

August 16, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F St, N.E.
Washington, D.C. 20549

RE: Proposed Rules “ESG Disclosures for Investment Advisers and Investment Companies” and
“Amendments to the Fund ‘Names Rule’”

Dear Chair Gensler,

We write to you as nearly 100 economic, climate, and racial justice organizations in support of both the “ESG Disclosures for Investment Advisers and Investment Companies” proposed rule and the “Amendments to the Fund ‘Names Rule’”, published on June 17, 2022. Investment companies have failed to wholly integrate ESG standards into their investment strategies. The lack of existing standardization and disclosure in the ESG landscape has allowed investment companies to continue investing in extractive industries under the guise of “social responsibility” or ESG investing. As a result, investors and advisors do not have the information they need to assess their ESG investments with a critical lens. Original analysis by the Action Center on Race and the Economy (ACRE) and Public Accountability Initiative (PAI) found that Vanguard’s U.S.-based equity ESG funds hold nearly \$6 billion in investments in sectors that pose a high risk to frontline and BIPOC communities.¹ For example, Vanguard includes

¹ Alston, Brittany, Cecilia Behgam, Robert Galbraith, Derek Seidman and Erika Thi Patterson. “Vanguard’s Empty Promises: How Vanguard Funds Harm and Fuels Extractive Industry.” Action Center on Race and the Economy and Public Accountability Initiative. March 24, 2022. Page 1.
https://acrecampaigns.org/wp-content/uploads/2022/03/ACRE-Report-Vanguard_03.22.pdf

fossil-fuel powered utilities, petrochemical producers, as well as weapons manufacturers in their ESG funds.² This inconsistency undercuts investment companies' stated ESG strategies, while also undermining investor ESG goals and expectations.

The proposed rules from the SEC acknowledge the need for a shift and provide investors with critical information to make informed ESG investment decisions. However, we strongly recommend that the SEC strengthen the proposed disclosure requirements with the changes outlined below. These recommended changes ensure that disclosure practices reflect the scope of environmental and social factors that investors consider when making ESG investment decisions.

Investment advisers and companies must strengthen disclosure regarding climate impacts of extractive and polluting industries in BIPOC and frontline communities.

Investment advisers can exaggerate the environmental soundness of, or “greenwash,” extractive and polluting industries to raise money under the guise of ESG. However, extractive and polluting industries, like oil and gas, contribute to increasingly severe climate catastrophes.³ But because companies greenwash ESG funds—downplaying the impact of their investments in the fossil fuel industry—investors cannot make fully informed decisions about the climate impacts and social consequences of certain investments on frontline communities, particularly Black, Indigenous and People of Color (BIPOC) communities. There are many risks associated with investments in extractive industries like the fossil fuel industry, which are heightened when

² Ibid, page 2.

³ Bertrand, Savannah. “Fact Sheet: Climate, Environmental and Health Impacts of Fossil Fuels (2021).” Environmental and Energy Study Institute. December 17, 2021. <https://www.eesi.org/papers/view/fact-sheet-climate-environmental-and-health-impacts-of-fossil-fuels-2021>

projects have social impacts on the communities in which they are situated.⁴ Investments in extractive industries have significant social impacts when companies infringe upon: (1) human rights, (2) Indigenous and tribal people’s rights, (3) economic livelihoods, safe infrastructure, food and/or water access, and/or (4) public and worker health and safety. These are all social factors that often intersect with or amplify climate impacts, and therefore must be assessed when building a sound ESG portfolio.

