Ceres
Sustainability is the bottom line.

August 16, 2022

VIA ELECTRONIC FILING

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

Re: Enhanced Disclosure by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. IA-6034; IC-34594; File No. S7-17-22, and Investment Company Names, Release No. IC-34593; File No. S7-16-22

Dear Ms. Countryman:

Ceres, a nonprofit sustainability advocacy organization, respectfully submits this comment letter on the Securities and Exchange Commission's ("SEC" or "Commission") proposals, *Enhanced Disclosure by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices* ("the ESG Proposal") and *Investment Company Names* ("the Names Proposal") (together, "the Proposals").

Interest in ESG investing has grown tremendously in recent years, as assets managed with a sustainable mandate in the US grew to over $17 trillion in 2020, and asset managers have developed many new sustainable investment products to meet this demand. This shift in asset allocation evidences the growing understanding that ESG factors are significant drivers of long-term investment performance. An analysis of over 11,000 mutual funds and ETFs showed that funds incorporating ESG criteria provide comparable financial returns to traditional funds, with less downside risk.

This explosive growth has been met with significant controversy in public discourse. The seismic shifts now working though major sectors of the economy including energy, transportation, heavy industry, agriculture, and others are creating disruptions that provoke backlash from deep vested interests. There have also been many assertions of funds overstating the extent to which they consider ESG factors – a phenomenon referred to as greenwashing. The wide array of new investment strategies and the absence of a standardized framework for their evaluation has resulted in significant confusion.

Ceres supports and appreciates the Commission's creation of a regulatory framework to provide standardized information about ESG investment products to aid investment decisions. The Proposals fill an important gap by requiring disclosure of consistent, comparable information about ESG objectives, policies, and procedures for funds and advisers that offer ESG strategies. The Commission and its staff have drafted a well-constructed set of rules and forms that would protect investors and enhance disclosure about ESG investing by registered funds and investment

advisers. In the short term, these rules, if adopted, may result in a decrease in total assets invested in funds that purport to be sustainable. We believe that ultimately, they would bolster confidence in climate and other ESG investment products and assist with capital formation to allow investors to drive climate solutions that will mitigate the worst financial impacts of the climate crisis.

We do, however, have some suggestions for possible changes. Our chief concern, and one that is shared by many within the industry, is that the ESG Proposal creates disclosure requirements for ESG funds and advisers but not others. We would encourage the Commission to consider subsequent rulemaking to extend these disclosure requirements to all funds and advisers, as we would not want to see the finalization of these rules have a chilling effect on ESG investing. Ceres would encourage the Commission to pursue this subsequent rulemaking as soon as possible, and to consider aligning the implementation timeline with these rules.

We discuss below several specific recommendations. Our most important recommendation would simplify the categorization of funds, thus reducing compliance costs and regulatory risk for fund managers, without compromising the proposed disclosures and investor protections. Ceres makes these recommendations from the standpoint of an expertise gained through our close working relationships with institutional investors. Ceres has over 30 years of experience working on climate change and other sustainability risks. The Ceres Accelerator for Sustainable Capital Markets works to transform the practices and policies that govern capital markets to reduce the worst financial impacts of the climate crisis. It spurs capital market influencers to act on climate change as a systemic financial risk—driving the large-scale behavior and systems change needed to achieve a just and sustainable future and a net zero emissions economy.

Our Investor Network on Climate Risk and Sustainability currently includes over 220 investors that collectively manage over $60 trillion in assets. Ceres is a founding partner of the Investor Agenda, the Net Zero Asset Managers Initiative, and the Paris Aligned Investment Initiative, which includes investors focused on sustainable investments. While we recognize that the Proposals address a wide array of sustainability issues, Ceres' comments are focused primarily on climate risks.

In this letter, we begin by discussing our comments on the ESG Proposal. We then turn to the Names Proposal. Following that, we discuss the SEC's statutory authority to adopt each of the Proposals. Finally, we discuss the cost-benefit analyses for the Proposals.

