashing" that the Integration Fund category is attempting to alleviate. First, the definition proposed for an ESG-Focused Fund ensures that a traditional fund could not describe itself or hold itself out as considering ESG factors to a significant degree without being labeled an ESG-Focused Fund and subject to its robust disclosure requirements. Second, the Names Rule Proposal makes clear that a traditional fund (or Integration Fund) could not use a term in its name that suggests it is an ESG fund or incorporates one or more ESG factors into its investment decisions.[9] Both of those proposals do more to inform and protect shareholders from "greenwashing" than the creation of a new broad category of Integration Funds.

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[7] Proposing Release at p. 28.
[8] Investment Company Names, Release No. 33-11067; 34-94981; IC-34593, RIN 3235-AM72 (May 25, 2022) ("Names Rule Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2022/33-11067.pdf.
[9] Names Rule Proposing Release at p. 81.

If, however, the Integration Fund category is retained, then we would propose that the definition of an Integration Fund be appropriately tailored to encompass only funds that explicitly hold themselves out to the public as materially considering ESG factors in an enhanced way as part of portfolio construction. We would also suggest that any prospectus disclosure requirements be limited to Item 9 disclosure.

First, incorporating a materiality standard, as outlined in *Basic Inc. v. Levinson*[10], would ensure that the consideration of ESG factors is not overstated and misleading for shareholders, and would follow standards that apply to all other investment strategies that are disclosed to shareholders based on their importance to the overall investment process. In that way, shareholders and fund sponsors alike will have a clear understanding of which funds are Integration Funds based on a well-understood and applied standard, and funds that merely consider an E, S, and/or G factor as a small part of their investment process would not be inadvertently captured.

Second, any traditional fund that chooses to discuss the enhanced role that ESG plays in its investment process – whether in its registration statement, marketing materials, or otherwise – would be deemed an Integration Fund. To be clear, we are making a distinction between funds that use ESG as a main or significant factor in their investment process – which we agree is properly captured by the ESG-Focused Fund category – and traditional funds that consider ESG as a "plus factor" in the investment decision-making process and market the fund in this manner. Managers that incorporate ESG into the overall investment process and believe that ESG factors are part and parcel of any assessment of an investment's value are not considering ESG in any unique way that would necessitate a distinct disclosure framework – no more so than managers who consider revenue growth or use of free cash flow to determine an investment's financial value. We do not believe that shareholders would be misled by an adviser employing ESG in this manner in a fund that otherwise pursues traditional investment strategies and objectives.

Rather, the Integration Fund category would be reserved for funds that discuss the enhanced role that ESG plays in their investment process, or that describe ESG as a "plus factor" when making investment decisions. For example, a fund may disclose that ESG factors are important to buy/sell decisions for certain portions of the portfolio or for certain industries in which the fund invests; or a fund may highlight in its marketing materials or sustainability reports how particular ESG research or considerations have played into a manager's long-term view of a company or his/her decision to invest or divest. The explicit inclusion of these enhanced ESG considerations in its public disclosures would appropriately signal to investors that such a fund is an Integration Fund. While we continue to assert that an Integration Fund category is unnecessary to achieve the Commission's goals, a category that is well-defined,

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[10] 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision; and quoting TSC Industries, Inc. v. Northway, Inc., 426 U. S. 438, 449 (1977) to further explain that an omitted fact is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.").

easily understood by all market participants and allows for a fund to opt in by its public statements, is preferable to an overly broad and confusing one.

III. ESG-FOCUSED FUNDS

A. Fidelity is generally supportive of the ESG-Focused Fund category with a few changes.

Under the Proposal, an ESG Focused Fund is defined 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."[11] It would include a fund (i) whose name contains terms indicating that its investment decisions incorporate one or more ESG factors or (ii) whose advertisements or sales literature indicate that the fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments.[12] While we generally support the definition of an ESG-Focused Fund, we believe certain portions should be modified or clarified as discussed below.

