

August 15, 2022

Vanessa A. Countryman
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

**Re: Investment Company Names (File No. S7-16-22);
Enhanced Disclosures by Certain Investment Advisers and Investment Companies about
Environmental, Social, and Governance Investment Practices (File No: S7-17-22)**

Dear Secretary Countryman,

The 97 undersigned organizations appreciate the opportunity to comment on the proposals of the Securities and Exchange Commission (“the Commission”) to bring much-needed standards and disclosures to the vast market of ESG-designated investment products and services. We strongly support both the Investment Company Names proposed rule (“Names Rule”) and the Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices proposed rule (“Disclosures Rule”).

Support for the Proposed Rules and Recommendations

A massive amount of capital has found its way into ESG funds, with one estimate projecting ESG assets may reach \$53 trillion by 2025, a third of global assets under management.¹ While this channeling of capital into ESG funds is indicative of investor interest in ESG investing, the thoroughly unregulated nature of ESG in investment products and services means that investors are in danger of being misled by exaggerated or unfounded ESG-related claims, often referred to as greenwashing in the climate context and ESG-washing more generally.

While some greenwashing and ESG-washing is fraudulent and actionable under current law (made clear by the enforcement actions recently taken by the Commission and other law enforcement agencies), there is a broader need—due to widely varying understandings of what ESG investing is—for investors to have information about what ESG-branded investment products and their managers do and do not do. For example, many investors may be surprised to learn that Amazon tends to be among the largest holdings in ESG funds even though it has come under fire for its harmful labor practices, high greenhouse gas emissions especially when

¹ “ESG assets may hit \$53 trillion by 2025, a third of global AUM,” Bloomberg Intelligence (Feb. 23, 2021), available at <https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>.

suppliers and sellers are taken into account, predatory pricing, and other issues.² Similarly, many investors may be surprised to learn that a private prison company facing a lawsuit alleging forced labor is considered by some important players in the ESG investment industry as a socially responsible investment.³

Greenwashing is a persistent problem. Recent reports show that the twenty largest ESG funds hold investments in seventeen fossil fuel producers on average.⁴ More than 70 percent of general ESG funds and over 50 percent of climate-themed funds are misaligned with global climate emissions targets as laid out by the Paris Agreement.⁵ BlackRock famously renamed an ESG fund twice in two years—from “Impact US Equity” to “Advantage ESG US Equity” to “Sustainable Advantage Large Cap Core”⁶—even though the fund currently invests in twenty three fossil fuel companies comprising 6.8% of assets and holds a D rating on fossil fuel exposure from Fossil Free Funds.⁷ In order for investors to be able to make investment decisions that they understand and meet their needs, they must be protected from deceptive and misleading fund names and given robust disclosures of fund strategies, goals, and progress.

Additionally, beyond ESG-branded funds’ underlying investments, investors may be surprised to learn that large asset managers with substantial assets under management in ESG-branded funds often vote against—or abstain from voting on—shareholder proposals and

² See Khalil Abdullah, “OPINION: Why ESG investors need to think twice about Amazon,” Thomas Reuters Foundation News, Jan. 18, 2022, available at <https://news.trust.org/item/20220118165222-odl0n/>; Tinglong Dai & Christopher S. Tang, “Opinion: Amazon is proof of a major weakness in ESG ratings,” MarketWatch, Nov. 10, 2021, available at <https://www.marketwatch.com/story/amazon-is-proof-of-a-major-weakness-in-esg-ratings-11636553274>; Brittany Alston & Cecilia Behgam, “Vanguard’s Empty Promises: How Vanguard Funds Harm and Fuels Extractive Industry,” 27, Action Center on Race & the Economy (ACRE) & Public Accountability Initiative (PAI), Mar. 2022, available at https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf.

