Betterment

August 16, 2022

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

Via Electronic Filing

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

Dear Ms. Countryman:

Betterment LLC ("Betterment") appreciates the opportunity to respond to the Securities and Exchange Commission ("Commission") proposed regulations, Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (File No. S7-17-22) ("Proposed ESG Disclosures Rule") & Investment Company Names (File No. S7-16-22) ("Proposed Amended Names Rule") (together, the "Proposed Rules").

Betterment agrees with the Commission that increased transparency, consistency, and accountability in the area of sustainable investing is a worthy goal and commends the Commission's efforts aimed at ensuring the integrity of ESG investing strategies. At the same time, Betterment believes that investors are best served by a flexible approach that is responsive to the rapidly evolving ESG investing landscape. Accordingly, Betterment submits this comment to request that the Commission consider aspects of the Proposed Rules that may be unduly prescriptive and risk stemming progress in this area, to the detriment of investors.

Betterment's Approach to ESG Investing

Launched in 2010, Betterment leverages technology to offer its advisory clients globally diversified portfolios constructed using low-fee exchange traded funds ("ETFs"). As of March 31, 2022, Betterment managed $33 billion on behalf of approximately 730,000 clients.

We launched our first Socially Responsible Investing ("SRI") managed portfolio option in 2017. In 2020, we iterated our methodology and launched three new SRI portfolios: a Broad Impact portfolio that offers increased exposure to companies that rank highly across all ESG criteria, a

Climate Impact Portfolio focused on mitigating climate change, and a Social Impact Portfolio focused on supporting social equity and minority empowerment.

In July 2021, we augmented all of our SRI portfolios to incorporate an engagement strategy. In particular, we added an allocation to VOTE, a sustainability-focused ETF created and managed by activist hedge fund Engine No. 1. VOTE is designed to track the Morningstar US Large Cap Select index. As described by Engine No. 1, "[r]ather than excluding companies that need to change, VOTE works to change them."[1] It does this in large part through the proxy votes it casts, which are geared toward "[s]trategically hold[ing] companies and leadership teams accountable while focusing on environmental, social, and governance issues."[2]

The Proposed Rules Would Make Certain Incremental Strides, But Some Aspects Are Overly Prescriptive

Betterment supports the development of a workable framework to aid the growing population of ESG investors. Indeed, Betterment has expressed enthusiastic support for other proposed rules in this area that we believe will support the objective of providing investors with meaningful data to inform their investment decisions.[3]

To that end, Betterment supports the Proposed Rules to the extent that they work toward promoting accountability and standardizing information that lends itself to being standardized.

For example, we agree with the Commission's proposal that environmentally focused funds disclose specific emissions metrics in order to permit investors to more easily compare the performance of such funds in terms of environmental impact.[4] We also agree that advisors who incorporate ESG factors into their investment strategies should disclose the criteria or methodologies they use, such as internal or third-party scoring frameworks, screens, and indexes,[5] and that advisors that consider ESG factors when voting proxies should include a description of which factors they consider and how they consider them.[6]

With that said, we are mindful of the rapidly evolving nature of ESG investing and are concerned about an overly prescriptive regulatory approach that would attempt to assign categories and designations to information that is ill-suited to this kind of treatment.

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[1] https://etf.engine1.com/vote.
[2] https://etf.engine1.com/vote.
[3] For example, Betterment expressed support for the Commission's proposed regulation concerning Enhanced Reporting of Proxy Votes by Registered Management Investment Companies (File No. S7-11-21). *See* https://www.sec.gov/comments/s7-11-21/betterment-12142021.pdf. We also voiced our support for the recent proposal concerning the Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22). *See* https://www.sec.gov/comments/s7-10-22/s71022-20132595-303097.pdf.
[4] Proposed ESG Disclosures Rule at 88.
[5] Proposed ESG Disclosures Rule at 132.
[6] Proposed ESG Disclosures Rule at 134-135.

For example, the Proposed ESG Disclosure Rule lays out a taxonomy to govern ESG investing decisions, as applied to both registered investment companies and registered investment advisors like Betterment. That taxonomy includes "integration" funds, which consider ESG factors alongside other non-ESG factors, "ESG-focused" funds, which use ESG factors as a significant or main consideration in selecting or advising clients with respect to investments or in the relevant engagement strategy, and "impact" funds, which seek to achieve a specific ESG-related goal.[7]

At first blush, these definitions may seem straightforward. Mapped onto the reality of ESG investing, however, the categories quickly break down. For example, all investment funds and strategies *must* consider other factors alongside ESG factors. Drawing a line between those that consider ESG factors to be "a significant or main consideration," on the one hand, and those that merely "consider" these factors but where they "may not be determinative," on the other hand, involves a subjective (and potentially arbitrary) exercise of judgment. If these definitions cannot be reliably and consistently applied, they undercut the very purpose of the Proposed ESG Disclosures Rule. This is all the more true because each fund or advisor is free to define "E," "S," and "G" however it wishes.[8]

The Proposed Amended Names Rule is similarly problematic insofar as it relies on and incorporates this taxonomy. Under that proposed rule, it would be *per se* misleading for an "integration" fund to have a name that suggests an ESG focus.[9] Thus, a fund with an ESG name that merely considers ESG factors "alongside" other factors would run afoul of the rule. But, as noted, all funds do (and should) consider additional, non-ESG factors in their investment decisions. Determining whether ESG factors play a sufficiently significant role to avoid violating the rule is a needlessly subjective exercise.

