August 16, 2022

VIA ELECTRONIC FILING

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

Re: Files No. S7-16-22 and S7-17-22, Environmental, Social and Governance Disclosures for Investment Advisers and Investment Companies; and, Investment Company Names

Dear Ms. Countryman:

Impact Capital Managers, Inc. welcomes the opportunity to submit comments in response to the Securities and Exchange Commission's (SEC) two new proposed rules: Environmental, Social and Governance[1] Disclosures for Investment Advisers and Investment Companies, and Investment Company Names (referred to within as the ESG Rule and the Names Rule, respectively; collectively, the Proposed Rules).

Impact Capital Managers, Inc. (ICM)[2] is a trade association representing the best-in-class private capital fund managers investing for superior financial returns along with meaningful positive impact. Today the network includes approximately 100 member funds collectively representing more than $40 billion in impact-focused capital across venture capital (VC), private equity, private debt and real estate strategies.

ICM members are active or former investors in over 1400 portfolio companies. Many of those are now large private and public companies responsible for generating hundreds of thousands of jobs across the U.S. and demonstrating that businesses focused on addressing urgent problems – from climate change to inequitable opportunities for underserved communities – can be both socially responsible *and* profitable. We believe that capital formation for companies with these "double-bottom line" benefits should be facilitated by regulatory requirements. Providing

[1] ESG

[2] For more information about the Impact Capital Managers including its board and members, please visit ICM's website at https://www.impactcapitalmanagers.com

investors with decision-useful and reliable environmental, social and governance (ESG) and impact information is important for both efficient capital allocation and risk management.

Further Context on Impact Capital Managers, Impact Investing, and Greenwashing

The Impact Capital Managers membership association was formed to advance the performance of its members and to scale the field of impact investing with integrity and authenticity. We have criteria for our members which include – but are not limited to – an established track record of financial performance as well as standards on impact measurement and management.

Our standards are rooted in a set of global definitions and practices that have long defined impact investors within the broader responsible investing market, such as intentionality and measurement. At ICM, all members must (1) define impact objectives for their portfolio, (2) establish an impact management and measurement process, (3) define their contribution as fund managers to the impact of their investments, and (4) measure the impact of each underlying portfolio company investment. These four practices are generally aligned with the widely accepted Impact Principles, incubated at the IFC. Many of our members go beyond these four. Over the next year, we will be working closely with a group of market leaders to establish best practices for private capital impact funds regarding ESG factors, taking into consideration the unique opportunities and challenges for VCs and smaller funds and companies.

Greenwashing and impact-washing are directly relevant to us as we seek to differentiate ourselves from the proliferation of funds that are Impact or ESG in name only. Funds claiming to be either must back up that label with credible practices. We also see firsthand how institutional investors' understanding of Impact and ESG continues to evolve rapidly both here in the U.S. and abroad. Given these realities – both the established definitions within impact investing and the dynamic nature of ESG and risk management in broader private markets – the SEC should consider which requirements should be addressed through Regulation vs. Guidance.

Summary of Recommendations

As impact investors with defined objectives, accountability mechanisms, and processes, we share the SEC's concerns about "greenwashing," which we would define as using ESG or Impact as a marketing tool rather than as an authentic investment objective and process. Greenwashing misleads investors and diverts capital, unfairly damaging authentic and transparent Impact and ESG funds and the companies that such funds seek to grow economically and support in their beneficial impacts. Both Proposed Rules make headway in addressing greenwashing and improving transparency for investors.

Nonetheless, if finalized as currently written, the Proposed Rules could result in serious unintended negative consequences that would undermine their beneficial objectives. ICM

conducted a written survey of our members[3] in an effort both to represent our members' views and to anticipate market reactions to the SEC's proposals. Having considered the survey results and conferred with various peer networks, we offer the following comments to improve the ESG Rule and support the Names Rule:

1. Impact should not be labeled as a subset of ESG; if categories are established "Impact" should not include the "ESG" moniker.
2. Creating named categories of funds or strategies – especially for Integration – may have adverse unintended consequences without commensurate benefits to investors; the disclosure requirement should be geared to marketing rather than the proposed categories.
3. The proposed check-the-box list and linked Fund disclosures will generate more confusion than clarity for (Impact) investors; related recordkeeping is inappropriate.
4. The proposed Names Rule amendment will appropriately reduce Greenwashing.
5. The Adviser Disclosure Requirements should target preventing greenwashing ideally without burdening smaller asset managers; *impact* disclosure requirements should allow for some flexibility in approach.
6. Mandatory disclosure of GHG Metrics by funds should relate only to public and large, established private companies.