Research indicates that corporate extraction of natural resources poses environmental, social, operational, political, legal, and reputational risks for businesses and the advisers and companies that invest in them.⁵ The community impacts of corporate activities, especially those that intersect with and amplify climate risks, are material and relevant to investors.⁶ As demonstrated in the response to the “The Enhancement and Standardization of Climate-Related Disclosures for Investors”—a previous letter to the SEC co-signed by over 100 organizations—corporate disregard for community impacts poses operational, political, legal, and reputational risks, which can mean financial losses for companies and investors.⁷ Historically, frontline communities have resisted controversial projects, specifically oil and gas pipeline projects, naming the potential and/or existing impacts these projects have on human rights and Indigenous and tribal people's

⁴ Franks, Daniel M., Rachel Davis, Anthony J. Bebbington, Saleem H. Ali, Deanna Kemp and Martin Scurrah. “Conflict translates environmental and social risk into business costs.” Proceedings of the National Academy of Sciences. May 12, 2014. <https://www.pnas.org/doi/10.1073/pnas.1405135111>

⁵ Ibid.

⁶ Americans for Financial Reform Education Fund (AFREF) and Public Citizen. “Results of a Nationwide Survey: Retail Investors’ Support for the SEC Mandating Climate-Related Financial Disclosures from Public Companies.” Apr. 28, 2022. Page 3.

https://ourfinancialsecurity.org/wp-content/uploads/2022/04/FINAL-Report_Climate-Disclosure-Survey-Results_AF-R-PC-2.pdf

⁷ Action Center on Race and the Economy, Ocean Conservancy, AmazonWatch. Comment letter regarding the proposed Securities and Exchange Commission rule: “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” June 16, 2022. Page 2.

<https://oceanconservancy.org/wp-content/uploads/2022/06/EJ-Comment-Letter-June16-9am.pdf>

rights.⁸ Community opposition can lead to higher project costs, impaired earnings, suspended permits, declining stock prices, lost investors and customers, and other costs to companies.⁹

For example, the Dakota Access Pipeline (DAPL) is a 1,172-mile-long oil pipeline between North Dakota and Illinois. Energy Transfer Partners (ETP) is the operator and largest partial owner of the pipeline.¹⁰ ETP, Phillips 66, and Enbridge Energy Partners – all partial owners of DAPL – are present in ESG funds, such as a BlackRock “ESG Aware” fund, which lists Enbridge as one of the top holdings.¹¹ The presence of these corporations in ESG funds should concern investors because of the reported and well-publicized environmental and social risks associated with DAPL, including the violations to Tribal treaty rights and non-adherence to Free, Prior and Informed Consent (FPIC) with impacted Indigenous peoples.¹² The Standing Rock Sioux Tribe sued the Army Corps of Engineers and Dakota Access LLC, a subsidiary of the pipeline company, for failing to consult tribe members before approving construction.¹³

Resistance to the pipeline grew into a social movement, led by Indigenous water protectors and allies who organized to protect lands from the negative environmental, economic, and cultural

⁸ AmazonWatch. Comment letter regarding the proposed Securities and Exchange Commission rule: “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” June 16, 2022. Page 1. <https://www.sec.gov/comments/s7-10-22/s71022-20131665-302054.pdf>

⁹ Action Center on Race and the Economy, Ocean Conservancy, AmazonWatch. Comment letter regarding the proposed Securities and Exchange Commission rule: “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” June 16, 2022. Pages 19-26. <https://oceanconservancy.org/wp-content/uploads/2022/06/EJ-Comment-Letter-June16-9am.pdf>

¹⁰ Fredericks, Carla F., Mark Meaney, Nicholas Pelosi and Kate R. Finn. “Social cost and material loss: The Dakota Access Pipeline.” First Peoples Worldwide, University of Colorado Boulder. November 2018. Page 7. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

¹¹ Ibid; “Pioneer Balanced ESG Fund: Schedule of Investments.” Amundi Asset Management. April 30, 2022. <https://www.amundi.com/usinvestors/dl/doc/q3-holdings/US72387P4037/ENG/USA/RETAIL/AMUNDI>; “iShares ESG Aware MSCI Canada Index ETF.” Blackrock. Accessed July 22, 2022. <https://www.blackrock.com/ca/investors/en/products/307298/ishares-esg-aware-msci-canada-index-etf?switchLocale=y&siteEntryPassthrough=true>

¹² Young, Stephen. “The Sioux’s Suits: Global Law and the Dakota Access Pipeline.” American Indian Law Journal, no. 6. (December 2017). Pages 175-176. <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1176&context=ailj>

