SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 232, 239, 249, 274, and 279

[Release No. 33–11068; 34–94985; IA–6034; IC–34594; File No. S7–17–22]

RIN 3235–AM96

Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend rules and forms under both the Investment Advisers Act of 1940 (''Advisers Act'') and the Investment Company Act of 1940 (''Investment Company Act'') to require registered investment advisers, certain advisers that are exempt from registration, registered investment companies, and business development companies, to provide additional information regarding their environmental, social, and governance (''ESG'') investment practices. The proposed amendments to these forms and associated rules seek to facilitate enhanced disclosure of ESG issues to clients and shareholders. The proposed rules and form amendments are designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry. In addition, we are proposing an amendment to Form N–CEN applicable to all Index Funds, as defined in Form N–CEN, to provide identifying information about the index.

DATES: Comments should be received on or before August 16, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–17–22 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Robert Holowka, Emily Rowland, or Samuel Thomas, Senior Counsels; or Christopher Staley, Branch Chief, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management; or Zeena Abdul-Rahman, Pamela K. Ellis, Amy Miller, or Nathan R. Schuur, Senior Counsels; Sara Cortes, Senior Special Counsel; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to the information displayed at 17 CFR 200.800; 17 CFR 230.497 (''rule 497'') under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''); 17 CFR 232.11 (''rule 11 of Regulation S–T'') and 17 CFR 232.405 (''rule 405 of Regulation S–T'') under the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*]; amendments to Form N–1A [17 CFR 239.15A and 274.11A], Form N–2 [17 CFR 239.14 and 274.11a–1], Form S–6 [17 CFR 239.19], Form N–8B–2 [17 CFR 274.12], Form N–CEN [17 CFR 249.330 and 274.101], and Form N–CSR [17 CFR 249.331 and 274.128] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''); and amendments to Form ADV [17 CFR 279.1] under the Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (''Advisers Act'').

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I. Introduction

Many registered funds and investment advisers to institutional and retail clients consider environmental, social, and governance (''ESG'') factors in their investment strategies.[1] Investor interest in ESG strategies has rapidly increased in recent years with significant inflows of capital to ESG-related services and investment products.[2] Asset managers, as key conduits for these investments, have responded to this increase in investor demand by creating and marketing funds and strategies that consider ESG factors in their selection process.[3]

Investors looking to participate in ESG investing face a lack of consistent, comparable, and reliable information among investment products and advisers that claim to consider one or more ESG factors. This lack of consistent, comparable, and reliable information can create a risk that a fund or adviser's actual consideration of ESG does not match investor expectations, particularly given that funds and advisers implement ESG strategies in a variety of ways.[4] The lack of specific disclosure requirements tailored to ESG investing creates the risk that funds and advisers marketing such strategies may exaggerate their ESG practices or the extent to which their investment products or services take into account ESG factors. With respect to environmental and sustainability factors, this practice often is referred to as ''greenwashing.'' The absence of a common disclosure framework also makes it difficult for investors to find the disclosures and to determine whether a fund's or adviser's ESG marketing statements translate into concrete and specific measures taken to address ESG goals and portfolio allocation. It also makes it difficult for investors to understand how effectively the strategy is implemented over time, and can frustrate investors' attempts to compare different ESG strategies across funds or advisers.

The Commission's commitment to improving the information provided to investors in disclosures is longstanding. For example, the Commission has long required funds to provide key information about a fund's fundamental characteristics, while requiring advisers to provide clear information about their advisory businesses and the investment strategies they utilize or recommend to clients.[5] Consistent with this goal, standardized disclosure of a fund's principal investment strategies and other key attributes, along with information about advisory practices, is integral to investors' understanding the specific types of investments or investment policies underlying certain strategies when making informed decisions about funds and advisers. As discussed below, the range of matters that different funds and advisers consider in implementing ESG strategies, in addition to the increased investor demand for investments in these strategies, requires strategy-specific disclosures. That will improve information available to investors by providing investors with an interest in ESG investing with key information that is material to their investment decisions.

