Monday, August 15, 2022

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

Re: Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (File Number S7-17-22); Fund Names Rule Amendment (File Number S7-16-22).

Dear Ms. Countryman,

Thank you for the opportunity to comment on the Security and Exchange Commission's ("SEC") proposed rules, the Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices ("Disclosure Rule") and the Fund Names Rule Amendment ("Names Rule"). Evergreen Action is a national non-profit helping lead the fight to put bold climate action at the top of America's agenda, implement an all-out mobilization to defeat climate change, and create millions of good jobs in an equitable clean energy economy.

We are writing to express our support for both the Disclosure Rule and Names Rule. Our organization views these two proposed rules as vital steps to equipping investors with key information they need to make well-informed decisions about ESG funds in the face of a rapidly changing climate.

As ESG investments have grown in popularity, the use of investment terms like "sustainable," "green," or even "ESG" itself have been used without proper oversight as to how good they are for the environment or how well they counter environmental or climate risks. For example, a recent report published by ACRE found that two of Vanguard's five ESG funds funneled money into fossil fuels, petrochemicals, and plastic manufacturers with poor environmental records. Meanwhile, six out of the 20 of the world's biggest ESG funds were invested in ExxonMobil, one of the world's largest greenhouse gas emitting companies. And in the past two years, Deutsche Bank AG's asset-management arm, DWS Group, and Goldman Sachs were investigated after they were found to have overstated the ESG credentials of some of their products. As such, Evergreen Action supports the SEC's efforts to help provide accurate, consistent information to investors increasingly looking to make climate-smart investment decisions. By using your clear authority to help correct the persistent problem of greenwashing ESG funds, this proposed rule will help the SEC fulfill its mission.

At the same time, we are also writing to offer recommendations on how to strengthen these rules. Our comments follow below:

<u>Disclosure Rule:</u>

Recommendation 1: Require disclosure of ESG funds' top three investments.

In Questions 5 of the Disclosure Rule, commenters are asked what additional disclosures about an Integration Fund would be helpful to an investor. Question 24 asks a similar question in relation to ESG-Focused Funds. We believe the SEC should require both Integration Funds and ESG-Focused Funds to disclose their **top three fund investments,** aligning with a proposal first put forward by Americans for Financial Reform (AFR). This information will help investors easily and quickly discern a more accurate sense for the contents of a fund. This is particularly important for retail inventors and funds that track an index, because the description of their strategy may not provide an accurate picture into the funds' makeup.

Recommendation 2: Improved clarity and transparency around disclosure of greenhouse gas emissions.

In response to Question 6 of the Disclosure Rule, Evergreen Action believes that an Integration Fund that considers the greenhouse gas emissions of its portfolio holdings as an ESG factor in its investment selection process must disclose how it considers the greenhouse gas emissions of its portfolio holdings. This should include a description of the methodology.

Furthermore, the SEC should require all ESG funds that *do not* have a policy or strategy for considering greenhouse gas emissions in their ESG criteria to make this clear in their prospectus. This will avoid misleading investors. ESG Integration Funds that *do* have such policies or strategies should be required to affirmatively state that they consider greenhouse gas emissions as a criteria and outline their methodology. In addition, ESG-Focused Funds should also provide their greenhouse gas emissions figures. This will help investors understand the role climate emissions play in particular ESG funds.

Recommendation 3: Investment advisors must strengthen their disclosure regarding specific climate impacts of extractive and polluting industries in Black, Indigenous and People of Color (BIPOC) communities and frontline communities.

We recommend that ESG funds disclose data about any negative community-level impacts associated with extractive and polluting industries. This should encompass allegations of human rights violations, infringement of Indigenous rights, negative public health impacts, or threatened livelihoods.

<u>Names Rule:</u>

Question 63 asks: *"Should we, as proposed, define a fund name as materially deceptive and misleading when the fund is an integration fund that uses ESG terms in its name? Are there circumstances in which an integration fund's use of an ESG term in its name would not be materially deceptive and misleading?"*

Yes, Evergreen Action strongly supports the SEC's proposal to define the names of Integration Funds as materially deceptive and misleading if they include any Environmental, Social, and Governance (ESG) terms and that intent is not reflected in the funds' portfolio.

Under the Investment Company Act and Investment Advisers Act, investment advisers owe a fiduciary duty of care to investors. As part of this, investment advisers are required to provide "investment advice in the best interest of its client, based on the client's objectives" (p. 8). When these duties are not being upheld, as in the case of misleading ESG fund names, the SEC must act. At the same time, investors have the right to obtain accurate information from asset managers that are marketing funds with ESG factors. This is particularly important for retail investors, who may not have the expertise or time to look beyond the fund name to evaluate asset managers' claims.

Integration Funds, defined in the SEC's Names Rule in the below footnote,[1] make up a large portion of the ESG funds currently available to investors. By eliminating the use of ESG-related terms for Integration Funds, investors would be less likely to be deceived by the claims of a fund.

Question 51 asks, *"Should the rule require certain funds, such as index funds, to invest a greater percentage of their assets in the investment suggested by the fund's name, (e.g. 95%?) As another example, should ESG-focused funds be subject to a greater percentage (e.g. 85%) than the proposed 80%? Why or why not?*

We believe that investors should have access to information that informs them if ESG funds have less than 100% of their portfolio invested in what the name advertises and the reasons for this breakdown.

We thank the SEC for issuing this proposal, and warmly encourage further strengthening this proposal in the above ways. Thank you for considering our comments.

Respectfully,
Mattea Mrkusic, Policy Lead
Evergreen Action
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[1] Integration Funds are defined on p. 18 of File No. S7-16-22 as a "fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but such 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."