Ceres
Sustainability is the bottom line.

May 5, 2020

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

Re: File No. S7-04-20, SEC Request for Comments on Fund Names

Dear Secretary Countryman,

I write on behalf of Ceres in response to the Request for Comments on Fund Names, File No. S7-04-20 ("Request"). Instead of focusing on whether ESG funds are named appropriately, we believe the Securities and Exchange Commission ("SEC") should instead focus on the highest priority needs of both retail and institutional investors with respect to sustainability matters, such as mandatory environmental, social, and governance ("ESG") disclosures. If the SEC improves disclosure through rulemaking, it will facilitate investors' access to information that is material to understanding and comparing companies' sustainability efforts. Such rulemaking will also allow shareholders to make their own judgments about the degree to which funds accurately represent their sustainability efforts, rather than having the SEC regulate the naming of ESG funds.

Incorporation of Sustainability and Similar Terms in Fund Names is Positive

The Request poses questions regarding how ESG is defined for the purposes of naming funds and the consistency of the use of this term across funds. It also asks whether the SEC should impose specific requirements for when a particular investment may be characterized as ESG or sustainable, and whether there should be other limits on a fund's ability to characterize its investments as ESG or sustainable.

However, the Request does not provide evidence indicating that retail or institutional investors consider the definitions of ESG or sustainability, or their use in fund names, to be a problem sufficiently warranting the SEC's attention. The Request mentions the increase in the number of funds with names referencing "ESG," "Clean," "Environmental," "Impact," "Responsible," "Social," or "Sustainable", from approximately 65 in 2007 to 291 in 2019. We view this trend as reflecting the evolving understanding of investors that ESG issues affect corporate financial performance, and the demand that they are seeing for ESG fund products..

While Ceres shares the SEC's goal to prevent the use of deceptive characterizations in fund names, we caution the SEC to refrain from defining or limiting the parameters enabling a particular investment to be characterized as ESG or sustainable. Doing so would be challenging in this fast and ever-evolving field. The SEC should instead ensure, on a case-by-case basis, that any funds' detailed descriptions of how they choose issuers for investment include clear definitions of investment criteria and are transparent.

In addition, systematized ESG disclosures in financial filings will help shareholders judge the accuracy of fund names and component selection referencing ESG. Currently, selective ESG disclosure in voluntary reports often does not provide a clear picture to investors about the extent to which ESG risks and opportunities are material to issuers. By contrast, comparable, consistent, and mandatory ESG disclosure in SEC filings would lead to a greater understanding of corporate sustainability efforts.

Mandatory Disclosure of Climate Change-related Risks is Critical

Mandatory disclosure of material risks, particularly climate change-related risks, is a pressing concern of U.S. and foreign investors and corporations that the SEC has not adequately addressed in recent years. Investors and corporations have, in large numbers, publicly declared their support for improving climate-related and ESG disclosures, including requests to governments worldwide for mandatory climate risk disclosure and support for the Financial Stability Board's Task Force on Climate-related Financial Disclosures. In December 2019, 631 investors, managing over U.S. $37 trillion, signed the Global Investor Statement to Governments on Climate Change ("Statement"),[1] which called on governments worldwide to improve climate risk disclosure. Specifically, the Statement included the following request:

- **Commit to improve climate-related financial reporting**
    - Publicly support the Financial Stability Board's Task Force on Climate-related Financial Disclosures ("TCFD");
    - Commit to implement the TCFD recommendations in their jurisdictions, no later than 2020;
    - Request the FSB incorporate the TCFD recommendations into its guidelines; and
    - Request international standard-setting bodies incorporate the TCFD recommendations into their standards.

As of February 2020, support for the TCFD has grown to over 1,027 organizations, many of them publicly traded corporations, representing a market capitalization of over $12 trillion.[2]

Improved Disclosures in Financial Filings Is Needed

Investors' work to reduce the carbon intensity of their investments also requires improved disclosure in financial filings. The Climate Action 100+ initiative is a group of 450 investors with over $40 trillion in assets, who have been working to influence 100 "systemically important

[1] https://theinvestoragenda.org/focus-areas/policy-advocacy/; https://theinvestoragenda.org/wp-content/uploads/2019/12/191201-GISGCC-FINAL-for-COP25.pdf
[2] https://www.fsb-tcfd.org/tcfd-supporters/

emitters," accounting for two-thirds of annual global industrial emissions, plus 60 relevant companies, since 2017.[3] Investors participating in this initiative ask these companies to provide enhanced corporate disclosure in line with the TCFD recommendations, as well as sector-specific disclosures from the Global Investor Coalition on Climate Change Investor Expectations on Climate Change.[4] As of 2020, the U.N. Principles for Responsible Investment initiative is requiring mandatory strategy and governance-focused climate risk reporting for its 2,085 investor and asset manager signatories.[5]

We appreciate Chairman Jay Clayton's detailed statement, on January 30, 2020, regarding the Commission's work on climate risk disclosure, including participation in international initiatives.[6] To that end, we would like to see more data to support Chairman Clayton's statement that since the SEC's issuance of interpretive guidance on climate risk disclosure ("Guidance") in 2010:

> SEC staff has continued to consider these matters, including, as part of regular reviews of annual and periodic reports and other company filings by the Division of Corporation Finance. The staff has generally found robust efforts to comply with the disclosure requirements but also has issued comments questioning the sufficiency and consistency of the disclosures in certain instances.