I. The ESG Proposal

A. The ESG Proposal Is Necessary to Strengthen Investor Protections for an Important and Growing Investment Category

Ceres agrees with the fundamental premises of the ESG Proposal. Investor interest in ESG strategies is increasing rapidly, resulting in significant inflows of capital. This necessitates that fund investors and advisory clients receive consistent, comparable, and reliable information so that they can make informed investment decisions. It also requires that investment advisers and

funds[1] implement ESG strategies in a way that is consistent with investor expectations, to prevent potential "greenwashing". Accordingly, Ceres supports amendments to existing requirements for funds and investment advisers to improve disclosures about ESG investing.

Fundamentally, as the SEC recognized in its recent proposal, *the Enhancement and Standardization of Climate-Related Disclosures*, climate change poses a significant financial risk. An October 2021 report from the US Financial Stability Oversight Council identified climate change as an emerging and increasing threat to financial stability. Climate change affects nearly all sectors of the economy. Global average surface temperatures have increased by about 1.8 degrees Fahrenheit (for the period 1901-2016), driven primarily by emissions of greenhouse gases (GHG), which have led to more frequent and intense extreme weather events and other disruptions, according to the USGCRP's Fourth National Climate Assessment. Climate-related disasters are increasingly frequent, with 20 events causing over $1 billion damage each in the US during 2021 alone, for a total cost of $153 billion. A 2019 analysis by CDP of 215 of the world's largest companies identified just under $1 trillion of potential risk to them from climate change – and noted that half of these losses are expected to materialize in the next five years. Because climate change is a significant financial risk, institutional and retail investors are seeking investment approaches that address climate risk.

An investment approach that includes climate risk factors should be seen as mainstream, based purely on financial considerations, and not an approach motivated by political or social considerations. The Global Sustainable Investment Alliance's 2020 Review reported that over 33% of US financial assets are now invested with a sustainability mandate, up from 18% in 2014. Put another way, a climate-focused approach to investing is a type of fundamental economic analysis. Accordingly, an investment approach that incorporates a climate risk factor or factors is becoming a mainstream approach to investing in the 21st century, and consideration of these factors aligns with maximizing risk adjusted returns in accordance with fiduciary duty. We believe it would be helpful for the Commission to expressly so state when it adopts the Proposals.

We recognize that some people have argued that it is unnecessary for the SEC to adopt specific disclosure requirements for ESG investing, including investment approaches that focus on sustainability and climate ("climate-aware investing"). Although we believe that climate-aware investing is becoming a mainstream approach to investing, it is an evolving approach with very broad implications, and we believe there is a need for clear regulatory standards to elicit comparable and meaningful information from funds and advisers that facilitates investor evaluation and selection of climate-aware funds and investment strategies.

B. The Disclosure Categories Should Be Refined and Apply Based on Election, Not Practice

Ceres supports the SEC's proposal to apply the new disclosure requirements based on the differing types of ESG funds and advisory strategies. We believe the categories offer a sensible way to apply disclosure requirements for the different types of funds and advisers. These

[1] Like the SEC, we use the term "funds" to refer to registered investment companies and business development companies, not private funds.

categories are generally in line with other international frameworks, although the SEC's proposals differ in some of their details.

However, in our many conversations with asset managers and market practitioners, we heard a common concern that it could be difficult to determine in which category a given fund or strategy belongs and whether the SEC would view a particular investment practice as incorporating an "ESG factor." To address this, and minimize the time spent by fund managers and the SEC in analyzing each fund or strategy, we suggest that the SEC clarify the method of categorization. Instead of categorization based on a fund's (or adviser's) investment decision-making process, we suggest allowing an opt-in approach, with each fund identifying itself as within one (or none) of the ESG categories. Their elected category would drive the relevant disclosure requirements and marketing permissions. Funds that describe themselves as ESG-Focused Funds would have to make the disclosures required of such funds and could use ESG terms in their names. In making the disclosures, they would have to explain specifically how they use ESG factors in investment decision-making and confirm that one or more ESG factors are the "most significant" consideration. Similarly, funds that describe themselves as Impact Funds would have to make the disclosures required of such funds and could use "impact" in their names. Of course, funds that choose to be ESG-Focused Funds or Impact Funds would have to have investment processes consistent with their prospectus disclosures. Similarly, any fund advertising or sales materials would have to be consistent with that prospectus disclosure.