¹³ Hersher, Rebecca. “Key Moments In The Dakota Access Pipeline Fight.” NPR. February 22, 2017. <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipelinefight>

threats of the project. At times, these protestors were met with police violence, which was met with public opposition.¹⁴ An analysis by First Peoples Worldwide estimated that the cost of the pipeline project nearly doubled, increasing by over \$3 billion dollars, due to construction delays from legal action and social demonstrations.¹⁵ Furthermore, ETP's stock price significantly underperformed relative to market expectations, and it experienced a long-term decline in value that persisted after the project was completed.¹⁶ In fact, from August 2016 to September 2018—while the S&P 500 increased by nearly 35 percent—ETP's stock declined by almost 20 percent.¹⁷ If investors had been informed about the environmental and social risks of this project, specifically the reported impacts on frontline and BIPOC communities, investors could have: (1) been aware of their investments in companies that owned a pipeline that was the target of one of the most public resistance efforts in recent history; (2) been given a full picture about the potential risks associated with this project and how those risks could translate into increased project costs and stock price declines for DAPL's corporate owners; and (3) made a decision about whether or not this investment was a sound one for this ESG portfolio based on the disclosed information.

Therefore, we recommend that ESG funds disclose data about adverse community-level impacts of investee corporate activities—particularly of extractive and polluting industries—such as allegations of and potential liabilities stemming from human rights abuses, infringement of

¹⁴ Brown, Alleen, Will Parrish and Alice Speri. "The Battle of Treaty Camp: Law Enforcement Descended on Standing Rock a Year Ago and Changed the DAPL Fight Forever." *The Intercept*. October 27, 2017. <https://theintercept.com/2017/10/27/law-enforcement-descended-on-standing-rock-a-year-ago-and-changed-the-dapl-fight-forever/>

¹⁵ Fredericks, Carla F., Mark Meaney, Nicholas Pelosi and Kate R. Finn. "Social cost and material loss: The Dakota Access Pipeline." First Peoples Worldwide, University of Colorado Boulder. November 2018. Page 41. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

¹⁶ *Ibid*, page 3.

¹⁷ *Ibid*.

Indigenous rights, threats to livelihoods, and negative health impacts. The disclosure of climate and social impacts on BIPOC and frontline communities will allow investors to make more informed investment decisions.

Investment advisers and companies must disclose investments in corporations with direct lines of business that rely on the prison system or policing of low-income and BIPOC communities like private prisons, weapons production, and surveillance technologies.

Record numbers of investors flocked to ESG investment vehicles in 2021, following the racial justice uprisings in response to the murder of George Floyd and amidst persistent climate catastrophes.¹⁸ Asset managers and other investment companies continue to profit because of investors' growing interest in aligning their values with their investments.¹⁹ But investment companies have not integrated their verbal commitments to racial justice into their investment portfolios, leaving investors with an uninformed assessment of their ESG investments. In a report by ACRE and PAI, researchers identified ESG funds with investments in surveillance technologies and weapons manufacturers, both tools used to police low-income and BIPOC communities.²⁰ This sort of ESG "woke washing" prevents investors from assessing the material risks associated with controversial investments, especially those that face governmental and media scrutiny as well as direct opposition from BIPOC communities.

¹⁸ Kerber, Ross and Simon Jessop. "How 2021 became the year of ESG investing." Reuters. December 23, 2021. <https://www.reuters.com/article/esg-yearender-analysis-idTRNIKBN2J20TT>

¹⁹ Ibid.