1. Impact should not be labeled as a subset of ESG; if categories are established "Impact" should not include the "ESG" moniker

Impact Investing should not be categorized as a subset of ESG Investing. Impact investing and ESG investing are different enough that they warrant unique categories – if categorization is implemented; see critique below – by regulators. As previously mentioned, we believe that the institutional investor marketplace currently understands that Impact is different from ESG. Managing for ESG is different than managing for intentional, measurable impact.[4]

Impact Investing has a commonly understood definition from the Global Impact Investing Network (the GIIN) that includes the elements of intentionality and measurement, which are indeed utilized in the proposed regulation. Nonetheless, it will add confusion rather than clarity to stray from the GIIN's definition:

> Impact investments are investments made with the intention to generate positive, measurable social and environmental impact alongside a financial return.[5]

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[3] While ICM members operate in the private market, approximately half of survey respondents are RIAs or have funds registered with the SEC. The SEC's Proposed Rules are thus highly relevant to our group.

[4] This distinction is especially true for early-stage venture capital investors. Recognizing that the regulation does not apply to (exempt) VC funds, the Proposed Rules would nonetheless set investor expectations and assumptions that could easily result in confusion and misallocation of capital.

[5] https://thegiin.org/impact-investing/need-to-know/#what-is-impact-investing

As impact investors, ICM's member funds are *not only* concerned with good governance, operational risks, or the effects of climate change on their portfolio companies' bottom line. While cognizant of these external factors – typically considered ESG factors – our members are backing innovative companies that are *directly contributing* to solutions through their core products and services, companies that have the potential to deliver impact at scale and attractive returns to investors. **These companies are in the business of net positive environmental and social change; what they create is the primary driver of their impact.** For example, an ESG fund would traditionally be concerned with how climate change affects the bottom line of its companies; it may be disinclined to act in the best interest of investors until climate change poses a material risk to the company. An Impact fund on the other hand would be concerned with the way the bottom line of its company affects climate change. These investors are proactively managing toward a positive, quantifiable outcome from day one. In short, considering ESG for risk management purposes is a different process than investing with the intention of generating a positive measurable impact.

ICM survey results support this distinction: 72% of respondents asserted: *"We classify ourselves as an impact investor, and we seek to achieve a specific impact, plus we also take ESG factor(s) into account as significant factors in our investment decisions or engagement."* 80% of respondents were strongly against treating Impact as a subset of ESG. And almost half of survey respondents believe that ESG and impact are at **opposite ends** of a linear spectrum in which ESG integration focuses largely on risk management and Impact focuses on intentionally, positively impacting some stated goal. The Bridges Fund Management "Spectrum of Capital" (page 3) is instructive here.[6]

In the words of our members:

> *"Impact investors seek to have an impact on society at large through investments in companies and products whose mission is positive impact. ESG investors invest in companies with solid ESG factors internally, but those factors are not central to the product they deliver."*
>
> *"We classify ourselves as an impact investor, and we seek to achieve a specific impact, plus we also take some ESG factors into account as *secondary* factors in our investment decisions or engagement but they are not our focus. We do not want additional ESG (non-primary) requirements to add to our primary impact management and measurement efforts and resources when they are not a core part of our strategy."*
>
> *"Impact funds should be able to use the impact label If their intention is specified and measured – i.e., meets the GIIN's definition of investing for an intentional positive non-financial outcome alongside investor return and measuring the impact. Other ESG issues need not be part of the objective or analysis."*

[6] https://www.bridgesfundmanagement.com/wp-content/uploads/2017/08/Bridges-Spectrum-of-Capital-print.pdf

> *"We see ESG integration as a separate dimension (considering financial risks & opportunities related to ES impacts/exposure, or G practices) vs. intending to have a measurable impact on wider stakeholders with the investment."*

Other members indicated that impact investing strategies focused on certain social outcomes – such as improving education systems – that cannot be defined as "*improving ESG within an organization"* even though they are laser focused on impact for the greater good.