1. Governance

While we support not including an overall definition of "ESG" within the rule, we urge the SEC to clarify in the final rule that consideration of "governance" as it relates to financial performance and other traditional economic standards should not cause a fund – that would not otherwise consider itself to be an ESG fund – to be labeled an ESG Focused-Fund.[13] All actively managed funds evaluate an issuer's governance practices in the ordinary course of their fundamental research process, the voting of proxies and/or in their engagements with company management. We do not believe that this evaluation of "governance" in the normal course is what investors reasonably think of in the context of ESG or is what the Commission intended to capture in the Proposed Rule. The final rule should be clear that consideration of "governance" factors in this broad sense will not cause a fund to suddenly be subject to the prescriptive disclosure requirements specific to ESG-Focused Funds.

2. Engagement

The definition of an ESG-Focused Fund, along with a number of the proposed new disclosure requirements, include references to a fund's use of ESG factors as a significant or main consideration in its engagement strategy with portfolio companies (whether by proxy voting or direct engagement).

As an adviser to more than 500 actively and passively managed funds, meeting with portfolio companies and engagement through proxy voting is core to our investment process. We believe that there is a strong correlation between sound corporate governance and enhancing shareholder value, and we put this belief into action through our consistent engagement with

[11] Proposing Release at p. 317.
[12] *Id.*
[13] Such fund also should not be categorized as an Integration Fund.

companies and, ultimately, through the exercise of voting rights. This practice extends to virtually every fund that Fidelity manages, not just ones focused on E, S and/or G factors. During 2021 Fidelity, on behalf of the funds and accounts that we manage, met with 755 portfolio companies on engagements tied to proxy votes and shareholder resolutions, participated in 5,041 shareholder meetings, reviewed 51,241 proposals and cast 38,621 ballots.

Many traditional funds would consider their proxy voting and engagement activities to be "significant," particularly as it relates to governance factors, without necessarily considering such activities to be part of an ESG-centered strategy. Including these as criteria that make a fund an ESG-Focused Fund – without clarity on what "significant or main" means – will be confusing to fund sponsors and investors, and could have unintended consequences. On the one hand, funds may feel compelled to fit into an ESG-Focused Fund category that they do not intend and in which they do not belong. This could risk overstating the ESG-related aspects of a fund's or adviser's engagement strategies, and make it difficult for investors to differentiate between funds truly focused on ESG factors and traditional funds that diligently engage with company management to seek the best investment ideas on behalf of fund shareholders. On the other hand, the uncertainty created by hazy definitions could lead funds and advisers to disengage and minimize their engagement activities, either because they believe they are not or do not wish to be classified as an ESG-Focused Fund. This would cause funds to suppress a vital part of the investment process and the exercise of fiduciary duty, to the detriment of fund shareholders and potentially all investors in public companies. Accordingly, we would therefore revise the definition of an ESG-Focused Fund to remove the reference to an engagement strategy via proxy voting or direct engagement with issuers.

If the Commission is determined to include heightened use of proxy voting or engagement as part of its proposed taxonomy, we believe that the disclosure requirements laid out in the Proposal related to engagement align more closely with the engagement strategies and actions of Impact Funds. For example, with regard to checking the boxes in the ESG Strategy Overview table regarding proxy voting or engagement with issuers, the Proposing Release notes that "a fund checking this box might pursue a strategy of purchasing securities of an issuer that is performing poorly on ESG metrics, such as a company that has historically focused on fossil fuel production that the fund believes does not have a strategy to allocate capital to other sectors of the energy market, and run a proxy campaign to elect board members who it believes would promote a shift in its capital allocation strategy."[14] However, putting forward a shareholder proposal is beyond the engagement practices of most traditional funds, including traditional ESG funds. We would therefore limit any proxy voting or engagement disclosure requirements to Impact Funds. Alternatively, if the Commission opts to retain an element of proxy voting or engagement in its definition of an ESG-Focused Fund, we would propose appropriately tailoring such disclosure requirements to ESG-Focused Funds that employ a proxy voting strategy where the fund proposes initiatives directly, funds that hold themselves out to the public as voting or engaging with companies as part of an explicit ESG-related strategy, or funds that utilize an engagement strategy beyond that typically used by the fund's adviser.