²⁰ Alston, Brittany, Cecilia Behgam, Robert Galbraith, Derek Seidman and Erika Thi Patterson. "Vanguard's Empty Promises: How Vanguard Funds Harm and Fuels Extractive Industry." Action Center on Race and the Economy and Public Accountability Initiative. March 24, 2022. Pages 26–31. https://acrecampaigns.org/research_post/vanguards-empty-promises/

For example, one ESG investment advisory firm touted ShotSpotter, an audio surveillance technology company, as a strong ESG investment.²¹ ShotSpotter contracts with local police departments to install audio sensors in many BIPOC-majority communities across the country, claiming that the technology identifies the sound of gunshots.²² However, it has been reported that there are serious concerns over the efficacy of the technology and its adverse impacts on communities.²³ ShotSpotter technology has played a role in the false accusations of criminal activity of people of color in Chicago and Rochester, New York and played a role in the death of a 13-year-old in Chicago.²⁴ In 2016, the City of Charlotte, North Carolina canceled their contract because it did not produce its intended results.²⁵ In August of 2021, the City of Chicago’s Inspector General investigated ShotSpotter’s gunshot detection technology and questioned its “operational value.”²⁶ Local community groups in Chicago are organizing for the city to end its

²¹ “Values Investing Spotlight: ShotSpotter.” Riverwater Partners. October 18, 2018.

<https://riverwaterpartners.com/2018/10/18/values-investing-spotlight-shot-spotter-ssti/>

²² Clayton, James. “Inside the Controversial US gunshot- detection firm.” BBC. 29 October 2021.

<https://www.bbc.com/news/technology-59072745>

²³ Fraga, Brian. “After Too Many Shots Missed, Fall River, Mass., Ends Deal with ShotSpotter.” Government Technology. April 23, 2018.

<https://www.govtech.com/public-safety/After-Too-Many-Shots-Missed-Fall-River-Mass-Ends-Deal-with-ShotSpotter.html>; Fang, Lee. “Deployment of controversial urban sensor system aided by aggressive lobbying.” The Intercept. March 26, 2015.

<https://theintercept.com/2015/03/26/rapid-deployment-shotspotter-controversial-urban-microphone-system-aided-aggressive-lobbying/>

²⁴ Burke, Garance, Martha Mendoza, Juliet Linderman and Michael Tarm. “How AI-powered tech landed man in jail with scant evidence.” AP News. March 5, 2022.

<https://apnews.com/article/artificial-intelligence-algorithm-technology-police-crime-7e3345485aa668c97606d4b54f9b6220>; Levinson, Reade and Lisa Girion. “A Black man risks all to clear his name - and expose the police.”

Reuters. November 17, 2020. <https://www.reuters.com/investigates/special-report/usa-police-rochester-trial/>; Kalvin,

Jamie. “Chicago Awaits Video Of Police Killing Of 13-Year-Old Boy.” The Intercept. April 13, 2021.

<https://theintercept.com/2021/04/13/chicago-police-killing-boy-adam-toledo-shotspotter/>

²⁵ Vandergriff, Caroline. “CMPD Cancels Contract for ShotSpotter Gunshot Detection System.” Spectrum News 1. February 12, 2016.

<https://spectrumlocalnews.com/nc/charlotte/news/2016/02/12/cmpd-cancels-contract-for-shotspotter-gunshot-detection-system>

²⁶ “The Chicago Police Department’s Use of Shotspotter Technology.” City of Chicago, Office of Inspector General. August 24, 2021. Page 22.

<https://igchicago.org/wp-content/uploads/2021/08/Chicago-Police-Departments-Use-of-ShotSpotter-Technology.pdf>

contract with ShotSpotter.²⁷ Opposition to ShotSpotter is so widespread that there is also currently a national campaign called #StopShotSpotter that calls on activists in cities across the country to organize against this technology in their cities.²⁸

Troubling examples like this highlight how the “ESG” moniker has been used to obfuscate investments that contribute to racial and economic inequality, factors that have been identified as systemic financial risks.²⁹ Therefore, it is recommended that all ESG funds, as outlined in the “ESG Disclosures for Investment Advisers and Investment Companies” proposed rule, should be required to disclose investments in corporations with direct lines of business that rely on the prison system or policing of low-income and BIPOC communities. This will allow investors to make more informed decisions regarding the social impacts and investment risks associated with industries such as private prisons, weapons production, and surveillance technologies.