Investors should receive consistent, effective disclosures for both kinds of funds: ESG funds and Impact funds. However, making impact funds a subset of ESG-Focused as the Proposed Rules are currently written ultimately detracts from clarity in the marketplace and does a disservice to the investors who would allocate to either strategy.

2. Creating named categories, especially for "Integration," of funds and strategies may have adverse unintended consequences without commensurate benefits to investors; disclosure requirements should be geared to marketing rather than the proposed categories.

One of the most troublesome aspects of the Proposed Rules is the categories of Integration and ESG-Focused – with ESG Impact as a subset of the latter. Our views are:

- The categories create unintended incentives for funds and investment advisers to identify as Integration with the lowest regulatory burden (and least disclosure to end users). In the words of one ICM member, "*The higher standard of disclosures for ESG Focused funds may push advisers to self-identify as ESG Integration so their ESG strategy is not scrutinized by the SEC."* Another member noted, "*It is more likely that registered funds will take the path of least resistance, whether it is E or S.*"
- Distinguishing between Integration and all other funds and strategies is as challenging as distinguishing between Integration and ESG-Focused. More sensible would be the approach of generally imposing upon all registered funds (and business development companies) the obligations described in "Integration Funds."
- The Integration category of funds is not needed as governance factors and at least some environmental and social considerations have long been part of investment analysis – for material financial (long-term) and *not* political reasons. Also, singling out ESG or Impact considerations for enhanced disclosure in a fund or a strategy that does not market itself based on such considerations could mislead investors into assuming such considerations have more significance than they actually do in the investment process.
- Problems with the ESG-Focused category also exist. For example, the Proposed Rules would consider any funds that apply an inclusionary or exclusionary screen to be within this category, which could easily result in funds and strategies whose asset managers do not consider such to be ESG-Focused being labeled as part of this category. Further, the dividing line between investment research and screening is not necessarily clear. Investor and asset manager confusion would be the result.

- Those funds and advisers that consider ESG or Impact authentically should *not* be penalized by regulation. After all, we note that current regulations do not require funds to disclose a full listing of the factors considered in investment decisions. Thus, all registered funds should be required to meet the obligations that the Proposed Rules apply to Integration funds. Disclosure of consideration of ESG factors would be accurate and proportionate with this approach.

The better approach in dispensing with these named categories would be to gear ESG or Impact enhanced disclosures to those fund and RIA[7] strategies whose marketing materials or names would indicate they incorporate one or more environmental or social factors by using them as a regular and significant consideration in investment decisions. The degree to which an ESG factor is considered should not trigger the burden (and potential liability); rather, the marketing of such funds or strategies should be the trigger. This approach is largely consistent with the adage, "Say what you do and do what you say."

Finally, the CFA Institute has developed the Global ESG Disclosure Standards for Investment Products[8]. While ICM did not survey its members about this document, its standards appear to us to be a useful (and wise) model for regulators. We encourage the SEC to consider carefully these standards and forms in creating its regulatory requirements.

3. The proposed check-the-box list and linked Fund disclosures will generate more confusion than clarity for (Impact) investors; related recordkeeping is inappropriate.

The proposed check-the-box list is inappropriate for funds investing in private companies. An overarching concern is that the existence of a check-the-box list could easily create questions in the minds of retail investors, who intuitively might view more checks as better. In addition, the meaning of screening and engagement is unclear regarding private companies.

Unsurprisingly, over 90% of survey respondents "seek to achieve a specific impact" and disclose that to investors readily – this box's label is not problematic; it is the other boxes that generate confusion. Over 64% responded that the proposed checklist would not appropriately showcase the approach of funds investing in smaller private companies or is appropriate for investments in public companies; only 9% favored[9] the proposed checklist. Tracking indices and proxy voting obviously are not applicable for funds investing in private companies. Engagement with company management and screening of potential investments take different forms and significance in

[7] Registered Investment Adviser

[8] www.cfainstitute.org/en/ethics-standards/codes/esg-standards

[9] One supporter of the checklist recommended these be added: *"Consideration of ESG data in investment selection" and "Voting as a member of the Board."* Another responded, *"We do see some value in creating two separate check lists, one for ESG-focused funds (or public equities-focused investing) and one for] impact investing*."

private markets. These distinctions will not be obvious to retail investors, and the check boxes will create more confusion than clarity.