In our search on the SEC's EDGAR database, we found only three comment letters from the SEC staff mentioning climate change during Chairman Clayton's tenure at the SEC. In the last four years, a total of only six SEC comment letters mentioned climate change.[7]

---

[3] https://climateaction100.wordpress.com/faq/; see also Climate Action 100+ 2019 Progress Report, available at https://climateaction100.wordpress.com/progress-report/.

[4] https://climateaction100.wordpress.com/faq/

[5] https://www.unpri.org/news-and-press/tcfd-based-reporting-to-become-mandatory-for-pri-signatories-in-2020/4116.article; https://www.unpri.org/reporting-for-signatories/faq-on-mandatory-climate-reporting-for-pri-signatories/5356.article.

[6] https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30

[7] Seven letters were found, but two of the letters (to FLEX LNG Ltd.) were identical. The SEC's EDGAR advanced full text search of filings over the last four years, https://searchwww.sec.gov/EDGARFSClient/jsp/EDGAR_MainAccess.jsp, was searched on May 1, 2020, using the SEC's instructions for accessing SEC comment letters to issuers, https://www.sec.gov/answers/edgarletters.htm. In a search of form type UPLOAD (SEC-originated letters to filers) for the term "climate change" from May 2, 2016 to May 1, 2020, https://searchwww.sec.gov/EDGARFSClient/jsp/EDGAR_MainAccess.jsp?search_text="climate change"&sort=Date&formType=FormUPLOAD&isAdv=true&stemming=true&numResults=100&fromDate=05/02/2016&toDate=05/01/2020&numResults=100, 4 letters were found that were dated after May 7, 2017, addressed to FLEX LNG Ltd. (2 identical letters), the State Treasury of the Republic of Poland, and Procure ETF Trust II. 3 letters before that date were addressed to Chevron Corp., Anadarko Petroleum, and Vedanta Ltd.

We believe that SEC leadership and staff have, in the past, made a much stronger effort to ensure companies followed the Guidance. In 2010 and 2011, the SEC staff sent 49 comment letters to issuers encouraging better disclosure on climate-related matters.[8]

There is a disconnect between Chairman Clayton's statement that SEC staff has generally found robust efforts to comply with the disclosure requirements and evidence about the quality of climate-related disclosure by issuers. The TCFD's July 2019 status report reviewed climate-related reporting by over 1,100 companies from 2016–2018.[9] It found that disclosure rates were trending in a positive direction but surveyed companies only disclosed, on average, 3.8 of the 11 total TCFD recommended disclosures.[10] An October 2019 study found that 30 percent of Russell 3000 companies discussed climate change as a risk in their 10-K filings, but only 3 percent of companies discussed climate risks in the Management Discussion & Analysis.[11]

While implementation of the Guidance through comment letters will continue to be important to investors and issuers, the lack of comparable, consistent, and material climate risk disclosure means it is time for the SEC to begin rulemaking on this matter.

Support for rulemaking is widespread. In 2016, when the SEC issued a concept release to revamp its corporate disclosure framework, it received more than 26,500 comments from investors and the public. A detailed analysis showed the comments overwhelmingly favored the need for SEC action to achieve stronger ESG and climate disclosure.[12] In 2018, Ceres, along with securities law experts and investors representing $5 trillion in assets, filed a petition calling for rulemaking on ESG disclosure.[13] Ceres also strongly supports the Climate Risk Disclosure Act of 2019, which calls on the SEC to issue climate risk disclosure rules in two years.[14]

Sustainability and ESG are broad terms that can legitimately describe various mechanisms that fund managers can use in their funds: using internal or external ratings to determine portfolio construction; exclusions of unsustainable issuers, industries and sectors; engagement and proxy voting on sustainability issues; and use of sustainability factors in smart beta or passive strategies. And those strategies rest on hundreds of variables that illuminate the commitment to sustainability of the issuers in portfolios.

Drawing an arbitrary line through this forest of detail as to what is considered sufficiently sustainable to be in the fund name is certain to be unfair to many funds on both sides of that line.

---

[8] Jim Coburn, Jackie Cook, Ceres, Inc., *Cool Response: The SEC & Corporate Climate Change Reporting: SEC Climate Guidance & S&P 500 Reporting—2010 to 2013* (February 2014) at 5, 20-25.
[9] https://www.fsb-tcfd.org/wp-content/uploads/2019/06/2019-TCFD-Status-Report-FINAL-053119.pdf
[10] https://www.fsb-tcfd.org/wp-content/uploads/2019/06/2019-TCFD-Status-Report-FINAL-053119.pdf
[11] Leah Rozin, NACD BoardTalk, ESG Risks Trickle Into Financial Filings (Oct. 21, 2019), available at https://blog.nacdonline.org/posts/esg-risks-trickle-into-financial-filings.
[12] https://www.sec.gov/comments/s7-10-16/s71016-4566028-176216.pdf - page=8
[13] https://www.sec.gov/rules/petitions/2018/petn4-730.pdf
[14] https://www.congress.gov/bill/116th-congress/house-bill/3623/text. The bill has been filed in the Senate for two years, and was introduced in the House in 2019 and passed out of Committee.

This should not be the SEC's highest priority. A better approach to assuring that sustainable funds are what they say they are is to assure that financial analysts and others have adequate access to comprehensive, comparable sustainability disclosure on the part of issuers. In addition, since ESG integration by market participants is evolving quickly, we hope that the SEC will review such a rule regularly and update them as appropriate.

Thank you very much for your consideration of Ceres' comments.

Respectfully,

James B. Coburn

Jim Coburn, Esq.
Senior Manager, Disclosure
Ceres, Inc.