Investment advisers and companies must disclose how screening tools are applied and assessed.

Asset Managers currently rely on a variety of tools to structure ESG funds, all of which require improvement. ESG funds currently deploy capital to corporations that harm and pose significant risks to frontline and BIPOC communities.

²⁷ Bobwin, Don and Garance Burke. “Chicago watchdog harshly criticizes ShotSpotter System.” AP News. 24 August 2021. <https://apnews.com/article/technology-business-chicago-1d62906b0c4b4dc67886da89596b1f12>

²⁸ “Tell ShotSpotter: Stop Selling Surveillance.” Accessed August 5, 2022
<https://act.newmode.net/action/mpower-change/tell-shotspotter-stop-selling-surveillance/>

²⁹ Matuszewicz, Anne and Henry Mason. “Facing hard truths: The material risk of rising inequality.” Calvert Institute. Accessed August 1, 2022.
<https://www.pionline.com/sponsored-content/facing-hard-truths-material-risk-rising-inequality>; Oxtoby, John T. and Leah Yablonka. “Racial Inequality is a Business Risk.” Chicago Booth Review. March 10, 2021.
<https://www.chicagobooth.edu/review/racial-inequality-business-risk>

For example, the exclusionary screens utilized by Vanguard to construct its U.S.-based equity ESG funds lack the rigor necessary to filter out extractive and harmful industries that many investors would expect to be excluded. Vanguard’s ESG funds track indices provided by FTSE Russel, which uses exclusionary screens to determine what sectors are kept out of its ESG indices.³⁰ The ESG tool labels alcohol, firearms, oil, coal and gas, and adult entertainment as controversial or potential issues, but does not screen other extractive and exploitative sectors, like defense, surveillance software, petrochemicals, waste incineration, and mining.³¹ For example, legacy polluters, like the Dow Chemical Company (Dow Inc.) remain in the ESG fund, despite their numerous reported environmental violations.³²

While Vanguard’s exclusionary screens filter out firearms, weapons manufacturer Axon Enterprise remains in one of its ESG funds. Axon Enterprise sells electrical weapons, such as tasers, and surveillance technology designed for law enforcement, corrections, military forces, and private security firms. While Axon has disputed many of the deaths attributed to their technology, tasers have proven to be fatal on numerous occasions.³³

The exclusionary screens used by BlackRock also fail to filter out carceral corporations. For example, CoreCivic, one of the United States’ largest private prison operators, is present in

³⁰ Vanguard ESG U.S. Stock ETF (ESGV). Accessed August 5, 2022. <https://investor.vanguard.com/etf/profile/ESGV>; Vanguard FTSE Social Index Fund Admiral Shares (VFTAX). Accessed August 5, 2022. <https://investor.vanguard.com/mutual-funds/profile/overview/vftax>

³¹ Ibid; Even mining for clean energy development has presented community conflicts, due to mining companies’ failure to respect the rights of local communities and obtain Free, Prior and Informed consent from Indigenous groups; See Block, Samuel. “Mining Energy-Transition Metals: National Aims, Local Conflicts.” MSCI. June 3, 2021. <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

³² “Dow Inc.” Good Jobs First: Violation Tracker. Accessed August 5, 2022. <https://violationtracker.goodjobsfirst.org/parent/dow-inc>

³³ Alston, Brittany, Cecilia Behgam, Robert Galbraith, Derek Seidman and Erika Thi Patterson. “Vanguard’s Empty Promises: How Vanguard Funds Harm and Fuels Extractive Industry.” Action Center on Race and the Economy and Public Accountability Initiative. March 24, 2022. Page 29. https://acrecampaigns.org/research_post/vanguards-empty-promises/

BlackRock’s iShares ESG Screened S&P Small-Cap ETF.³⁴ This fund follows an index provided by S&P, which uses exclusionary screens for controversial business activities.³⁵ CoreCivic recently completed a racial equity audit and published a “Diversity, Equity, and Inclusion” report, both of which can be used to calculate a corporation's ESG rating by index providers and investment advisers.³⁶ However, reporting indicates that operating in the private prison industry presents significant risks.³⁷ Investors deserve clarity around how ESG ratings are calculated, especially when internal corporate policies and procedures, like racial equity audits and reports, are more heavily weighed in screening tools than external community impacts.