Ceres supports the SEC in leaving it up to fund advisers to select and define the ESG terms that they use in their names and marketing. This approach should facilitate productive experimentation. Once these rules have been in effect for some time, we would encourage the SEC to convene relevant stakeholders and consider guidance to establish standards for the use of ESG terms, so that investors can more easily understand them.

Funds that describe themselves as Integration Funds would have to make the disclosures required of such funds, and would not be able to market themselves as ESG funds. Indeed, we believe that requiring prospectus disclosure by Integration Funds as to how they incorporate ESG factors in their investing could mislead investors by overstating the importance of those factors, so we suggest that the SEC could eliminate or greatly shorten the requirement that Integration Funds discuss how they use ESG factors in Item 4 of the summary prospectus, to reduce the risk that investors will perceive Integration Funds are placing more emphasis on ESG than is the case.

If the Commission does not follow our recommendation for an opt-in approach, we recommend that the Commission drop the Integration Fund category entirely, along with all its disclosure requirements. From our discussions with institutional investors and others, we understand that many funds employ at least some ESG analysis in their investment decision-making. We believe it would be very difficult to differentiate between ESG Integration Funds and funds that are not in any ESG category, based solely on investment practices. The potential for reasonable minds to disagree as to which funds are Integration Funds, and the resultant compliance and enforcement confusion that could ensue would seem to outweigh the benefit of retaining the category.

Also, we believe the Commission should make clear that funds that do not label themselves as ESG funds should not be subject to enforcement simply because they take actions to maximize

risk-adjusted returns that may in some cases align with ESG concerns. For example, a fund might vote for a climate-related proxy initiative because it believes doing so will be accretive to shareholder value or sell shares in a company that it believes is reducing shareholder value by engaging in inappropriate labor practices. Such a fund should not be subject to enforcement if it has not elected to label itself using one of the ESG fund categories.

We further request that the Commission consider the following points regarding the categories:

i. The Commission Should Clarify that ESG-Focused Funds Use ESG Methods to Maximize Financial Returns

Many investors believe consideration of ESG factors is critical in generating superior long-term performance. A climate-aware fund may seek to avoid losses by analyzing the risk of stranded assets and achieve growth through investing in technologies that will see increased uptake in a net-zero economy. Such a fund uses environmental factors in its economic analysis to identify financial risks and opportunities. For a climate-aware fund, ESG is a significant or main consideration *because the ESG factors are financially relevant.* In conversations with dozens of asset managers who offer ESG funds or advisory strategies, it has become clear that they are concerned that their funds and strategies could be viewed as subjugating financial concerns to other factors if they label them as ESG-Focused Funds or strategies. This simply does not comport with the reality that investors want exposure to ESG factors in the market because of their long-term views about the economy. It is essential that the SEC clarify that ESG-Focused Funds employ ESG analysis in service of maximizing long-term risk adjusted returns in accordance with fiduciary duty.

In crafting these definitions, we encourage the Commission to share its thinking with the Department of Labor (DOL) as it prepares a final version of its October 2021 proposal Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights. This proposal, if enacted, would clarify that ESG funds can be appropriate investment options in ERISA plans because the ESG considerations are relevant to financial returns. Any language in the SEC's rule that leaves open a contrary interpretation of the objectives of ESG-Focused Funds could create legal risk for plan sponsors who offer such funds to their participants. Ceres recommends that the SEC and DOL collaborate to ensure that these two important rulemaking efforts lift the chill that has prevented ERISA plans from offering American workers access to the sustainable investment options that they desire.

ii. The Boundary Between Integration and Focused Funds Must Be Clarified

We believe there is some tension between the definitions of Integration Funds, on the one hand, and ESG-Focused Funds, on the other. The definition of an Integration Fund indicates that a fund will be an Integration Fund if "ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio." The definition of an ESG-Focused Fund is one that uses one or more ESG factors "as a significant or main consideration," but this definition does not reference whether or not the factors are "determinative".