In private markets where most of impact investing currently occurs, engagement and inclusionary/exclusionary screening take quite different forms than in public markets – both for funds and for advisers. Should an asset manager take a board seat, even if done in conjunction with other fund managers, the engagement record-keeping and measurement should take a more appropriate (and less onerous) form than that of the proposed regulation – which appears to have been drafted only with public companies in mind. Indeed, almost two thirds of survey respondents reacted strongly that recordkeeping and disclosure should not be required of engagement with smaller private companies. In their words:

> *"[The SEC should exclude] funds with <$1B in AUM and/or companies with revenues of <$500M [from the engagement recordkeeping]. Also if a fund is doing a pre-investment screen on positive impact or ESG issues and investing in those companies, this engagement strategy is less relevant. ESG improvement via investor contribution and engagement is one method by which an investor can seek to make ESG investments. Another method is to create a high bar and only invest in companies that need less engagement. Also, meeting frequency does not account for email communications or other information sharing and goal setting exercises that can take place outside of meetings with companies and the engagement count should include other types of communication, than just meetings."*

> *"We keep records consistently regarding engagement with public issuers. The challenge we have with engagement with private issuers is that engagement on ESG is often integrated into conversations about other topics, so it can become messy to define who engaged on ESG when. We are working on a better solution to this for our own purposes (using record keeping in our CRM), but it is an additional burden."*

> *"We also note the engagement recordkeeping requirement is different and an additional burden vs. SFDR."*

A summary overview of all registered funds' ESG strategies could be useful to investors if it is limited to a concise description of how funds incorporate (or disregard) E, S and/or G factors in their investment decisions. If a fund uses screens or engagement, etc., these elements could be mentioned without the "check the box" presentation. Given the ever-evolving nature of ESG as well as the extent to which Impact incorporates some elements of ESG, guidance from the SEC would seem to be a better mechanism for promoting consistency amongst fund disclosures. Such guidance could include recommendations for describing ESG strategies in the summary including identifying terms that should be used or avoided and could adapt to the differences – as well as some of the overlap -- between Impact and ESG oriented funds.

4. The proposed Names Rule amendment will appropriately reduce Greenwashing.

The Names Rule will appropriately reduce Greenwashing and Impact-washing, according to 55% of survey respondents. Additionally, 55% of survey respondents say they "support the expansion of the 80% Rule to apply to all strategies, not just ESG." And, while over 70% of respondents believe that investors in their funds today are sophisticated enough to sniff out greenwashing, they nonetheless worry about the ways in which other funds may be (mis)using the label and how that may engender skepticism and confusion that affects credible fund managers:

> *"It has raised some doubt of the true intention of ESG/impact funds. And it has allowed some mega fund managers to cross over into impact/ESG and use their money raising machines to raise huge funds."*
>
> *"A host of climate funds have emerged in the last few years with very limited definition - and that has affected the market perception of funds that are actively integrating climate and ESG into strategy."*
>
> *"Our impact and financial outcomes are clear to investors, but greenwashing is a concern in terms of defining, growing, and strengthening the broader field of impact investing."*
>
> *"It can be challenging to distinguish ourselves/compete in a deal with larger investors that take an ESG integration approach."*
>
> *"In general, once an investor is speaking with us, greenwashing doesn't hurt us because they will go deep and learn what we do. However, I think it hurts the industry at large and dampens potential interest from newer impact investors."*

Regarding Fund Names that relate to Impact, fully 74% of survey respondents agreed that compliance with the GIIN's definition should be the standard rather than the SEC's definition in the Proposed Rules.

5. Adviser Disclosure Requirements should target preventing greenwashing without burdening smaller asset managers; Impact disclosure requirements should allow for some flexibility in approach.

Similar to the reservations expressed in #2 above, we do have some concerns about disincentivizing Advisers from developing ESG or Impact strategies by creating unusually detailed disclosure requirements for those strategies (when compared to requirements related to other market strategies).

