August 16, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, File No. S7-17-22 ("ESG Disclosure Proposal"); Investment Company Names, File No. S7-17-22 ("Fund Names Proposal")

Dear Ms. Countryman:

We are writing on behalf of the Sierra Club to express strong support for the above-referenced Security and Exchange Commission proposals aimed at strengthening protections for investors in mutual funds, Exchange-Traded Funds and similar funds ("funds"). We offer a number of suggestions for improvement of the two proposals and encourage the Commission to move expeditiously in considering these and other suggestions and issuing final rules. We also offer recommendations about the need for an additional rulemaking to address the fiduciary duty of all funds and investment advisers (together, "asset managers") to address Environmental, Social and Governance ("ESG") factors.

I. *The Demonstrated Need for These Rulemakings*

Investors are Increasingly Reliant on Asset Managers for Responsible Handling of Climate-Related Financial Risk

Climate-aware asset management is fundamental to financial stewardship, part of an asset manager's fiduciary duty toward its investor-clients.The transition toward zero-carbon, climate-resilient business models - an urgent imperative due to climate change - arguably

represents the largest global reallocation of capital in history. If an asset manager ignores or downplays this reality, it leaves its clients unwittingly exposed to assets that are likely to become stranded. The SEC recognized this fact in its recent proposal, *the Enhancement and Standardization of Climate-Related Disclosures*, in which it reviewed the extensive literature demonstrating that climate change poses a significant financial risk.

These two proposed rulemakings do not take all of the steps needed to ensure fulfillment of this fiduciary duty (see discussion of needed additional steps in section V below), but they take important steps to protect investors by requiring disclosures about their asset managers' handling of climate change in their investment and engagement approaches, as well as protecting against misleading marketing.

In today's marketplace, funds and investment advisors are not providing the reliable, consistent and comparable information that investors need. Moreover, some large asset managers are exaggerating their handling of climate-related risks and opportunities. Investors, including Sierra Club members, are harmed as a result. Like other investors, Sierra Club members with fund investments rely on asset managers' expertise on investment and engagement strategies, recognizing that a professional asset manager is often better-equipped to properly assess a company's management of complex societal shifts and economic disruptions.

In particular, investors rely heavily on asset managers' attention to transition risk, the risk that a company is failing to adequately position itself for the ongoing transition to a decarbonized economy. A key measure of asset managers' attention to transition risk is the GHG emissions profiles of the companies that it is financing. As discussed below, assessment and disclosure of financed emissions and other relevant climate data is essential for asset managers to to fulfill their fiduciary duty and to avoid making materially deceptive and misleading statements about their ESG performance.

These proposed rulemakings are coming forward at a time of growing criticism of ESG investing, with groups aligned with the fossil fuel industry arguing that it is not about protecting financial returns, but about advancing environmental or social causes. It is true that many investors believe that environmental or social conditions can be improved by investing with an eye toward ESG-related financial risks and opportunities. However, this does not take away from the fact that assessment and disclosure of climate risks and other ESG factors is key to financial stewardship and should be viewed as the fiduciary duty of every asset manager.

Large Asset Managers are Greenwashing their Actions on Climate Risk

Large asset management companies have accumulated enormous assets and shareholder voting power in recent years. At year end 2020, just four companies - Blackrock, Vanguard, Fidelity and

State Street - were managing nearly one-quarter of the $103 trillion assets under management (AUM) globally. A significant part of this growth in AUM is due to effective marketing of ESG funds. Bloomberg recently projected that ESG funds would explode from $35 trillion AUM in 2021 to $50 trillion in 2050. Much of this marketing purports to address investor concerns about climate change and sustainability. For example, Blackrock CEO Larry Fink stated in January 2020 that sustainability would be the firm's "new standard for investing" and that it would exit investments with "high sustainability-related risk" such as thermal coal.

Yet this marketing does not reflect the reality of actions taken by large asset managers on climate and sustainability. Over two years after Fink's sustainability pledge, Blackrock remains one of the world's two largest investors in coal. It remains a major investor in Adani, one of the world's largest developers of new coal and gas projects. It also has backtracked on earlier commitments to support climate-related proxy resolutions at its portfolio companies, stating that such resolutions are "too prescriptive." Similar exaggerations can be seen at other large asset management firms.