Accordingly, should the Commission maintain the concept of an Integration Fund, to resolve any potential confusion or ambiguity, we suggest striking the phrase "such that ESG factors may not be determinative in deciding to include or exclude any particular investment portfolio" from the definition of an Integration Fund. We would also revise the definition of ESG-Focused Fund to be one that holds itself out as using one or more ESG factors "as the most significant consideration because of their financial relevance." This would mean that Integration Funds would be those for which ESG factors are "generally no more significant" than other factors and ESG-Focused Funds would be those for which such factors are "the most significant consideration".

iii. Recognition of Standard Governance Concerns Is Not Sufficient

We are concerned that, even with the revisions we suggest above, the definition of Integration Funds may be too inclusive. We recommend the SEC consider modifying the definition to eliminate governance factors, so that funds will not be included as Integration Funds simply because they evaluate executive compensation or board composition, exercise a preference for or against certain ownership structures, or because they vote on proxy initiatives (as fiduciary duty compels them).

iv. Impact Funds Should Be a Separate Category

Furthermore, we believe that including Impact Funds as a subset of ESG-Focused Funds could create confusion, because ESG-Focused Funds use an ESG approach to achieve financial returns, whereas Impact Funds may or may not focus exclusively on financial returns. Accordingly, we suggest that the SEC reword the definition of Impact Funds so that they are a separate group from ESG-Focused Funds and revise the application of the disclosure requirements accordingly. We do not intend to suggest that the SEC should create any substantive differences in the disclosure requirements by these changes.

C. Improved Disclosure Regarding ESG Methodologies Is Needed

As the SEC noted in the ESG Proposal, registered funds and investment advisers today disclose their methodologies and processes for incorporating ESG factors, particularly climate factors, in their investment decision-making in a multiplicity of ways. This is understandable, given that investor interest in climate-aware investing has grown significantly in recent years, leading to proliferation of related investment products and strategies. We believe that if adopted the SEC's proposed disclosure requirements, including descriptions of index methodologies, internal methodologies, rating systems of third-party data providers, the use of inclusionary or exclusionary screens, the use of third-party frameworks, and proxy voting and other engagement strategies will provide for improved transparency of material benefit to investors. Today, there is little information about these tools, and the information that is available is inconsistently disclosed. Requiring more information, disclosed in comparable ways, will help investors understand the differences among the many investment products in the market that are often grouped together under the ESG banner, even while the investment processes behind them differ greatly.

D. GHG Disclosure in Annual Reports Would Protect Investors from Undisclosed Transition Risk and Greenwashing

We strongly support the SEC's proposal to require detailed GHG emissions disclosures by ESG-Focused Funds and a brief GHG emissions disclosure by Integration Funds. We believe the proposed disclosure requirements, with a few minor modifications discussed below, would enhance the protection of investors.

It is widely recognized that GHG emissions are a critical measure of transition risk, but today's regulatory regime does not provide investors in funds with adequate transparency about the transition risk to which they are being exposed. Similarly, climate information is disseminated to investors in inconsistent formats, frustrating their ability to undertake comparative evaluations of asset managers' handling of climate risk. A 2021 Edelman survey finds that 92% of US investors are concerned companies are not effectively executing on their net-zero pledges; 46% lack confidence in the accuracy of GHG emissions information provided to them. In May 2022, Deloitte warned its clients that regulators around the world are on "high alert" due to "widespread concerns" about greenwashing by asset managers. A key concern is reporting on GHG emissions that could "lead end-investors who are unfamiliar with new terminologies and metrics to believe that funds intend to have a greater positive environmental impact than they do."

