August 15, 2022

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

Re: File Number S7-17-22

Dear Ms. Countryman:

The Natural Resources Defense Council (NRDC) appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rule: Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices. The information required by this rule will provide important protections to investors and we encourage the Commission to finalize these disclosures. While investment advisers and investment companies have, by and large, conformed their investments to their funds' stated objectives, investors would benefit from greater information about how environmental, social, and governance (ESG) factors are used to inform investment and voting decisions, how those factors are weighed relative to one another, and whether and how funds engage with management on ESG issues.

NRDC is a nonprofit environmental organization with more than 3 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and environment. NRDC has offices in New York City, Washington D.C., Los Angeles, San Francisco, Chicago, Montana, and Beijing. Through its finance and legal experts, NRDC advocates for financial regulation as it relates to environmental issues. Our work on financial regulation stretches back to the early 1970s, when we petitioned the Commission to require greater disclosure on environmental and social issues from public companies.[1]

[1] *See Nat. Res. Def. Council, Inc. v. Sec. & Exch. Comm'n*, 606 F.2d 1031 (D.C. Cir. 1979).

The Investment Advisers Act[2] and the Investment Company Act[3] were "the last in a series of Acts designed to eliminate certain abuses in the securities industry. . . . A fundamental purpose, common to these statutes, was to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry." *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 186 (1963). These two acts "serve similar disclosure purposes" and authorize the Commission to prescribe regulations requiring investment companies and investment advisers to release information about their investment positions.[4] These Acts "establish[] 'federal fiduciary standards' to govern the conduct of investment advisers,"[5] and created "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts.'"[6]

Under the Acts, the Commission has the authority to promulgate the proposed disclosures. Investment advisers must "make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors,"[7] and investment companies must include in periodic reports "such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors."[8] The requested disclosures are appropriate investor protections that more precisely define the ESG strategy that particular funds or advisers apply, identify the way in which those funds employ those strategies, and document their progress toward stated targets.

Recent empirical work on ESG funds suggests that those funds generally deliver on their commitments – for example, environmental funds hold portfolios

[2] 15 U.S.C. § 80b-1 *et seq.*
[3] 15 U.S.C. § 80a-1 *et seq.*
[4] James C. Spindler, *How Private Is Private Equity, and at What Cost?*, 76 U. Chi. L. Rev. 311, 322 (2009).
[5] *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979) *(quoting Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 471 n.11 (1977)).
[6] *Capital Gains*, 375 U.S. at 194 (quoting William L. Prosser, Law of Torts 534–35 (2d ed. 1955)).
[7] 15 U.S.C. § 80b-4(a).
[8] 15 U.S.C. § 80a-29(f).

with higher scores on environmental factors and are more likely to oppose company management on shareholder proposals related to the environment.[9] Greater disclosures can be useful, however, by informing investors about how companies weight the different aspects within the subset of environmental, social, and governance issues, as well as how they weight ESG against other investment factors. As ESG has become a more mainstream investment strategy, it has come to encompass a variety of approaches. Some investors apply an ESG screen, some investors consider ESG as one among many factors informing their investment decisions, and some investors try to achieve specific impacts.[10] ESG funds are increasingly less likely to rely on screening than many sustainable investors in the past, and "prefer a more structured approach that will enable them to balance their sustainability objectives against their financial priorities. As such, many seek to bring a sustainability tilt to their portfolio by strategically divesting from unsustainable companies and investing in sustainable ones."[11] In the absence of disclosure requirements from the Commission, however, investors will not have complete and comparable information about the investment approach that an investment company or investment advisor employs. Disclosure requirements that are designed to elicit greater and more trustworthy information about what strategy funds or advisers employ will enable investors to make more informed decisions.

We agree that the Commission's proposed rule properly distinguishes approaches, correctly defines "ESG integration," "ESG-focus," and "ESG impact," and sets appropriate disclosure requirements for each approach. The simple act of differentiating in this way will be useful to investors because they will be able to draw high-level distinctions between ESG integration approaches (which consider ESG factors along with other factors), ESG focused approaches (which give primacy to one or more ESG factors) and ESG impact approaches (which identify particular impacts they are trying to achieve). The Commission's disclosure requirements are appropriately tiered to these different approaches, while nevertheless seeking enough detail to inform investors about which particular ESG issues an adviser or

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[9] *See* Quinn Curtis, Jill Fisch, and Adriana Z. Robertson, *Do ESG Mutual Funds Deliver on Their Promises?*, 120 Mich. L. Rev. 393, 431, 435 (2021).
[10] *See* Daniel C. Esty & Quentin Karpilow, *Harnessing Investor Interest in Sustainability: The Next Frontier in Environmental Information Regulation*, 36 Yale J. on Reg. 625, 652 (2019).
[11] *Id.* at 652-53.

company focuses on, how they focus on them, how that focus affects their investment strategy, and how they measure their ESG progress. Given the variety of ESG issues and approaches, this is a welcome step to protect investors.

Thank you for considering our comments. Please let us know if we can be of any further assistance.

Sincerely,

Sarah Dougherty
Director, Green Finance Center

Tom Zimpleman
Senior Attorney