Large asset managers' continued investment in fossil fuels, and failure to make progress on climate risk through meaningful engagement with fossil fuel companies, comes at a time when leading scientific institutions have shown that continued fossil fuel expansion is incompatible with the Paris 1.5C target and leading economists have documented the asset deflation and other economic losses already underway due to climate change and that will worsen substantially if the Paris target is not achieved.

To prevent deception of investors about asset managers' commitments to reducing climate risk and other ESG-related financial risks, and to facilitate the ability of investors to compare asset managers on their approaches, the SEC must put in place a comprehensive framework for asset manager disclosure of their ESG-related investment and engagement policies and practices.

Aligning with other Standard Setters is Key to Cost-Effective Disclosure

The proposed rules are being put forward at a time of growing momentum toward standardized sustainability reporting around the world, with extensive participation of public and private standard-setters, the private sector and civil society. By aligning its rules to the greatest degree possible with widely-respected standard setters, the Commission reduces costs of reporting and increases transparency and comparability to the benefit of investors.

The Commission's fund-category approach, discussed below, has the benefit of roughly mirroring the approach taken by the EU with its Sustainable Finance Reporting Directive (SFDR), which, like the SEC's proposals, has differing disclosure requirements based on investing approach. Although SFDR's categories do not match the SEC's proposed three

categories perfectly, both regimes recognize that investors have differing informational needs depending on goals and desired approach. Similarly, both regimes call for disclosures of financed emissions.

To a significant degree the SEC's proposals also adhere to the frameworks of leading private standard setters GHG Protocol and Partnership for Carbon Accounting Financials (PCAF). The PCAF Global Carbon Accounting and Reporting Standard, launched just over two years ago by leading financial institutions, has quickly become the most widely-embraced framework for disclosure of financed emissions by banks, insurers and asset managers. Its framework for reporting of Scope 1, 2 and 3 emissions of portfolio companies has been carefully vetted by financial industry leaders and is now used by more than 250 institutions. Below we recommend that the SEC strengthen its Scope 3 emissions disclosure requirements to better align with the PCAF standard. Although we do not believe that investors should be expected to rely on PCAF (due to lack of universal adoption and enforcement), investors benefit when the Commission builds on the work of this important standard-setter.

II. Proposed ESG Disclosure Rule

A. With Clarifications, We Support the Proposed Three Fund Categories

In general, we support the definitions of the three fund categories. However, we believe a few modest adjustments to the proposed category definitions and disclosures will be needed to reduce the risk of confusion and greenwashing.

The Commission creates three categories of funds - Integration funds, Focused funds and Impact funds - to reflect key differences in the investment objectives and approaches of ESG-oriented funds. The disclosure obligations of Integration funds would be fairly minimal, whereas more detailed disclosures would be required from Focused and Impact funds. ESG-related marketing would be significantly limited for Integration funds, while Focused and Impact funds would have significant flexibility to market their ESG offerings. We believe that this is a useful way to meet the informational needs of ESG-oriented investors, which may differ depending on investing objectives.

Recommended Fund Category Amendment #1: Prohibit ESG Marketing by Integration Funds

As noted above, because consideration of ESG factors is critical to maximizing risk-adjusted returns, assessment and disclosure of such factors is core to the fiduciary duty of *every* asset manager, not only those claiming that ESG is being considered in investment and engagement. However, because the proposed ESG Disclosure Rule does not purport to address asset managers

beyond those making such ESG claims, we recommend that the Commission revisit this fiduciary duty in a future rulemaking. See section V below.

In the interim, it will be critical that the Commission ensure that Integration funds - those claiming to consider ESG factors without treating them as the main consideration when making investment and engagement - not be allowed to greenwash their status. Because mere consideration of ESG factors is fundamental to asset management, no ESG advantage should be claimed in marketing unless a fund wants to assert that one or more of these factors will be the main consideration in investing and engagement (and then support this assertion with Focused fund-level disclosures).

As we discuss in section III, we strongly support the Commission's proposal to prohibit Integration funds from using ESG terminology in fund names. This is an important step toward preventing Integration funds from exaggerating their handling of ESG factors. But, by itself, it is insufficient to prevent greenwashing. The Commission should also require forthright disclosure of the narrow approach to ESG investing in a fund's prospectus. For example, any instance in which an Integration fund includes a discussion of ESG in the prospectus, the Commission should require a caveat about how ESG is *not* a main consideration in investing and engagement and how ESG is a main consideration only in Focused and Impact funds.