The SEC correctly recognizes that investors need more reliable and transparent disclosures of emissions data from asset managers. In their comments on the Commission's recent proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, asset managers and owners overwhelmingly support the disclosure of GHG emissions by issuers.[2] In its letter to the SEC, BlackRock wrote that "Investors on behalf of clients are not just looking for more data on climate risk, they need *high-quality* climate-related information that is (1) relevant to understanding climate-related risks and opportunities, and (2) reliable, timely, and comparable across jurisdictions." Surely investors in funds that purport to consider ESG and climate concerns have reason to expect similar disclosures from such funds. In his recent piece in the New York Times, Brad Lander, the Comptroller of the City of New York, a fiduciary serving over 700,000 public-sector workers and retirees with responsibility for over $250 billion in public pension funds, wrote that "understanding those [climate] exposures is essential to mitigating risk across our portfolio to secure strong returns for the city's public-sector workers. Yet under the current regulatory framework, investors are largely in the dark about those perils."

The SEC wisely targets its requirement for a detailed emissions disclosure at the category of ESG-Focused Funds, where the risk of greenwashing and other deception about emissions has been most clearly demonstrated: funds that claim to address environmental factors. Any fund claiming to be addressing environmental factors would likely cause its clients to believe that it is addressing the risk of GHG emissions. The SEC also provides an elegant solution for those funds that seek to address environmental factors without attending to GHG emissions: an explicit statement that they do not consider these emissions allows them to exempt themselves from the

[2] According to Ceres analysis of the public comment file, of just over 100 institutional investors who filed unique comments that mention GHG emissions, 95% support Scope 1 and 2 disclosures, and 91% support Scope 3.

disclosure duty. We strongly support this carefully targeted approach to the market failure around deceptive environmental claims.

Importantly, the SEC also would require a brief GHG emissions disclosure by those Integration Funds (assuming it retains this category) that consider GHG emissions in their analysis. Even though such 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, the Commission sensibly would require that, if an Integration Fund considers the GHG emissions of its portfolio holdings as an ESG factor in its investment selection process, it must 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 their prospectuses.

The SEC also wisely proposes to blend disclosures of financed emissions with disclosures of asset managers' engagement strategies as to climate risk. Many large asset managers resist calls from their clients and others to divest from companies in fossil fuel exploration and production or other carbon-intensive industries, instead pledging that they will engage with companies in these industries on accelerating their transition to low-carbon (and low transition risk) business models. Under the ESG Proposal, key details about such engagements would be qualitatively disclosed and then quantitative disclosures of financed GHG emissions would allow investors to track and compare asset managers' progress with engaging portfolio companies on reducing climate risk.

We also strongly support the SEC's proposal to mandate disclosure by asset managers of their carbon footprint and weighted average carbon intensity (WACI). Each of these metrics reveals different aspects of transition risk and thus both are needed. As the Commission states (at 36677), "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 SEC states, "the carbon footprint and WACI metrics are generally aligned with the recommendations from the TCFD and the financial industry-led Partnership for Carbon Accounting Financials (''PCAF'') frameworks and based on emission data consistent with those defined by the GHG Protocol framework." We recommend that the SEC follow the approach of these two standard-setters and require both metrics for Scope 3 disclosures as well as Scope 1 and 2 emissions disclosures.

Finally, the SEC properly recognizes that numerous asset managers are already disclosing the Scope 1, 2 and 3 emissions of their portfolio companies using the accounting and reporting framework established by PCAF. Major asset managers and banks with asset management divisions that have committed to using the PCAF framework include Blackrock, BNP Paribas, Deutsche Bank, and HSBC Holdings. The SEC provides an important benefit to asset managers and investors by aligning with PCAF to the greatest degree possible.

We recommend that the Commission clarify that its required disclosure of Scope 3 emissions data that are "publicly available" includes emissions data that are commercially available. This would ensure that emissions data behind a paywall (as are the extensive emissions data held by CDP) would be subject to the disclosure requirement.