[14] Proposing Release at p. 62.

3. Screens

The Proposing Release notes that funds that apply a screen to include or exclude investments in particular industries based on ESG factors would be included in the ESG-Focused Fund category.[15] This could result in a fund that applies an ESG screen to a small portion of its portfolio being inadvertently swept into the ESG-Focused Fund category. Such overinclusion risks overstating the application or importance of ESG-related criteria and would exacerbate the Commission's concerns about potential "greenwashing" of funds. This risk is heightened in the context of "inclusionary screens," which we believe do not have an accepted definition in the industry and may not be as well understood by investors. While funds may apply "inclusionary" criteria in a number of ways as part of portfolio construction, it may not be clear as to whether or to what extent consideration of those inclusionary criteria constitute a "screen" for this purpose such that the fund should be considered an ESG-Focused Fund. To address the potential for confusion, the Commission should clarify in the final rule, with respect to an ESG screen, that only funds that apply the screen to 100% of their portfolio (excluding cash and cash equivalents) to determine whether an investment is permissible or not should be considered ESG-Focused Funds.

B. The proposed prospectus disclosure requirements for ESG-Focused Funds are inconsistent with the purpose of the summary prospectus and are too prescriptive.

1. Item 4 Disclosure

The Proposal would require that ESG-Focused Funds include a new ESG Strategy Overview table in their summary prospectus. The table would appear before other disclosure required by Item 4(a) of Form N-1A.

In the first row of the table, ESG-Focused Funds would describe the ESG factor or factors that are the focus of the Fund's strategy. They would also include a list of ESG strategies in a check the box format (tracking an index, applying an inclusionary or exclusionary screen, impact investing, proxy voting, and issuer engagement) and indicate which such strategies apply to the fund.

In the second row of the table, an ESG-Focused Fund would describe how the Fund incorporates ESG factors into its investment process for evaluating, selecting or excluding investments. An ESG-Focused Fund would also be required to include certain prescribed information related to (i) any inclusionary or exclusionary screens applied by the fund, (ii) any internal methodologies or third-party data providers used by the fund; (iii) an index tracked by the fund; or (iv) any third-party ESG frameworks followed by the fund.

In the third row of the table, an ESG-Focused Fund would describe how the fund engages or expects to engage with issuers on ESG issues (whether by voting proxies or otherwise). The fund would also state whether it has specific or supplemental policies and procedures that

[15] Proposing Release at p. 33.

include one or more ESG considerations in voting proxies and, if so, state which considerations. If the fund seeks to engage other than by proxy voting, it must provide an overview of the objectives it seeks to achieve with the engagement strategy. If an ESG-Focused Fund does not engage or expect to engage with issuers on ESG issues, then the fund must state so in this row of the table.

While we generally support including a table in the summary prospectus to allow investors to meaningfully compare ESG-Focused Funds, we believe the table should be revised to only include the first row. The summary prospectus was designed to provide investors with key information in a concise document with more detailed information provided in the statutory prospectus. The proposed requirements of the second and third rows of the table would result in extensive disclosure, particularly for funds that check multiple boxes in the table, which would contradict this purpose. We also suggest revising the narrative requirement of the first row to require a brief summary of the fund's ESG strategy. A laundry list of ESG factors, particularly for broad-based sustainable funds, would again contradict the purpose of the summary prospectus. Additionally, with the evolving nature of ESG investing, this list of factors may change over time and become outdated.

As noted above, we believe the disclosure requirements included in the Proposal related to proxy voting and engagement are closer aligned to the Impact Fund category rather than the ESG-Focused Fund category. Accordingly, we believe any such disclosure requirements, including checking of related boxes in the ESG Strategy Overview table, should be limited to Impact Funds.

Additionally, the requirement for the ESG Strategy Overview table to come at the beginning of the other disclosure required by Item 4(a) of Form N-1A may, for certain ESG-Focused Funds, overemphasize ESG over other relevant characteristics of the portfolio. For example, an Emerging Markets ESG fund may determine it is more appropriate under the existing disclosure regime to first discuss its emerging markets strategy and then detail its ESG strategy. We would suggest that the location of the table within the Item 4 disclosure be left to the discretion of the registrant.