Furthermore, marketing of ESG strategies and approaches by Integration funds should be prohibited entirely. If ESG factors are not a main consideration in investing and engagement, funds should not be using their marketing materials to convey the opposite impression.

Recommended Fund Category Amendment #2: Provide Clearer Distinctions Between Integration and Focused Funds

Under the Commission's proposal, Focused funds would be defined as those in which ESG factors are used as "a significant or main consideration" in investing and engagement. However, "a significant" consideration conflicts with the meaning of "main" consideration, which is a rough equivalent to "most significant."

We recommend revising the Focused fund definition to exclude funds that make ESG factors merely "a significant" consideration among potentially many significant considerations and include only those funds that make ESG "the main consideration." This would help prevent greenwashing by effectively prohibiting those funds from using the permissive marketing provisions of the Focused fund category. It also would help funds avoid confusion in their process of identifying the category that best matches their stated ESG approaches.

We recommend that the Commission pair the "main consideration" standard in its Focused fund definition with a "not the main consideration" standard in its Integration fund definition. This would capture the general idea put forward by the Commission in its "may not be determinative" language in the proposed Integration Fund definition. We recommend deleting "may not be determinative" to avoid having competing standards.

Recommended Fund Category Amendment #3: Provide Clearer Distinctions Between Focused and Impact Funds

Finally, to avoid confusion about the distinction between Focused Funds (which focus on achieving financial returns using an ESG approach) and Impact Funds (which do not necessarily focus exclusively on financial returns), we recommend that the Commission treat Impact Funds as a separate category rather than a subset of Focused Funds. This would not necessitate changing the disclosure requirements for either category.

B. *With Strengthening Amendments, We Support the Emissions Disclosure Requirements*

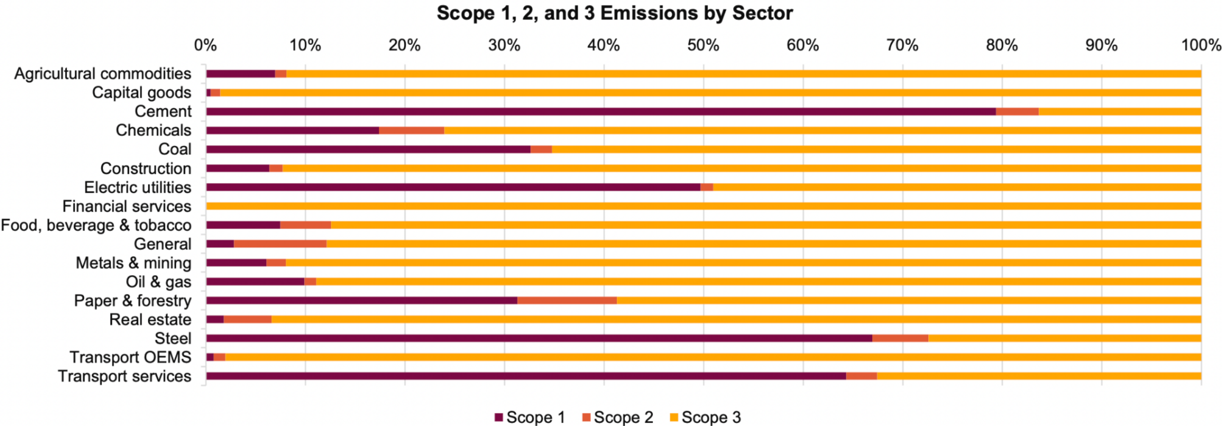
We strongly support the SEC's proposal to require a brief GHG emissions disclosure from Integration funds and detailed GHG emissions disclosures from Focused and Impact funds. (*For the remainder of this letter, we refer to Focused and Impact funds simply as Focused funds, given the SEC's proposal to treat Impact funds as a subset of Focused funds and subject them to Focused fund requirements.*) In particular, we support the Commission's approach of requiring detailed GHG disclosures whenever a Focused fund considers environmental factors and whenever it does not affirmatively state that it does not consider the GHG emissions of the portfolio companies in which it invests. We also support requiring funds to calculate their GHG emissions without giving effect to any purchased or generated carbon offsets which, due to well-documented integrity problems, are a poor metric for progress in reducing climate risk. These requirements will be critical to increasing transparency and preventing greenwashing by Focused funds.