³ See Lee Fang, “Green-Colored Glasses: Private Prisons Are a Socially Responsible Investment, According to Bizarre Wall Street Measures,” The Intercept, Jun. 27, 2022, available at <https://theintercept.com/2022/06/27/esg-funds-corporate-responsibility-dei/>; Brittany Alston & Cecilia Behgam, “Vanguard’s Empty Promises: How Vanguard Funds Harm and Fuels Extractive Industry,” 26, Action Center on Race & the Economy (ACRE) & Public Accountability Initiative (PAI), Mar. 2022, available at https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf.

⁴ “Sustainable finance is rife with greenwash. Time for more disclosure,” The Economist, May 22, 2021, available at <https://www.economist.com/leaders/2021/05/22/sustainable-finance-is-rife-with-greenwash-time-for-more-disclosure>.

⁵ Amy Gunia, “Thinking of Investing in a Green Fund? Many Don’t Live Up to Their Promises, A New Report Claims,” Time Magazine, Sept. 20, 2021, available at <https://time.com/6095472/green-esg-investment-funds-greenwashing/>.

⁶ Silla Brush, “One Fund, Three Names and Lots of Questions for ‘ESG’,” Yahoo!, Jul. 25, 2022, available at <https://www.yahoo.com/now/one-fund-three-names-lots-090019017.html>.

⁷ “BlackRock Sustainable Advantage Large Cap Core Fund,” Fossil Free Funds, Mar. 30, 2022, available at <https://fossilfreefunds.org/fund/blackrock-sustainable-advantage-large-cap-core-fund/BIRIX/fossil-fuel-investments/FS0000C0EV/F00000W3UB>.

other important issues.⁸ Because voting proxies in their clients' best interest is a key component of the fiduciary duty advisers owe their clients, the Commission should require all funds with voting securities to disclose information about their proxy voting, rather than only funds that check proxy voting as an ESG strategy. That way, would-be investors can know whether their proxies would be voted in their best interest as they make investment decisions, and current investors can determine whether their proxies are being voted in their best interests.

Lastly, greenhouse gas (GHG) emissions are of great importance to investors.⁹ Therefore, the Commission should: 1) require all ESG funds that do not have a policy or strategy regarding issuers' GHG emissions to affirmatively state so in their prospectus; 2) make Scope 3 GHG emissions disclosure more reliable by requiring the use of commercially-available data when publicly-reported data is missing or incomplete; 3) not allow funds to take carbon offsets or carbon credits into account in their GHG calculations; and 4) require environmentally-focused funds that invest in portfolio companies with significant usage of carbon credits to describe material regulatory, legal, and reputational risks this presents to investors stemming from failure to deliver purported climate benefits, misleading investors and the public, and environmental justice and community-level impacts of projects.

Looking Ahead

The Commission has been engaged in critical regulatory activity going to the heart of its mission. These two rules about ESG investing and advisory services complement the climate disclosure rule and the anticipated human capital management disclosures rule for issuers, providing guidance for advisers and fund managers on how to describe their strategies within a more meaningful data environment. The issuer rules will make crucial information that is often both material for financial performance and important to investors newly available to investors and fiduciaries alike, and the Commission should consider engaging in further regulatory action to clarify how this soon-to-be newly available information should inform how advisers fulfill their fiduciary duty to their clients—inside and outside the context of ESG-branded investing and advisory services.

Additionally, we note that GHG emissions—while critical to maintain and strengthen in this rulemaking—are not the only quantitative ESG metrics needed by investors to evaluate

⁸ Lucian Bebchuk & Scott Hurst, "The Power of the Big Three, And Why It Matters," 24, Feb. 21, 2021, *available at* http://www.law.harvard.edu/faculty/bebchuk/The_Power_of_the_Big_Three_and_Why_It_Matters.pdf.