2. Item 9 Disclosure

Under the proposed new instructions to Item 9 of Form N-1A, an ESG-Focused Fund would be required to describe how the fund incorporates ESG factors into its investment process. It would also be required to include the following, as applicable: (i) if the fund is an index fund, the index methodology for the index it tracks along with any criteria or methodologies for selecting or excluding index components that are based on ESG factors; (ii) any internal methodology used by the fund and how it incorporates ESG factors; (iii) the scoring or ratings system of any third-party data provider used by the fund or other third-party provider of ESG-related data about companies, including how the fund evaluates the data quality; (iv) the 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; (v) a description of any third-party ESG frameworks followed by the fund as part of its investment process and how the framework applies to the fund; and (vi)

regarding engagement (either by proxy voting or otherwise), a description of specific objectives of such engagement, including the fund's time horizon for progressing on the objectives and any key performance indicators that the fund uses to analyze or measure the effectiveness of the engagement.

We believe that these proposed requirements are too prescriptive in nature and would result in extensive, detailed, and overly technical disclosure. This will overwhelm investors with information that is not useful for, or relevant to, their investment decisions. Additionally, in many instances, funds would be required to include in their registration statements information about third parties' methodologies, processes, or frameworks without protection from any potential liability related to the inclusion of such information. We believe ESG-Focused Funds should instead be required to include the following items in their statutory prospectus:

1. An overview of any internal ESG-related methodology and/or third-party data used by the fund;

2. An overview of any inclusionary or exclusionary ESG screen that applies to 100% of the fund's portfolio (excluding cash and cash equivalents); and

3. The name of any index tracked by the fund and a brief description of the index as well as a reference to where additional information regarding the index can be obtained.

We believe that providing an overview of the principal ESG strategies and considerations will better promote investor understanding without overwhelming the reader. For example, we support concise disclosure that identifies the index a fund tracks and provides information on where to find additional information about the index, but we do not believe a fund should be required to disclose the index methodology, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors. A fund also should not be required to name third-party data providers or ESG frameworks followed by the fund, or disclose how it evaluates the quality of the data. While we agree that a fund should explain in general terms any internal or external ESG methodology used, a fund should not be required to disclose proprietary information about the adviser's investment process.

These proposed requirements would align with the Commission's goal of "providing investors with an interest in ESG investing with key information that is material to their investment decisions."[16] They are also more in line with the current disclosure framework of Item 9 of Form N-1A, which requires a fund to explain in general terms how the fund's adviser decides which securities to buy and sell for the fund. Additionally, as noted above and described in more detail below, we believe any disclosure requirements related to proxy voting or engagement should be limited to Impact Funds.

[16] Proposing Release at p. 9.

C. Any proxy voting and engagement requirements in the annual report should be limited to Impact Funds and should be qualitative rather than quantitative.

Under the Proposal, if an ESG-Focused Fund indicates that engagement with issuers is a significant means of implementing its ESG strategy, then the fund would be required to provide in its annual report the number or percentage of issuers with which the fund held ESG engagement meetings, along with the total number of ESG engagement meetings. The fund would also be required to discuss the fund's progress on any key performance indicators. If an ESG-Focused Fund indicates that proxy voting is a significant means of implementing its ESG strategy, then the fund would be required to disclose in its annual report the percentage of ESG voting matters for which the fund voted in furtherance of the initiative; this disclosure could be limited to matters involving ESG factors that the fund incorporates into its investment decisions.

On engagement, the disclosure requirements, as currently proposed, could unduly emphasize quantity over quality by encouraging funds to engage in more frequent meetings with issuers on ESG matters with the discussions at each meeting being less productive than if the fund were to hold longer more infrequent meetings with issuers. Additionally, with the evolving nature of the ESG landscape, funds may differ in their interpretations of what is considered ESG for purposes of the quantitative requirements. This could lead to funds disclosing engagement-related figures that are not comparable, which could mislead investors and render any such disclosures of limited utility. Given this, we would suggest replacing the proposed metrics on engagement with qualitative disclosure pursuant to which registrants can discuss key engagements and are permitted to include quantitative information if they believe the information would be helpful for investors.