We also appreciate the Commission's efforts to align its standards with the emissions reporting frameworks of the GHG Protocol and PCAF. As discussed below, we believe that several strengthening amendments will be needed to achieve greater alignment and ensure effective protection of investors.

Investors need GHG emissions disclosures because they are one of the most important measures of transition risk - the risk that a company is not adequately prepared for the transition to a low-carbon economy. A key theme in the investor comments on the SEC's proposed climate risk disclosure rule is that investors are greatly concerned about their exposure to undisclosed transition risks and want detailed and comprehensive emissions disclosures in SEC filings,

including disclosures of Scope 3 emissions. Similarly, a key focus of the Net Zero Asset Owners Alliance, consisting of 74 institutional investors with $10.6 trillion in assets under management (AUM), and the Net Zero Asset Managers initiative, consisting of 273 large institutions with $61 trillion AUM, is securing evidence of progress toward Paris alignment through portfolio companies' emissions disclosures.

As research by CDP and others has shown, Scope 3 emissions represent the majority of emissions in many of the sectors in which funds invest. In an April 2022 technical note, CDP measured Scope 3 emissions' percentage of overall emissions in sectors with a high impact on the energy transition and produced the following table:



This research confirms what is already well-understood by investors and other market participants: substantial transition risk resides in the value chains of key industry sectors. To understand and manage the transition risk to which they are exposed, investors need their funds to disclose their portfolios' value chain (Scope 3) emissions.

Recommended Emissions Disclosure Amendment #1: Replace the "Not Publicly Available" Exemption from Scope 3 Disclosures with Comprehensive Disclosures and Reasonable Estimates

In the SEC's proposed emissions data hierarchy, Focused funds have a much lower duty to disclose portfolio companies' Scope 3 emissions data than Scopes 1 and 2 emissions data. Whereas Focused funds would be required to provide comprehensive Scopes 1 and 2 emissions disclosures and to address data gaps by making reasonable estimates, the Commission would require Scope 3 emissions disclosures from them only to the extent that "portfolio companies … disclose their Scope 3 emissions" and these data are "publicly available."

We recommend eliminating the "not publicly available" exemption from required Scope 3 emissions disclosures and imposing the same "comprehensive disclosure with reasonable estimates" requirement on Scope 3 emissions disclosures that would be imposed on Scopes 1 and 2 emissions disclosures, which is already industry best practice. As discussed below, given the

steadily increasing availability of emissions data from which to build models, and the growing scale and sophistication of the data services industry, data gaps are not an insurmountable barrier to estimation and disclosure of Scope 3 emissions.

Comprehensive Scope 3 Disclosures with Reasonable Estimates are Needed for Comparability

Allowing funds to disclose only an arbitrarily-determined portion of portfolio companies' emissions would undercut the Commission's stated objective of creating a reliable and standardized disclosure regime. Comprehensive Scope 3 disclosures with reasonable estimates will be essential to enable investors to compare the financed emissions of Focused funds.

Comprehensive Scope 3 Disclosures with Reasonable Estimates are Needed for Transparency Around Transition Risk