Finally, we also recommend that the Commission require disaggregated disclosures of GHG emissions. Under the proposed methodology for calculating GHG emissions of portfolio companies, the emissions of individual portfolio companies must be separately calculated. The SEC calls for tallying these calculations and then disclosing emissions by sector, rather than by individual company. The Commission should consider amending its proposal to require that emissions be disclosed in a disaggregated fashion, so that investors can evaluate the asset managers' progress in managing transition risks at individual portfolio companies. Because such individualized emissions data will already be in the asset managers' possession, such disclosure would entail minimal burdens.

E. We Support the Engagement Disclosure Requirements

Ceres supports the proposal to require disclosure of ESG engagements in fund prospectuses and annual reports. We believe that any fund that uses engagement with issuers as a significant means of implementing an investment strategy should disclose briefly in its prospectus how it engages with portfolio companies. We also believe that it is appropriate to require such a fund to disclose in its annual reports the objectives of its engagements, progress on any key performance indicators of engagement, and the number of or percentage of issuers with whom the fund held engagement meetings. We acknowledge that these metrics are imperfect measures of the effects of engagements, but they have the advantage of being objective and verifiable.

Fund managers may use a variety of methods to engage with portfolio companies, including but not limited to bilateral meetings, multi-stakeholder collaborations, written communications, proxy voting, and submission of shareholder resolutions. Ceres encourages the SEC to include questions referencing these various methods in the engagement disclosure requirements. Funds should also be encouraged to provide structured reporting on what ESG topics they addressed in their engagements. We recognize that there is a wide range of engagement strategies and objectives across the industry, and that qualitative disclosures will play an important role in conveying the true nature of a fund's engagement activities. However, we encourage the SEC to work with the industry on the development of more structured and standardized forms of engagement reporting in the hopes that such disclosures will become increasingly decision useful over time.

We also believe that these disclosures should be required of any funds that use engagement with issuers as a significant means of implementing an investment strategy, whether or not that strategy is an ESG strategy. We recognize, however, that adopting this requirement more broadly may require a separate rulemaking by the Commission.

F. The Impact Disclosure Requirement is Appropriately Tailored

Ceres supports the proposal to require Impact Funds to comply with a common disclosure requirement in prospectuses and annual reports, including the relationship between the impact an Impact Fund is seeking to achieve and financial returns. We believe these disclosure requirements would provide investors with appropriate information to help them evaluate an Impact Fund's approach and success as to impacts. As with engagements, we believe these disclosures should be required of any funds that seek to achieve impacts, whether or not those impacts are ESG impacts. We recognize that adopting this requirement more broadly may require a separate rulemaking by the Commission.

II. The Names Proposal

A. The Names Proposal Is an Appropriate Way to Prevent Investor Confusion and Greenwashing

Ceres supports the SEC's proposal to include climate terms within the scope of rule 35d-1, with one change discussed below. We believe that if a fund is marketed as a climate-aware fund, its portfolio should contain assets that are consistent with that marketing. For that reason, we generally support the 80% test for funds that use climate terms in their names. We also agree with the SEC's decision not to prescribe what securities a climate portfolio must contain and instead leave it to individual funds to define how they comply with the 80% test in a fundamental investment policy. Furthermore, we support the proposed prohibition on using ESG terms in the names of Integration Funds.

We note, however, that there may be some climate-aware portfolios that do not comply with the 80% test, but, when viewed as a whole, are consistent with a climate term. For example, a fund name might include "Low Carbon" and define that as having a portfolio that has no more than 75% of the carbon intensity of the S&P 500. The fund could accomplish this by having half its assets in stocks that had the same carbon intensity as the S&P 500 and half in stocks that had 50% the intensity. The fund thus would meet the 75% standard in aggregate but may not meet the 80% test for individual securities. In some ways, this would be analogous to a fixed-income fund that seeks to achieve a certain weighted-average portfolio duration, which the SEC has said does not require compliance with the 80% test.[3] We urge the SEC to allow funds to have terms, including climate terms, that apply based on their aggregate portfolios, without complying with the 80% test for individual securities.