⁹ Of retail investors that "prefer to invest in companies that disclose ESG criteria and practices," 63% would factor in GHG emissions produced by a corporation's products and supply chain, 60% would factor in GHG emissions produced by a corporation's day-to-day operations, and 55% would factor in GHG emissions produced by activities funded by banks' and financial institutions' investments and loans. *Source:* AFREF and Public Citizen. "Results of a Nationwide Survey: Retail Investors' Support for the SEC Mandating Climate-Related Financial Disclosures from Public Companies." April 28, 2022, updated August 15, 2022, *available at* https://ourfinancialsecurity.org/wp-content/uploads/2022/08/Updated-Report_Climate-Disclosure-Survey-Results_AFR-PC-2.pdf.

funds and protect them from misrepresentations and exaggerated ESG claims. In future rulemaking, the Commission should incorporate other aspects of the climate disclosure rule, the upcoming human capital management rule, and other future issuer disclosure rules into the Disclosures Rule as needed to protect investors. We strongly support rulemaking on issuer disclosures of labor issues, human rights, political contributions and lobbying, tax transparency, environmental, racial, and economic justice, and other community impacts to better protect investors from ESG risks. These issuer disclosures could then be used as a basis for further fund disclosures, including quantitative metrics, as needed.

We appreciate the Commission's consideration of our recommendations to make the rule as effective as possible. For further discussion, please contact Natalia Renta at natalia@ourfinancialsecurity.org and Alex Martin at alex@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund
Accelerate Neighborhood Climate Action
Action Center on Race & the Economy
AFGE Local 704
American Federation of Teachers
Animals Are Sentient Beings Inc
Association of Young Americans
Ban SUP (Single Use Plastic)
Businesses for a Livable Climate
Call to Action Colorado
CatholicNetwork US
Center for International Environmental Law
Change Finance
Citizen's Alliance for a Sustainable Englewood
Climate Finance Action
Climate Hawks Vote
CO Businesses for a Livable Climate
ColorBrightonGreen.org
Communications Workers of America
Community for Sustainable Energy
Consumer Action
Divest Oregon: Reinvest in a Fossil Free Future
Earth Ethics, Inc.
Elders Climate Action
Environmental Justice Team, Cedar Lane UU Church

Evergreen Action
Extinction Rebellion Phoenix
FracTracker Alliance
Friends of the Earth US
Good Neighbor Steering Committee of Benicia
Greater New Orleans Housing Alliance
Honor the Earth
I-70 Citizens Advisory Group
Inclusive Development International
Indivisible Ambassadors
Institute for Agriculture and Trade Policy
Larimer Alliance for Health, Safety and Environment
LittleSis / Public Accountability Initiative
Majority Action
Mayfair Park Neighborhood Association Board
Mental Health & Inclusion Ministries
Mighty Earth
Montbello Neighborhood Improvement Association
MoveOn.org Hoboken - HobokenRESIST
Natural Capitalism Solutions
New Mexico Climate Justice
Nicaragua Center for Community Action
North American Climate, Conservation and Environment
North Range Concerned Citizens
Positive Money US
Private Equity Stakeholder Project
Public Citizen
Rainforest Action Network
RapidShift Network
Resist the Pipeline
Resource Renewal Institute
Revolving Door Project
River Valley Organizing
Saphron Initiative
Save EPA (former employees)
Seeding Sovereignty
Seventh Generation
Sierra Club
Sisters of St. Dominic of Blauvelt, New York
Small Business Alliance

SoCal 350 Climate Action
Solar Wind Works
South Asian Fund For Education Scholarship and Training Inc.
Southwest Organization for Sustainability
Spirit of the Sun, Inc.
Stand.earth
System Change Not Climate Change
Take on Wall Street
Terra Advocati
Texas Campaign for the Environment
The Consortia
The Green House Connection Center
The Greenlining Institute
The People's Justice Council
The Quantum Institute
Third Act Virginia
TIAA-DIVEST!
Turtle Island Restoration Network
Unite North Metro Denver
United for Respect
Volusia Climate Action
Vote Climate
Wall of Women
Waterway Advocates
Western Slope Businesses for a Livable Climate
Wilwerding Consulting
Womxn from the Mountain
Working for Racial Equity
198 methods
350 Conejo / San Fernando Valley
350 Seattle
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350Kishwaukee
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