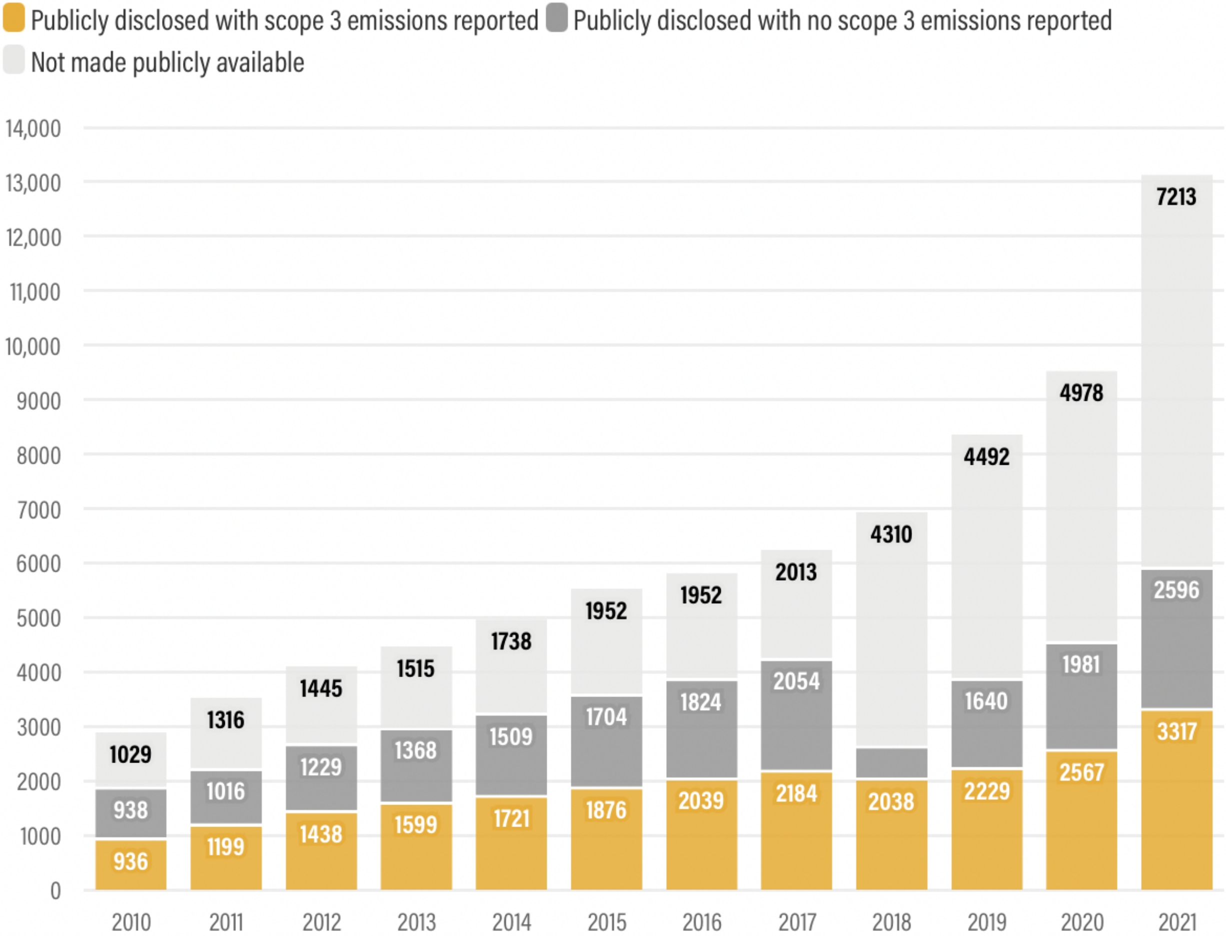
Relying solely on publicly available Scope 3 data would leave significant gaps in Focused funds' emissions disclosures. Under the Commission's proposal, funds would be allowed to transmit significant transition risk to their clients without acknowledging having done so. To ensure that funds keep investors properly informed, a comprehensive Scope 3 emissions disclosure requirement is needed.

Significant Emissions Data is Available for Use in Making Estimates and Data Availability will Continue to Increase

The Commission correctly notes that limited Scope 3 disclosures by portfolio companies complicates reporting on these emissions by the funds that invest in them. However, the gaps in Scope 3 disclosures are steadily closing. A 2021 survey by the Task Force on Climate-Related Financial Disclosures finds that 62% of climate-disclosure preparers already estimate Scope 3 emissions (54% already estimate and disclose) and 87% of preparers are already or have plans to estimate Scope 3 emissions soon.

This rapid shift toward greater disclosure of Scope 3 emissions is an unstoppable trend, driven by more than just investors concerned about climate risk. Employees, customers and policy makers are likewise increasingly seeking evidence of progress on emissions reductions. Amazon employees, for example, are regularly and publicly calling for their employer to step up progress in this area. In recognition of this growing demand for transparency around climate progress, Congress included in Section 60111 of the just-enacted Inflation Reduction Act funding for the EPA to strengthen disclosures around corporate climate action commitments, including plans to reduce greenhouse gas emissions.

The question facing the SEC is how to balance two realities: the amount of publicly-released Scope 3 data is growing rapidly, yet a significant number of companies continue to resist publicly disclosing their Scope 3 emissions. As shown by the World Resources Institute chart below, the number of companies that reported Scope 3 emissions in the public CDP dataset increased from 936 companies in 2010 to 3,317 companies in 2021, but more than half (55%) of companies did not agree to their data being publicly available in 2021.