Accordingly, we are proposing various disclosure and reporting requirements to provide shareholders and clients improved information from funds and advisers that consider one or

[1] *See* Carlson, Debbie, ''ESG Investing Now Accounts for One-Third of Total U.S. Assets Under Management'', Market Watch (Nov. 17, 2020), *available at https://www.marketwatch.com/story/esg-investing-now-accounts-for-one-third-of-total-u-s-assets-under-management-11605626611. See also* Letter from Morningstar to Chair Gensler (June 9, 2021) attaching Sustainable Funds U.S. Landscape Report—More funds, more flows, and impressive returns in 2020, Morningstar Manager Research (Feb. 19, 2021), *available at https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf.*

[2] U.S. sustainable investments increased from $639 billion in assets under management (''AUM'') in 1995 to $17.1 trillion by 2020. The end of the last decade in particular saw extensive growth as the total U.S.-domiciled assets integrating ESG strategies grew from $12.0 trillion in 2018 to $17.1 trillion by 2020. This represented a 42% increase that brought the total amount of assets considering ESG strategies to 33%, or 1 in 3 dollars of total U.S. assets that are professionally managed. *See,* U.S. Sustainable Investing Forum, The Report on U.S. Sustainable and Impact Investing Trends (Nov. 16, 2020), *available at: https://www.ussif.org/files/Trends/2020_Trends_Highlights_OnePager.pdf.* For purposes of this Release, when discussing investors in funds and clients of investment advisers, we generally use the term ''investors'' unless otherwise required by the context.

[3] *See* U.S. Government Accountability Office (''GAO''), GAO–20–530, Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them (July 2020), *available at https://www.gao.gov/assets/gao-20-530.pdf* (stating that institutional investors seek ESG information to understand risks that could affect company performance, to inform proxy voting, or to enhance decision-making in portfolio management). *See also,* Boffo, Riccardo and Patalano, Robert, ''ESG Investing: Practices, Progress and Challenges'', Organization for Economic Co-operation and Development (''OECD''), (2020), *available at https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf* (noting that ESG investing has evolved in recent years to meet the demands of institutional and retail investors, as well as certain public sector authorities, that wish to better incorporate long-term financial risks and opportunities into their investment decision-making processes to generate long-term value).

[4] When referring to a ''fund'' in this release, we variously mean management investment companies registered on Form N–1A [17 CFR 274.11A] or Form N–2 [17 CFR 274 11a–1], unit investment trusts registered on Form S–6 [17 CFR 239.16], and BDCs, but not private funds as defined under the Advisers Act.

[5] *See* Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)] (amending Form N–1A to focus prospectus disclosure on key information to assist in investment decisions) and Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928 (Aug. 22, 1983)] (adopting Form N–1A and its two-part disclosure format permitting funds to provide investors with a simplified prospectus containing essential information along with a companion document called the ''Statement of Additional Information'' (''SAI'') with more detailed information). *See also* Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (adopting enhanced disclosure and new prospectus delivery option for registered open-end management investment companies including a plain English requirement and providing the statutory prospectus on an internet website) and Investment Adviser Act Release No. 3060 (July 29, 2010) [75 FR 49233 (Aug. 12, 2010)] (amending the Form ADV Part 2 ''brochure'' to require advisers to provide meaningful information in a clearer format, noting ''[t]o allow clients and prospective clients to evaluate the risks associated with a particular investment adviser, its business practices, and its investment strategies, it is essential that clients and prospective clients have clear disclosure that they are likely to read and understand'').

more ESG factors. These enhancements are designed to help investors, and those who provide advice to investors, make more informed choices regarding ESG investing and better compare funds and investment strategies. The proposed amendments create a framework for disclosures about a fund or adviser's ESG-related strategies. We are also proposing to enhance the quantitative data for environmentally focused fund strategies, where methodologies for reporting emissions metrics are becoming more standardized. In addition to these investor- and client-facing disclosures, we are also proposing that funds and advisers report census type information on their ESG investment practices in regulatory reporting to the Commission, which would inform our regulatory, enforcement, examination, disclosure review, and policymaking roles, and help us track trends in this evolving area of asset management. In addition to the ESG-specific disclosure, the Commission is proposing an amendment to Form N–CEN that would require all index funds, regardless of whether the fund tracks an ESG-related index, to report identifying information about the index. Finally, we are proposing to require funds to submit the ESG-related disclosures in a structured data language to make it easier for investors and others to analyze this data.