With regard to the proposed quantitative disclosure requirements related to proxy voting, an adviser to a fund should not be penalized in the eyes of investors for voting against a shareholder proposal if the adviser does not consider the proposal to be in the best interests of the fund and its shareholders. It is also possible that, in certain instances, the proposed requirements could result in an adviser voting for a proposal of which it would not otherwise vote in favor. Additionally, as noted in the Proposing Release, funds are already required to report information about how they vote proxies on Form N-PX, while there is currently less disclosure on other engagements funds may have with issuers.[17] The Asset Management Advisory Committee, in their report to the SEC with recommendations for ESG, similarly noted "that the reporting of proxy voting is already well regulated…".[18] Given this, we would suggest not requiring additional disclosure related to proxy voting and instead referring investors to the fund's proxy voting record. We recommend tying this reference to the current requirements of Form N-1A Item 17(f), which permits, among other options, reference to a fund's website. Fidelity shareholders are directed to a website where they can easily access voting records by fund. This is in contrast to Form N-PX where voting records of all of the funds within a trust are included within one filing. Alternatively, similar to engagement, we would recommend that the

[17] Proposing Release at p. 16.
[18] Asset Management Advisory Committee Recommendations for ESG (July 7, 2021) at p. 9-10, *available at* https://www.sec.gov/files/spotlight/amac/recommendations-esg.pdf.

quantitative proxy voting metrics be replaced with qualitative disclosure pursuant to which registrants could discuss key proxy votes and would be permitted to include quantitative information if they believe it would be helpful to investors.

As previously noted, any required disclosure on engagement or proxy voting should be limited to Impact Funds. Additionally, we recommend that the reporting period be tied to the Form N-PX reporting period (most recent 12-month period ended June 30), which would allow investors to compare disclosures across funds.

D. Any GHG metrics requirements should be derived from the final public company GHG emissions disclosure rule, and the scope of funds subject to the requirements should be narrowed.

Under the Proposal, an ESG-Focused Fund that considers environmental factors as part of its investment strategy would be required to disclose in its annual report the carbon footprint and the weighted average carbon intensity (“WACI”) of the fund’s portfolio, unless the fund affirmatively states in the ESG Strategy Overview table that it does not consider the GHG emissions of the portfolio companies in which it invests.

The calculations for the carbon footprint and WACI would both include a portfolio company’s Scope 1 and Scope 2 emissions. The Proposal includes a hierarchy for where funds would obtain such information. A fund would first look to a portfolio company’s disclosed Scope 1 and Scope 2 emissions in a regulatory report. If a portfolio company does not file regulatory reports, or they do not contain the necessary information, the fund would use Scope 1 and Scope 2 information that is otherwise publicly provided by the portfolio company. If this is also not available, the fund would use a good faith estimate of the portfolio company’s Scope 1 and Scope 2 emissions.

A fund would also be required to disclose the Scope 3 emissions of its portfolio companies, to the extent Scope 3 emissions data is either reported by the fund’s portfolio companies or, if not reported, provided publicly by a portfolio company. Funds would not be required to estimate the Scope 3 emissions of their portfolio companies under the Proposal. Scope 3 emissions would be calculated using the carbon footprint calculation methodology.

1. Scope 1 and Scope 2

The carbon footprint and WACI calculations involve information regarding portfolio companies’ Scope 1 and Scope 2 emissions, which are in flux in light of the SEC’s Public Company Proposal. Given this, we would suggest that the Commission wait to finalize this portion of the Proposal until the Public Company Proposal has been finalized and is effective.

