November 30, 2023

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

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

Dear Ms. Countryman:

The Investment Company Institute and ICI Southwest are writing to express our shared views on the Securities and Exchange Commission's proposal to require registered investment advisers, registered investment companies, and business development companies to provide additional disclosure regarding their environmental, social, and governance ("ESG") investment practices.[1] In so doing, we express support for the SEC's customary consideration of comments received after the close of formal comment periods.[2] Given the SEC's volume and pace of rulemaking, it is particularly important for the public to have the ongoing opportunity to comment on proposed rulemakings.[3]

We support the Commission's goal of promoting investor understanding of ESG funds and mitigating the risk of greenwashing. These results can be best achieved if the Commission adopts

[1] *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (May 25, 2022) ("Fund ESG Proposal") *available at* Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (sec.gov). For simplicity, we refer to registered investment companies and business development companies as funds throughout this letter.

[2] *See* Testimony of Chair Gary Gensler Before the United States House of Representatives Committee on Financial Services, (April 18, 2023), *available at* https://www.sec.gov/news/testimony/gensler-testimony-house-financial-services-041823 ("With the closing of a formal comment period, staff begins its work to account for this important public input but continues to receive additional comments, which the Commission may consider. Oversight of the Securities and Exchange Commission, Hearing of the House Financial Services Committee (April 18, 2023) *available at* https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408690 ("We also often consider comments well beyond that [formal comment] period of time and continue to receive comments."). Market Data Infrastructure, SEC Release No. 34-90610, 86 Fed. Reg. 18596 at 18601 (April 9, 2021) *available at* 2020-28370.pdf (govinfo.gov) ("The Commission has considered all comment letters received to date, including comments that were submitted after the comment deadline had passed.").

[3] ICI, along with 24 other trade organizations, previously expressed concerns about "[e]xceedingly short comment periods associated with numerous concurrent potentially interconnected rule proposals that touch on significant changes to the operational and regulatory regime applicable to financial firms." *See* Joint Trade Associations' Letter to SEC Chair Gensler (Apr. 5, 2022) *available at* 22-ici-letter-to-sec-chair-gensler.pdf.

the Public Company Climate Proposal[4] *before* the Fund ESG Proposal and better calibrates disclosure requirements for Integration Funds and ESG-Focused Funds. We provide the Commission with several recommendations to better achieve these goals. These recommendations are provided in summary fashion here with more detailed information provided in the letters previously filed with the Commission.[5]

Section 1: Recommendations

- Require US public companies to report their GHG emissions data in regulatory filings before requiring funds to report aggregated GHG emissions data in their regulatory filings that is dependent on the US public companies' data.
- Better calibrate which funds are required to report aggregated GHG emissions.
- Do not require Integration Funds to provide enhanced disclosure.
- Require less-prescriptive prospectus disclosure for ESG-Focused Funds.
- Revise Impact Fund disclosure requirements to better reflect impact-related investing practices.
- Eliminate annual shareholder report disclosures regarding proxy voting and engagement.
- Provide funds with sufficient time to implement any new disclosure requirements.

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[4] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042 (March 21, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11042.pdf ("Public Company Climate Proposal").

[5] ICI provided initial comments on several aspects of the Fund ESG Proposal in a letter submitted on August 16, 2022. *See* Letter from Eric J. Pan, President & CEO, ICI, and Annette M. Capretta, Associate General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC, dated August 16, 2022, *available at* https://www.sec.gov/comments/s7-17-22/s71722-20136279-307345.pdf. We provided supplemental comments reiterating our concern with the prospect of requiring certain investment companies to disclose their carbon footprint and weighted average carbon intensity *before* public companies must disclose their greenhouse gas emissions (GHG) in a letter submitted on May 16, 2023. *See* Letter from Eric J. Pan, President & CEO, ICI, and Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, ICI, to Vanessa A. Countryman, Secretary, SEC, dated May 16, 2023, *available at* https://www.sec.gov/comments/s7-17-22/s71722-190239-374582.pdf. We urged the Commission to calibrate any new requirements taking into account the protections provided by FINRA review of fund public communications. Letter from Eric J. Pan, President & CEO, ICI, and Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, ICI, to Vanessa A. Countryman, Secretary, SEC, dated July 26, 2023 (July Letter), *available at* https://www.sec.gov/comments/s7-17-22/s71722-235999-492462.pdf.

Section 2: Principles Underlying the Recommendations

Our recommendations are based on several principles intended to achieve effective fund disclosure for the benefit of investors.

1. *Disclosure obligations imposed on funds should follow appropriate regulatory sequencing.* Requiring US public companies to provide GHG emissions data is a necessary precedent to imposing a reporting obligation on funds. Funds estimating GHG emissions will worsen the problem to be resolved by introducing more inconsistent, incomparable and potentially inaccurate data into the marketplace. Funds should not have liability for required information that is derived from (or dependent on) information reported by a portfolio company that is greater than the portfolio company's liability for providing that information in the first instance.
2. *The current disclosure framework supports effective disclosure.* The current disclosure framework, which requires funds to disclose their investment objectives, principal investment strategies, and principal investment risks, is the product of years of thoughtful work, including periodic reexamination, by the Commission, sometimes based on investor focus groups, that provides useful information to investors in a layered format.[6] The disclosure framework is supported by the antifraud provisions of the federal securities laws, which provide the Commission with an enforcement tool to address material misrepresentations, including in connection with ESG investing practices.[7] Funds rely on this well-established framework to describe to investors their ESG-related objectives and strategies. Any new disclosure requirements should be consistent with, and built upon, this long-standing framework.
3. *Any prescribed disclosures for particular investment strategies should be modest and narrowly tailored.* The Commission has not generally prescribed specific disclosures for particular investment strategies. The complexity of the proposal illustrates the challenges with prescribing specific disclosures for particular investment strategies. For example, some of the proposed disclosure requirements could give the incorrect and potentially misleading impression to investors that ESG factors are more important than other factors that are integrated into a fund's investment process. As a result, the Commission's disclosure requirements have the potential to exacerbate greenwashing in contravention of the

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[6] *See*, e.g., *Registration Form Used by Open-End Management Investment Companies*, Investment Company Act Release No. 23064 (Mar. 13, 1998), *available at* https://www.sec.gov/rules/final/33-7512r.htm ("Through focus groups and written comments on the initiatives, investors have confirmed that they concur strongly with the Commission's view that fund disclosure documents will be useful only if they communicate information effectively.") and *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Investment Company Act Release No. 28584 (Jan. 13, 2009), *available at* https://www.sec.gov/rules/final/2009/33-8998fr.pdf (which took into account investors' preferences as reflected in focus group interviews and a telephone survey);. Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements (October 26, 2022), *available at* https://www.sec.gov/files/rules/final/2022/33-11125.pdf

[7] *See* Section 206(4) of the Investment Advisers Act of 1940 and Rule 10b-5 under the Securities Exchange Act of 1934; see also FINRA Rule 2210(d) and MSRB Rule G-40.

Commission's stated goal for imposing the requirements. Moreover, compelling funds to engage in misleading speech raises serious First Amendment concerns.[8]

4. *Narrative discussion, rather than granular, quantitative data, can in many cases be more informative for investors.* Requiring funds to disclose specific quantitative metrics that are not pertinent to a fund's investment objectives and principal investment strategies could lead to investor confusion and the dangerous illusion of certainty; whereas a narrative discussion can provide context and explanation that would promote investor understanding.

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We appreciate the SEC's consideration of these comments.

Sincerely,

Investment Company Institute ICI Southwest

[8] July 2023 Comment Letter at 3-6.