B. Derivatives Positions Should Count Toward the 80%

Ceres supports the SEC's proposal to require funds to value derivatives instruments using notional amounts, with certain adjustments,[4] for purposes of determining compliance with the 80% basket. In our view, this approach would more accurately reflect a fund's economic exposure than using market values of derivative instruments. We do not believe that this would lead to misleading or deceptive practices, for at least two reasons. First, the use of derivatives would require compliance with rule 18f-4, a complex rule with significant compliance

[3] Names Proposal at text accompanying n.49.
[4] While notional may be appropriate for some derivatives like total return swaps or other "delta 1" instruments, others, such as options, should be adjusted in line with their sensitivity to the underlying (known as "delta")

requirements. Second, as the Commission has cautioned, rule 35d-1 is not a safe harbor. Accordingly, any fund that somehow used derivatives to comply with the 80% test without reflecting economic reality would be subject to SEC enforcement action under section 35(d).

C. Collective Investment Trusts

We note that collective investment trusts relying on section 3(c)(11) are not subject to the names rule, because they are not registered under the Investment Company Act, but may be offered to investors in 401(k) plans and similar vehicles. We urge the SEC to work with the Department of Labor and bank regulators to ensure that collective investment trusts with climate names are subject to requirements similar to rule 35d-1.

III. The SEC Has Statutory Authority to Adopt the Proposals

The ESG proposal falls squarely within the SEC's established statutory authority. As confirmed by the text, purpose, and history of the securities laws, Congress vested the SEC with authority to require disclosures that protect investors or serve the public interest. The ESG proposal does not purport to mandate any conduct beyond financial issuer disclosures—the traditional realm of SEC regulation—and the disclosures required under the ESG proposal are tailored to serve these Congressionally-defined goals.

As to ESG disclosures in registration statements, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 expressly authorize the SEC to require disclosures as necessary or appropriate for investor protection or to serve the public interest. Similarly, as to periodic reports, the Exchange Act, the Investment Company Act, and the Advisers Act each expressly authorize the SEC to require disclosures as necessary or appropriate for investor protection and to update information in registration statements. In sum, the federal securities laws give the SEC broad authority to prescribe the content of registration statements and periodic reports, to ensure that they contain information that provides investors and advisory clients with relevant information.

The Names proposal also falls squarely within the SEC's established statutory authority. Section 35(d) 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." That section also authorizes the SEC to define such names as materially deceptive or misleading. 15 USC. §80a-35(d). Given the increasing number of funds using words connoting ESG investments in their names, the SEC has unquestionable authority to define the circumstances under which such words in fund names are misleading or deceptive.

IV. Cost-Benefit Analysis

Ceres believes that the Commission's cost-benefit analysis is thorough and meets the standards imposed by the courts in recent years. As the New York University School of Law Institute for Policy Integrity explained in its paper Mandating Disclosure of Climate-Related Financial Risk:

> Notably, nothing in relevant case law suggests that the SEC must support every assumption in its cost-benefit analysis with empirical evidence, quantify all of the rule's significant impacts, or demonstrate the aggregate quantified benefits outweigh aggregate quantified costs. Instead, the Commission need only provide a reasoned explanation for its assumptions (taking into account reasonably available empirical evidence), make a good-faith effort to quantify impacts when possible and, when quantification is not possible, explain why.

In both Proposals, the SEC has provided a reasoned explanation for its assumptions, considering available evidence, made a good-faith effort to quantify impacts, and, for those instances where quantification is not possible, explained why.