In reacting to the Proposed Rules' Impact disclosure requirements, one respondent raised a variety of technical concerns regarding the level of detail required and the potential for liability. Impact investments *"may be immature or unproven…. In many instances it takes years for true*

measurable impact to occur." The impact may only be realized after the private company is acquired, so does *"the impact of the acquired company get attributed to the fund?"* Validation obviously adds costs and may not be appropriate annually, especially for novel technologies. Others wrote:

> *"Each portfolio company may have a distinct target impact that is difficult to neatly summarize at the advisor or fund level and requires details on a company-by-company basis. This can be complex to report, particularly prospectively for a new fund that is new/young in its investment stage…."*
>
> *T*he ADV-2 compliance costs would require "*an initial setup cost of approximately $300k-$450k and annual compliance costs of $200k-$300k*."
>
> *"I am concerned that impact funds will have higher levels of SEC oversight and exams on broader ESG issues (outside of primary target impacts that are communicated to investors) and therefore will face undue scrutiny and consequences as a result when these funds are not promising a high degree of broad ESG engagement to investors and focusing intently on target IMM practices."*
>
> *"It will be very ironic if these rules are applied inequitably...in other words, if these rules disadvantage the less advantaged. Ironic because ESG criteria assess inclusion and equity as part of the analysis, and impact investing aims to drive inclusion and equity. For impact investors, our goal is to transition to a market that accounts for social and environmental externalities and incentivizes net-positive outcomes ...that needs to be accomplished here, by the regulators, as well. the system has to be set up to perpetuate (incentivize) the desired feedback loop."*

Despite this policy concern about disincentives and technical and other apprehensions raised by our members, we also note from the survey that over 90% of respondents already disclose information about the strategy's progress in achieving its stated impact objective as part of their current impact management and measurement practice. Tailoring the regulatory requirement to current best practices within impact investing makes good sense as does leaving room for flexibility. With this in mind, *guidance* may better achieve the SEC's objectives than fixed regulation.

Whether through regulation or guidance, an effective Proposed Rule should avoid inadvertently penalizing those fund managers who are on the pathway to greater consideration of ESG and Impact, and those Advisers that market their ESG or Impact considerations in investment decisions should provide a concise yet proportionately detailed description of their ESG or Impact strategies or activities.

6. **Mandatory disclosure of GHG Metrics by funds should relate only to public and large established private companies.**

In the case of GHG metrics, a majority of survey respondents believe that such disclosures are appropriate to be aggregated regarding publicly listed companies, but in the private market context, only for large, later-stage companies. This is a different limitation than the Proposed Rules' focus on fund strategy as triggering or exempting disclosure. Such data for public and large private companies would be more readily available so that costs of compliance would be reduced.

One respondent illustrated the concern this way: "*This rule has little applicability to fund investing in young or early stage companies. How does a 5 person company that may not have even shipped a product consider its WACI? How would a fund try to validate any related calculation? Perhaps this rule should apply to funds where greater than 50% of investee companies are at least 10 years with annual revenue is excess of $100M. In order for this regulation to make sense the company and product needs to be proven and predictable."*

An unintended consequence of this rule was articulated by other survey respondents, such as this cautionary comment regarding the exemption from disclosure for funds stating they do not consider GHG emissions: the "*disclosure exception will incent funds to not consider GHG emissions*."

Separately, a final thought on **Interoperability**: "*We strongly push for interoperability of compliance between SFDR and SEC rules."*

To conclude, Impact Capital Managers both endorses the objectives of the Proposed Rules and advocates for paring them back – an approach that should not trigger the need for a re-proposal. The refinements discussed above to the Proposed Rules would facilitate more effective means to combat greenwashing and to provide investors with decision-useful information. Adjusting the Proposed Rules to private markets – i.e., investments in smaller private companies – and dispensing with the categories of funds and strategies would avoid confusing investors and creating unintended negative consequences. By focusing in a somewhat more targeted and limited fashion on diminishing the disingenuous marketing that is greenwashing, the Proposed Rules would better support asset managers in fulfilling their fiduciary duties to their asset-owner investors and fostering these investors' understanding of the effects of their investments. Advancing the integrity of Impact and authentic ESG funds and strategies would benefit the increasing numbers of investors seeking consideration of ESG and Impact in allocating their capital.

Thank you for the opportunity to comment from our practitioner perspective on these two important Proposed Rules. We would be pleased to discuss any aspect of our comments with the Commission.

Yours sincerely,

IMPACT CAPITAL MANAGERS, INC.

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