The Commission focuses on the challenges with non-disclosure by *some companies* as its justification for its narrow Scope 3 requirement but gives insufficient attention to the growing volume of emissions data released by other companies. Given this increased volume of data from

which to build models, and the growing scale and sophistication of the data services industry, data gaps are not an insurmountable barrier to disclosure of Scope 3 emissions.

Costs of Scope 3 Estimates Will Decline as the Data Services Industry Grows

Analytics and modeling to address data weaknesses and gaps is now standard industry practice for Scopes 1, 2 and 3 reporting. In response to the growing demand for emissions disclosures from policy makers, financial institutions, corporate buyers and others, the sophistication of this modeling has rapidly increased, with machine learning and other advanced techniques now routinely offered by data services firms. The costs of these services will inevitably decline as the scale of the industry grows, new methodologies and software tools emerge and greater volumes of emissions data are gathered and disseminated.

Other Standard-Setters Expect Comprehensive Scope 3 Disclosures with Reasonable Estimates

The Joint Committee of the European Supervisory Authorities (ESA) recognized the feasibility of comprehensive Scope 3 disclosures by asset managers in February 2021 when it imposed a requirement under the SFDR that all Article 8 Funds disclose Scope 3 emissions of portfolio companies by January 2023. In its Final Report on Draft Regulatory Technical Standards, the ESA (in Article 7) explicitly acknowledged that estimates will be needed for these and other adverse impacts on sustainability factors; it called for the following disclosures about these estimates:

> "In identifying adverse impacts on sustainability factors and relevant information is not readily available, asset managers must provide "details of the best efforts used to obtain the information either directly from investee companies, or by carrying out additional research, cooperating with third party data providers or external experts or making reasonable assumptions."

Similarly, in Article 40, the ESA called for the following disclosures regarding GHG emissions and other sustainability factors:

> (a) the data sources used to attain the sustainable investment objective the financial product;
> (b) the measures taken to ensure data quality;
> (c) how data is processed; and
> (d) the proportion of data that is estimated.

PCAF, the leading private industry standard setter for disclosure of financed emissions, has taken a very similar approach. Its Global GHG Accounting and Reporting Standard states (at 15):

> "Limited data is often the main challenge in calculating financed emissions; however, data limitations should not deter financial institutions from starting their GHG accounting

> journeys. Beginning with estimated or proxy data can help identify carbon-intensive hotspots in lending and investment portfolios. The Standard provides guidance on data quality scoring per asset class, facilitating data transparency and encouraging improvements to data quality in the medium and long term. The Standard also provides recommendations and requirements for disclosures, which include a minimum disclosure threshold with flexibility to report beyond this level. Any requirements not fulfilled must be accompanied by an explanation."

Similarly, the Global Financial Alliance for Net Zero (GFANZ) and CDP both recommend use of estimations to assess Scope 3 emissions of portfolio companies, using bottom-up or regression models.

Data Quality Scores Can Be Used to Help Investors Evaluate Estimates

PCAF recognizes that even emissions data provided by the portfolio company will have weaknesses and gaps; it calls for assigning data quality scores for company-generated data based on the degree to which these gaps and weaknesses have been addressed. Data quality scores of 1 and 2 are given to disclosures that rely on company-generated data; scores of 3 through 5 are assigned to disclosures based on other data. This approach is taken for Scopes 1, 2 and 3 emissions data; no exemption from disclosure is offered if Scope 3 emissions data is not made publicly available by the portfolio company. See PCAF Standard, Table 5-3.

We recommend that the Commission follow the PCAF approach and require Scope 3 emissions disclosures for the entirety of asset managers' investments, with reasonable estimates used and methodologies and assumptions disclosed whenever data gaps emerge. We also recommend requiring funds to disclose their quantitative assessments of data quality, using a scoring system akin to that employed by PCAF.

In summary, enacting a single emissions disclosure approach that covers Scopes 1, 2 and 3 emissions disclosures would build upon the efforts of financial industry leaders to establish a respected global standard for transparency around financed emissions and transition risk.