We wish to address specifically two aspects of the SEC's cost-benefit analyses. First, we observe that many of the investment advisers that will be directly or indirectly subject to the Proposals are part of global asset management businesses that are subject to substantially similar rules in other jurisdictions. For example, many, if not most, large US investment advisers are also subject to the European Commission's Sustainable Finance Disclosures Regulation (SFDR), which has requirements that generally parallel those proposed by the SEC. We believe that the burden and cost of complying with the SEC's proposals will be eased by already having developed compliance systems for similar regulatory requirements in other jurisdictions and private standards setters. The Commission's framework, discussed above, has the benefit of roughly mirroring the SFDR's framework, which like the SEC's proposals has differing disclosure requirements depending on asset managers' investing goals and approach. Although SFDR's categories do not match the SEC's proposed categories perfectly (Article 6 aims at funds without a sustainability scope, Article 8 at funds that promote environmental or social characteristics, and Article 9 at funds that have sustainable investment as their objective), both regimes recognize that investors have differing informational needs depending on their investing objectives.

The SFDR and the ESG Disclosure rule are similar in many key respects. Both adhere to the general approach of requiring fund managers to disclose investment and engagement goals, strategies, and methodologies. Both generally adhere to the approaches of the Task Force on Climate-Related Financial Disclosures and the Partnership for Carbon Accounting Financials for reporting climate-related data.

In some respects, the proposed ESG Disclosure rule is broader than the SFDR: it covers fund advisers in addition to the investment companies; the EU's process of updating its regulations to cover sustainability-related investment advisers is still underway. In other respects, the disclosure requirements under the SFDR are greater than under the SEC's proposal. Whereas the SFDR requires disclosures regarding both sustainability impacts and sustainability-related financial risks of investments (so-called double materiality), the SEC focuses its disclosure requirements entirely on financial matters unless the fund explicitly states that it has non-financial ("impact") goals. The SEC's ESG Proposal covers mutual funds, ETFs, closed-end funds, unit investment trusts, and business development companies, whereas the SFDR includes other products such as insurance-based investment products. Finally, while the SFDR imposes substantial disclosure obligations on both Article 8 and Article 9 funds, the SEC imposes

minimal disclosure obligations on its rough equivalent of Article 8 funds, the proposed ESG Integration funds.

The SFDR's Article 8 and 9 funds, the two types of ESG funds with the greatest disclosure responsibilities, now account for 46% of overall EU fund assets. Many of the large fund managers that would be subject to the SEC's proposed ESG Disclosure rule are already required to comply with this rule. By harmonizing the ESG Disclosure rule with the SFDR where possible, the SEC provides cost savings to these asset managers.

If the SEC clarifies (as we recommend above) that a fund may "opt in" to any category if it abides by that category's disclosure requirements, this cost savings would be increased. As the recent reclassification of 1800 EU funds reflects, the SFDR has evolved into an "opt in" regulatory regime. By allowing investment advisers to choose the categories they deem appropriate for their US funds, the SEC could empower asset managers to choose fund categories with disclosure requirements similar to those they are already facing in the EU.

The costs already incurred by US-regulated asset managers and their affiliates in complying with the SFDR and other non-US regulations should be viewed as part of the baseline in evaluating the costs and benefits of the proposed ESG Disclosure rule. The data-gathering, analysis, auditing, compliance, and disclosure costs of the proposed ESG Disclosure rule will be greatly reduced once the costs of compliance with non-US regulations are considered.

Second, we believe that the primary benefit of the SEC's proposals fits squarely within the purposes of the Securities Act, the Investment Company Act, and the Investment Advisers Act. The SEC's proposals would do much to ensure that the assets of registered fund investors and advisory clients who seek to invest in keeping with climate factors are invested consistently with the intent of these investors. We do not know how to quantify this benefit, but it is a benefit that is at the heart of the SEC's mission.

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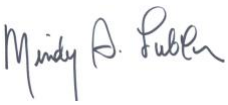
Thank you in advance for your consideration of our comments. We welcome the opportunity to provide additional background and resources if it would be useful. If you have questions or would like further information, please contact Steven Rothstein at srothstein@ceres.org or Eric Pitt at ericpitt.consultant@ceres.org.

Sincerely,



Mindy S. Lubber
CEO and President
Ceres