Further, these definitions themselves may nudge funds and advisors in the direction of *less* ESG impact. For example, a fund or strategy that accords substantial weight to ESG factors and falls somewhere along the spectrum between "integration" and "ESG-focused" may opt to de-emphasize those factors to avoid the additional scrutiny that comes with an approach deemed to fall within the "ESG-focused" category. As Matt Levine put it, the requirements applicable to "ESG-focused" and "impact" funds are "good, if your goal is to protect investors from fake ESG, but it does make it harder to be an ESG fund."[10] In this respect, the Proposed ESG Disclosures Rule could discourage greenwashing at the cost of discouraging actual ESG investing.

The disclosure requirements applicable to "ESG-focused" funds and strategies in particular raise similar issues as the overarching taxonomy. Under the proposed requirements, funds

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[7] Proposed ESG Disclosures Rule at 14-15.
[8] Proposed ESG Disclosures Rule at 24-25 ("We are not proposing to define 'ESG' or similar terms and, instead, we are proposing to require funds to disclose to investors (1) how they incorporate ESG factors into their investment selection processes and (2) how they incorporate ESG factors in their investment strategies.").
[9] Proposed Amended Names Rule at 126.
[10] https://www.bloomberg.com/opinion/articles/2022-05-26/elon-called-off-his-margin-loan.

falling into this category must disclose which of the "common ESG strategies" they employ in a check-box format, on theory that this approach will "help investors to compare and analyze different ESG-Focused Funds more easily as they make investment decisions."[11] In reality, however, this degree of simplification fails to provide investors with information sufficient to determine whether a fund's approach "aligns with [their] goals," and risks leading them astray entirely.[12] Among other things, based on our direct experience, some investors will almost certainly conclude that a fund that utilizes *several* of the named ESG strategies is necessarily more impactful than one that uses just one or two (or even none – it easy to see how the existing list could soon represent only a small subset of the available strategies). But the number of boxes checked bears no relationship to a fund's actual commitment to advancing ESG issues.

The Proposed ESG Disclosures Rule would also impose seemingly arbitrary requirements on funds that pursue an engagement strategy. Funds that take this approach would be required to disclose "the number or percentage of issuers with whom the fund held ESG engagement meetings during the reporting period" and the "total number of ESG engagement meetings," the idea being that this will allow investors to "evaluate critically the disclosure of funds whose ESG strategy involves engagement other than or in addition to proxy voting."[13] However, it is difficult to see how this information would shed any meaningful light on whether these funds are making real progress on goals that resonate with investors; indeed, what matters is not the *number* of meetings but what actually happened at (and after) those meetings.[14]

Furthermore, when read together, the Proposed Rules introduce potential confusion with respect to ESG-focused funds that rely on an engagement strategy.

The Proposed ESG Disclosures Rule is clear that "a fund that has a policy of voting its proxies and engaging with the management of its portfolio companies to encourage ESG practices or outcomes" counts as an ESG-focused fund.[15] But the Proposed Amended Names Rule seems to imply that such a fund could not have an ESG-related name unless – in addition to or instead of pursuing an engagement strategy – it invests 80% of its value in assets that align with the name.[16]

What would this mean for an innovative fund that pursues an ESG strategy exclusively through a curated handful of engagement campaigns, rather than through investment selection, such as the VOTE ETF, managed by Engine No. 1? Or for that matter, some other ESG strategy, which has not even emerged yet? Principles-based regulation like the 1940 Advisers Act endures not because those rule makers thought of everything, but because they did not try.

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[11] Proposed ESG Disclosures Rule at 36-37.
[12] Proposed ESG Disclosures Rule at 37.
[13] Proposed ESG Disclosures Rule at 80-81.
[14] This requirement is particularly convoluted given the definition of an "ESG engagement meeting," which involves a subjective judgment regarding whether or not ESG issues were "a focus" of a particular meeting. *See* Proposed ESG Disclosures Rule at 81-82.
[15] Proposed ESG Disclosures Rule at 33.
[16] *See* Proposed Amended Names Rule at 20.

As University of Pennsylvania Law Professor Jill Fisch put it, “[s]tandardisation is not the same thing as clarity.”[17] We are at a critical juncture in the era of ESG investing that involves rapid growth and rapid evolution of both products and strategies available. Betterment fully supports the Commission’s efforts to increase accountability and standardize the kinds of quantitative metrics that lend themselves to standardization. But approaches that seek to categorize the uncategorizable will at best age prematurely, and at worst, do more harm than good.

We thank the Commission for offering the opportunity to comment on the Proposed Rules, and we would welcome any further engagement on this issue.

Sincerely,
/s/ Boris Khentov
Head of Sustainable Investing

[17] https://www.ft.com/content/6fefdb2c-f72e-4e52-b95b-c0727aeb1a94.