Recommended Emissions Disclosure Amendment #2: Clarify that Publicly Available Data Includes Commercially Available Data

Regardless of whether the Commission accepts our recommendation that it abandon its "not publicly available" exemption for Scope 3 disclosures, we would strongly recommend that, at the very least, it clarify that "publicly available" includes commercially available data. This will ensure that emissions data sets behind paywalls, such as CDP's extensive database, are used for disclosures.

Recommended Emissions Disclosure Amendment #3: Require WACI Metrics for Scope 3 Disclosures by Focused Funds

We support the Commission's proposal to require use of two GHG emissions metrics in Focused fund disclosures of Scopes 1 and 2 emissions: the investment porfolio's carbon footprint and its Weighted Average Carbon Intensity (WACI). As the Commission states, "carbon footprint and WACI together would provide investors in environmentally focused funds with a comprehensive view of the GHG emissions associated with the fund's investments, both in terms of the footprint or scale of the fund's financed emissions and in terms of the portfolio's exposure to carbon-intensive companies." Moreover, as the Commission states, "the carbon footprint and WACI metrics are generally aligned with the recommendations from the TCFD and Partnership for Carbon Accounting Financials (''PCAF'') frameworks and based on emission data consistent with those defined by the GHG Protocol framework."

These two metrics are no less valuable to investors when they evaluate the Scope 3 emissions of a Focused fund's portfolio companies. We therefore recommend that the Commission follow the approach of TCFD and PCAF and revise its proposal for Scope 3 emissions disclosures to include the WACI metric as well as the carbon footprint metric.

Recommended Emissions Disclosure Amendment #4: Disclosures When Integration Funds Do Not Consider GHG Emissions

We support the Commission's requirement that Integration Funds provide a brief GHG emissions disclosure whenever they consider GHG emissions in their investment selection process, although we believe that additional language on this point is needed to prevent confusion of investors. Under the proposed rule, even though the funds by definition would not treat environmental factors as a significant or main consideration in investment decisions, they nonetheless would be allowed to discuss their handling of environmental factors in their prospectuses. To prevent greenwashing and promote transparency in connection with these discussions, it makes sense to require that the fund be required to describe how it considers the GHG emissions of its portfolio holdings, including providing a description of the methodology the Fund uses for this purpose. We recommend that the Commission take the additional step of requiring Integration Funds that do not consider GHG emissions to expressly state this in its prospectus.

C. We Support the Commission's Proposed Engagement Disclosures, with Key Strengthening Amendments

We cannot overstate the importance of the engagement disclosures that would be required by the Commission. Strong engagement disclosures, coupled with comprehensive annual emissions

disclosures, are essential for investors to evaluate whether asset managers are achieving their stated ambitions of reducing climate risk with this strategy. Engagement is regularly cited by asset managers as a key vehicle for addressing climate risk. For example, the Global Financial Alliance for Net Zero (GFANZ) argues that engagement is the primary strategy for reducing climate risk, claiming that a focus instead on divestment would deprive high-emitting companies of capital needed for transition activities. Yet investors concerned about climate risk currently have little visibility into the effectiveness of asset managers' engagement strategies.

We recommend that the Commission supplement its existing list of required disclosures to call for Focused funds to identify any targets, milestones and timelines they have adopted with respect to their engagements and any actions that they plan in the event that targets and milestones are not reached within the timelines. Also, the proposal for quantitative reporting about substantive engagement meetings should be expanded to cover any substantive communications, so that emails and other written communications are captured in addition to in-person and virtual meetings (with separate delineation of written and in-person communications).

Finally, we support the proposed proxy voting disclosures and, in addition, recommend calling for detailed disclosures of Focused funds' and Integration funds' decision making regarding use of proxy voting to advance ESG objectives. The Commission should require that Focused funds disclose their rationale for any votes they cast in opposition to shareholder resolutions seeking to advance ESG issues that are the focus of the fund; the rationale for any decisions to abstain on these resolutions likewise should be subject to disclosure. Focused funds also should be required to disclose the rationale for any decisions to lend out shares and thereby sacrifice voting power on shareholder resolutions seeking to advance ESG issues that are the focus of the fund. Finally, Integration funds should be required to state whether any proxy voting policies and procedures are utilized to advance the ESG issues under the fund's consideration and, if so, to summarize how they are utilized.