A. Background

1. Development and Growth of ESG Investing

''ESG'' is a term commonly used to incorporate three broad categories of interest for investors: Environmental, Social, and Governance.[6] Investor demand for ESG funds and advisory services has increased over the last decade, but consideration of ESG issues in investment decision making has deep roots. In the 1970s and 1980s, some asset managers began to integrate ESG factors into funds with social and environmental investment objectives, while the early 1990s saw the launch of the first ''socially responsible'' indexes.[7] Since the mid-2000s, many financial institutions have signed on to climate and sustainability-related investment frameworks.[8] In addition, a number of organizations have formed to promulgate disclosure reporting frameworks that incorporate environmental measures including: the Climate Disclosure Standards Board, Global Reporting Initiative, Sustainability Accounting Standards Board, and International Sustainability Standards Board.[9] These trends have accelerated in recent years as the asset management industry has increasingly focused on issues such as financing the transition from fossil fuels and mitigating risks associated with climate change, and additional voluntary [10] and regulatory [11] frameworks have developed.

Statistics measuring fund flows and assets under management reflect the increasing prevalence of ESG investing in recent years. The size and scope of the asset management industry's ESG investing landscape varies significantly depending, for example, on the focus of the analysis, the assumptions made, and how much of this evolving area is measured. For example, the U.S. Forum for Sustainable and Responsible Investment (''US SIF'') states that since 1995, the ''U.S. sustainable investment universe'' has increased more than 25 times from $639 billion to $17.1 trillion.[12] Morningstar found that at the close of 2020 the number of ''sustainable'' open-end funds and exchange-traded funds (''ETFs'') available to U.S. investors had experienced a nearly fourfold increase over the past decade with a significant acceleration beginning in 2015.[13] In the same report, Morningstar states that sustainable funds have set records for inflows in each of the past 5 years with more significant increases in 2019 and 2020.

Investors and other market participants increasingly demand access to ESG-related investment services, products, and data, as, according to one survey, 42% of institutional investors say they consider ESG factors when making an investment decision.[14] Another survey of professional fund

[6] For the purposes of this release and the proposed rules, the Commission uses the term ''ESG'' to encompass terms such as ''socially responsible investing,'' ''sustainable,'' ''green,'' ''ethical,'' ''impact,'' or ''good governance'' to the extent they describe environmental, social, and/or governance factors that may be considered when making an investment decision. These terms, however, are not defined in the Advisers Act, the Investment Company Act, or the rules or forms adopted thereunder.

[7] *See* Liu, Jess, ''ESG Investing Comes of Age, Morningstar'' (Feb 11, 2021) *available at: https://www.morningstar.com/features/esg-investing-history* (noting that the first sustainable mutual fund, ''Pax World,'' was launched in 1971 and the Domini 400 Social Index was launched in 1990).

[8] The United Nations Principles for Responsible Investment (''UN PRI'') launched in 2006 and called upon institutional investors to commit to six principles to integrate ESG issues into investment analysis and decision-making. *See* About the PRI, Principles for Responsible Investment, *https://www.unpri.org/pri/about-the-pri* (last visited Dec. 8 2021). The Forum for Sustainable and Responsible Investment and Ceres are two other notable institutional and investor-led initiatives.

[9] *See* Murray, Sarah, ''Measuring What Matters: the Scramble to Set Standards for Sustainable Business'' (May 13, 2021) *available at: https://www.ft.com/content/92915630-c110-4364-86ee-0f6f018cba90. See also* IFRS Foundation Announces International Sustainability Standards Board, IFRS (Nov. 3, 2021), *available at: https://www.ifrs.org/news-and-events/news/2021/11/ifrs-foundation-announces-issb-consolidation-with-cdsb-vrf-publication-of-prototypes/.*