Additionally, the Proposing Release notes that “[d]isclosure of GHG metrics could better prevent exaggerated claims in this space by providing consistent, comparable, and reliable data that investors can use when reviewing funds that market themselves as focusing on climate

factors in their investment process."[19] However, the carbon footprint and WACI requirements would apply not only to funds that focus on climate factors but rather more broadly to any ESG-Focused Fund that considers environmental factors and does not state in its prospectus that it does not consider GHG emissions. To align more closely with the Commission's stated purpose, we believe the requirements to disclose GHG metrics should be limited to funds that primarily focus on GHG emissions in their investment process. We do not believe it is appropriate to require GHG metrics disclosure from a broad-based sustainable fund that may consider GHG emissions as part of its investment process.

Moreover, to promote reliable, comparable data across funds, we recommend limiting the definition of "portfolio company" for purposes of the carbon footprint and WACI calculations to issuers that would be required to report Scope 1 and Scope 2 emissions under the SEC's Public Company Proposal. This would align with the statement in the Proposing Release that "GHG emissions information that is filed with the Commission in a regulatory report, if available, would be the most reliable source of such information."[20] Alternatively, we suggest limiting the definition of "portfolio company" to U.S. and non-U.S. issuers who have a regulatory obligation to report Scope 1 and Scope 2 emissions. In either case, we would suggest that the carbon footprint and WACI calculations be revised to be solely based on the Scope 1 and Scope 2 emissions that are reported in the filed regulatory reports. Furthermore, as funds would rely on information provided by third parties to prepare any GHG-related metrics, we strongly urge the Commission to provide a safe harbor from liability for funds' disclosure of such metrics.

2. Scope 3

As noted in Fidelity's comment letter on the Public Company Proposal, Scope 3 GHG emissions is an evolving space where current data is speculative and, as such, the SEC should not require mandatory reporting by public companies of Scope 3 emissions at this time. [21] Fidelity similarly believes the SEC should not mandate disclosure requirements for funds related to portfolio companies' Scope 3 emissions at this time.

IV. IMPACT FUNDS

Under the Proposal, an Impact Fund is defined as "an ESG-Focused Fund that seeks to achieve a specific ESG impact or impacts." The Proposing Release notes that "[i]mpact strategies generally seek to target portfolio investments that drive specific and measurable environmental, social, or governance outcomes."[22] An Impact Fund would be required to disclose in its investment objective the ESG impact that the fund seeks to generate with its investments and would be subject to additional prospectus and annual report disclosure requirements.

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[19] Proposing Release at p. 22.
[20] Proposing Release at p. 104.
[21] Fidelity Investments comment letter at p. 2, *available at* https://www.sec.gov/comments/s7-10-22/s71022-20132177-302674.pdf.
[22] Proposing Release at p. 15.

As currently proposed, certain funds that would consider themselves to be ESG-Focused Funds may inadvertently fall into the Impact Fund category and be subject to its additional disclosure requirements. We believe the Impact Fund category should instead encompass a small group of funds, with funds deliberately choosing to be included in the category. Accordingly, we suggest revising the definition for Impact Fund to be "an ESG-Focused Fund that has an investment objective that references a measurable ESG-related impact or outcome".

V. FORM ADV

The Proposal would also amend Form ADV to require certain ESG-related disclosures by investment advisers that consider ESG factors as part of their business. As noted in the release, the proposed requirements for investment advisers have many common elements with the proposed requirements for funds.[23] We recommend that any such elements be updated to take into account our comments above on the corresponding fund-related disclosures.

Consistent with our views expressed above of the Integration Fund proposal, we believe that the concept of an ESG integration strategy should either be (i) removed from the final rule or, if retained, (ii) defined as a strategy that holds itself out to the public as materially considering ESG factors in an enhanced way as part of the investment process. We are concerned that investment advisers would be required to disclose immaterial information that would not be decision-useful or relevant to investors and may overemphasize ESG factors.