D. We support the Commission's Proposed Investment Selection Disclosures

We support the Commission's requirements for disclosures of investment selection methodologies. Because a key feature of many ESG funds' investment approaches is reliance on third parties for ratings and indexes, we recommend that the Commission require detailed disclosures of the data, methodologies and assumptions used by these service providers. Many are not regulated under current interpretations of the Advisers Act and thus do not file their own SEC disclosures. To ensure transparency about the investment section process, the Commission should require that the funds using these providers disclose key details about the approaches of the indexes and ratings used.

III. *Names Rule Proposal*

A. We Support the Proposed Prohibition on Misleading ESG Labels

We strongly support the Commission's proposal to prohibit the use of ESG-related terminology in the names of Integration funds. As discussed above, funds not assigning a central role to sustainability in their investment and engagement approaches are currently attracting assets to their funds by implying that they have a central role. It is critical that the Commission amend its Name Rule to put a halt to this and similarly misleading ESG marketing.

The key to this prohibition's success in defeating greenwashing will be how it is blended with rules governing disclosures and marketing by Integration funds. As discussed above, any fund in which ESG factors are not a main consideration should not be marketing itself as an ESG fund.

B. We Support the Proposed Use of the 80 Percent Test

Finally, we support the Commission's proposed application of its 80 percent rule to ESG funds, so that assets representing the vast majority of the fund's total holdings must be consistent with the fund's stated purpose. We also agree with the Commission's proposal to maintain the option of pursuing fraud enforcement actions against firms maintaining assets inconsistent with its stated ESG purpose, regardless of whether the assets are less than 20 percent of total holdings.

IV. Requiring Disclosures of Handling of ESG Factors and Prohibiting Misleading Fund Names is well within SEC's Authorities

By creating a standardized format for disclosure of ESG-related information, the Commission is acting squarely within its statutory mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation. The Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 supply the needed authority to prescribe the content of registration statements and periodic reports to ensure they provide investors with relevant information. The Commission also derives authority under Section 206(4) of the Investment Advisers Act, which prohibits investment advisers from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative.

With regard to the Commission's proposed update to its Names Rule, Section 35(d) of the Investment Company Act makes it unlawful for any funds to use as part of its name "any word or words that the Commission finds are materially deceptive or misleading." This section also authorizes the SEC to define such names as materially deceptive or misleading. Given the increasing number of funds using ESG-related terminology in their names, the SEC is clearly acting within its authority to define which words in fund names are misleading or deceptive.

V. The Need for an Additional Rulemaking on ESG's Applicability to all Asset Managers

As discussed above, we believe that the minimal requirements proposed by the Commission for qualifying as an Integration fund - simply to consider ESG factors - are among the core fiduciary responsibilities of asset managers and should be applied to all registered funds and advisers. Yet we assume that the Commission will not seek to elaborate on the fiduciary duties of all asset managers in its final rules given that its proposals focus solely on the problems associated with funds that claim to be addressing ESG factors. We recommend that the Commission specify the duty of all asset managers to assess ESG factors and disclose ESG strategies and approaches in a future rulemaking.

A new ESG rulemaking applicable to all asset managers is critical because ESG factors raise questions of systemic risk affecting every fund's financial performance. Graham Steele, the assistant secretary of Treasury for financial institutions, has warned of a "climate Lehman moment," calling attention to similarities between systemic risks presented by climate change and those that led to the financial crisis of 2008-09. More recently, top experts from the investment and business worlds and leading think tanks have warned of the systemic financial risks associated with the recent erosion of democracy and the rule of law.

Asset managers have enormous influence over how companies address these and other systemic risks to the savings of their investor-clients. With many trillions of dollars of assets at their collective disposal, they have broad discretion in both selecting investments and engaging with portfolio companies, including voting on shareholder resolutions. Yet, there is currently no disclosure regime to enable investors to evaluate which asset managers are responsibly confronting these risks and which are exacerbating them or sweeping them under the rug.

In making investment and engagement decisions, asset managers act as agents of the investor. A fiduciary relationship arises because the asset owner rarely possesses the information and expertise to evaluate the integrity and effectiveness of the asset managers' services in a timely way but is forced to rely heavily on them. The Commissions should address this power imbalance by moving forward with an ESG disclosure rulemaking applicable to all asset managers.

Sincerely,

Ben Cushing, Sierra Club Campaign Manager, Fossil-Free Finance

Jessye Waxman, Sierra Club Senior Campaign Representative, Fossil-Free Finance

John Kostyack, Sierra Club Consultant