Based on our analysis, we recommend that investment advisors disclose how screening tools are applied and assessed.

We strongly support the SEC’s proposed rules for the “ESG Disclosures for Investment Advisers and Investment Companies” and the “Amendments to the Fund ‘Names Rule’.” We believe that strengthening and finalizing these rules is an important step towards improving the integrity of the ESG investment industry and protecting investors. We hope that these rules also build upon a strong final rule for “The Enhancement and Standardization of Climate-Related Disclosures for Investors” that will require disclosure of corporations’ community impacts as a key component of climate-related financial risk. As our country navigates climate catastrophe and a racial justice reckoning, we will continue to urge the SEC to require additional disclosures regarding

³⁴ “CoreCivic 2021 Annual Report (10-K).” Securities and Exchange Commission. Accessed August 4, 2022. https://www.sec.gov/ix?doc=/Archives/edgar/data/1070985/000156459022005663/cxw-10k_20211231.htm;

“iShares ESG Screened S&P Small-Cap ETF.” iShares by Blackrock. Accessed July 29, 2022. <https://www.ishares.com/us/products/315920/>

³⁵ Ibid.

³⁶ Fang, Lee. “Green-Colored Glasses: Private Prisons Are a Socially Responsible Investment, According to Bizarre Wall Street Measures.” The Intercept. June 27, 2022. <https://theintercept.com/2022/06/27/esg-funds-corporate-responsibility-dei/>

³⁷ “Private Prisons and Investment Risks Part Two: How Private Prison Companies Fuel Mass Incarceration - and How Public Pension Funds are at Risk.” The American Federation of Teachers. 2019. Page 8. <https://www.aft.org/sites/default/files/private-prisons-invest-2019-part2.pdf>

adverse community impacts of investee corporate activities, particularly from polluting and carceral industries, that pose risks to ESG fund investors.

Respectfully submitted,

198 methods
350 Conejo/San Fernando Valley
350.org
350 Kishwaukee
350 NYC
Accelerate Neighborhood Climate Action
Action Center on Race and the Economy
AFGE Local 704
Americans for Financial Reform Education Fund
Animals Are Sentient Beings Inc
Association of Young Americans
Ban SUP (Single Use Plastic)
Businesses for a Liveable Climate
Call to Action Colorado
Catholic Network US
Center for International Environmental Law
Change Finance
Citizen's Alliance for a Sustainable Englewood
Climate Finance Action
Climate Hawks Vote
CO Business for a Liveable Climate
ColorBrightonGreen.org
Community for Sustainable Energy
Consumer Action
Divest Oregon: Reinvest in a Fossil Free Future
Earth Ethics, Inc
Elders Climate Alliance
Environmental Justice Team, Cedar Lane UU Church
Extinction Rebellion Phoenix
Frack Tracer Alliance
Friends of the Earth USA
Good Neighbor Steering Committee of Benicia
Greater New Orleans Housing Alliance
1-70 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

Mayfair Park Neighborhood Association Board
Media Alliance
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(NACCE)
North Range Concerned Citizens
Positive Money US
Private Equity Stakeholder Project
Public Citizen
Rainforest Action Network
Rapid Shift Network
Resist the Pipeline
Resource Renewal Institute
Revolving Door Project
River Valley Organizing
Saphron Initiative
Save EPA (former employees)
Seeding Sovereignty
Seventh Generation
Sisters of St. Dominic of Blauvelt, New York
Small Business Alliance
SoCal 350 Climate Action
Solar Windworks
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
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

Vote Climate

Wall of Women

Waterway Advocates

Western Slope Businesses for a Livable Climate

Wilwerding Consulting, also Co-Chair, Littleton Business Alliance

Womxn from the Mountain

Working for Racial Equity