Similar to our comments above on the Commission's proposed changes to Item 9 of Form N-1A, we believe that the disclosure requirements in proposed sub-Item 8.D of Form ADV Part 2A are too prescriptive in nature and would result in extensive, detailed, and technical disclosure. Such disclosure would overwhelm investors with information that is of limited use and relevance to their investment decisions. Further, overly detailed disclosures of an investment adviser's proprietary methodology could compromise the confidentiality and competitive advantage of the adviser. Additionally, in many instances, investment advisers would be required to include in their Adviser Brochures information about third-parties' methodologies and/or frameworks without protection from any potential liability related to the inclusion of such information. We believe that the proposed sub-Item 8.D should apply only to ESG-focused and ESG impact strategies and include only the following items:

1. A summary of any internal ESG-related methodology and/or third-party data used by the strategy;

2. An overview of any inclusionary or exclusionary ESG screen that applies to 100% of the strategy's portfolio (excluding cash and cash equivalents); and

3. The name of any index tracked by the strategy and a brief description of the index as well as a reference to where additional information regarding the index can be obtained.

[23] Proposing Release at p. 127-128.

We agree that investment advisers should provide clear disclosures for their proxy voting policies in Item 17 of Form ADV Part 2A. We recommend that the final rule allow investment advisers, who rely upon a third-party proxy advisory firm's voting policy, to provide a hyperlink to, or copy of, the policy in the Adviser Brochure.

Fidelity generally supports the Commission's proposed amendment to Item 6 of the wrap fee brochure requiring advisers that consider ESG factors when selecting, reviewing, or recommending portfolio managers within the wrap fee programs they sponsor to describe the ESG factors they consider and how they consider them. However, we believe that the Proposal is overly prescriptive in creating three new disclosure requirements. We would argue that requiring wrap fee sponsors and sponsor-managers to provide a description of the ESG factors they consider and how they consider them is sufficient in providing the client and prospective client with the information needed to make an informed decision. The Commission's proposed prescriptive disclosure requirements would unnecessarily add to the complexity and length of the brochure, and be of limited use and relevance to investors.

Additionally, the Commission should exclude investment advisers who only advise registered funds from the proposed ADV requirements, and with regard to Form ADV Part 2A (brochure) narrative disclosure, for those investment advisers that advise both registered funds and non-registered funds or other accounts, the brochure should only need to describe ESG considerations that apply to those clients for which a delivery obligation arises. Registered funds would already include ESG-related disclosure in their registration statements, as appropriate, and so the Commission would gain little from the additional ADV disclosure at the investment adviser level. Furthermore, for advisers that manage only registered fund clients, Form ADV does not require delivery, and thus a brochure need not be created purely for those clients. In such cases, any narrative brochure disclosure would be unnecessary and duplicative with what is already included in the registration statements.

Lastly, to account for the evolving nature of ESG investing, an investment adviser should not be required to submit an other-than-annual amendment to reflect changes to the ESG-related ADV disclosure. Instead, an adviser should be permitted to include any updates as part of its annual updating amendment.

VI. COMPLIANCE DATES

The Proposal generally allows for a 12-month transition period from the date the final rule is effective, which would be 60 days after publication in the Federal Register, for funds to come into compliance with the requirements of the Proposal.[24] The proposed disclosures in the shareholder report and filed on Form N-CSR would be subject to an 18-month transition period from the final rule's effective date.[25]

As noted above, the SEC should wait to finalize any requirements related to GHG emissions metrics until the Public Company Proposal has been finalized and is effective. For all

[24] Proposing Release at p. 168-169.
[25] Proposing Release at p. 169.

other requirements, Fidelity recommends that the SEC extend the transition period to 24 months. This would provide funds and advisers with the necessary time to (i) review their product offerings and categorize appropriately; (ii) prepare any necessary disclosure updates; (iii) seek board approval of any prospectus disclosure changes; (iv) update fund registration statements and adviser Form ADVs; (v) review fund marketing and advertising materials to align with the new requirements; and (vi) implement any necessary system changes. It also recognizes that during the period that funds will be required to implement this final rule, they will also be charged with complying with the SEC's other recent rulemaking which will necessitate time, attention and similar resources, and include the Names Rule Proposal along with the Commission's proposed rules relating to shortening the settlement cycle, cybersecurity requirements for funds and advisers, and money market fund reform.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,

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 Birdthistle, Director, Division of Investment Management

Fidelity INVESTMENTS