[10] Several of these frameworks have relied on the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (''GHG Protocol'') that established measurable standards around reporting Scopes 1 and 2 GHG emissions that allow investors to more readily compare the emissions impacts of companies in their portfolios and conduct scenario analyses. *See* The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard, Revised Edition, *available at: https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf.* In addition, the Financial Stability Board (''FSB'') established the Task Force on Climate–Related Financial Disclosures (''TCFD'') in 2015 to develop a framework to foster consistent climate-related financial disclosures that could be utilized by organizations across sectors and industries, including advisers and funds. *See* Task Force on Climate-related Financial Disclosures, 2021 Status Report (Oct. 14, 2021) *available at https://www.fsb.org/wp-content/uploads/P141021-1.pdf.* In 2020, an international group of asset managers launched the Net Zero Asset Managers Initiative committing hundreds of signatories to the goal of achieving net zero gas emissions by 2050 or sooner. *See* Net Zero Asset Managers Initiative Progress Report (Nov. 1, 2021) *available at https://www.netzeroassetmanagers.org/media/2021/12/NZAM-Progress-Report.pdf.*

[11] In 2019, the European Commission adopted the Sustainable Finance Disclosure Regulation (''SFDR''), a sustainability disclosure framework for providers of certain financial products and financial market participants including asset managers. *See* Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 Nov. 2019 on sustainability-related disclosures in the financial services sector and Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 PE/20/2020/INIT (''Taxonomy Regulation'') (implementing a classification framework to help determine to what extent economic activities are environmentally sustainable by reference to six environmental objectives).

[12] US SIF Comment Letter (June 14, 2021). Our proposal takes into account the comments we received in response to Acting Chair Allison Herren Lee's requested public input on climate change disclosure from investors, registrants, and other market participants. *See* Acting Chair Allison Herren Lee Public Statement, *Public Input Welcomed on Climate Change Disclosures* (Mar. 15, 2021), *available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures* (''Climate RFI''). The comment letters are available at *https://www.sec.gov/comments/climate-disclosure/cll12.htm.* Except as otherwise noted, references to comments in this release pertain to these comments.

[13] *See* Letter from Morningstar to Chair Gensler (June 9, 2021) attaching Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020, Morningstar Manager Research (Feb. 10, 2021), *available at https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf.*

[14] *See* Whyte, Amy, ''More Institutions than Ever are Considering ESG. Will they Follow Through?'', Institutional Investor (Oct. 6, 2020), *available at https://www.institutionalinvestor.com/article/b1npm5yq50b024/More-Institutions-Than-Ever-Are-Considering-ESG-Will-They-Follow-Through.*

selectors and institutional investors indicated that 75% and 77% respectively believe that the consideration of ESG factors is integral to investment decision making.[15] Moreover, funds are increasingly selecting fund names to signal ESG considerations or converting existing funds into ESG or ''sustainable'' funds.[16] An analysis of Form N–PORT data indicates that 2.4 percent of all funds had names containing ''Sustainable,'' ''Responsible,'' ''ESG,'' ''Climate,'' ''Carbon,'' or ''Green'' as of September 2021.[17] The Forum for Sustainable and Responsible Investment has also documented continued growth in ESG funds, expanding from 55 funds in 1995, to 1,002 in 2016, and to 1,741 in 2020.[18]

2. Characteristics of ESG-Related Investment Products and Services

Approaches to ESG investing vary, which can pose challenges for investors choosing among investment products and services.[19] First, ESG is an expansive term that incorporates three broad categories of interest for investors and asset managers: environmental issues, social issues, and governance issues.[20] Some funds and advisers will consider only one issue under the ESG umbrella when making investment decisions, while others will apply the factors more broadly and implement measures across each of the ESG categories. Even those focusing on all three categories will have differing perspectives on what attributes of an issuer or investment fit within ESG.

Second, investment products that incorporate one or more ESG factors vary in the extent to which ESG factors are considered relative to other factors. This generally falls along a three-part spectrum: integration, ESG-Focused, and impact investing. We are incorporating these terms into our proposed rules.

Generally, ''ESG Integration'' strategies consider one or more ESG factors alongside other, non-ESG factors in investment decisions such as macroeconomic trends or company-specific factors like a price-to-earnings ratio.[21] In such strategies, ESG factors may be considered in the investment selection process but are generally not dispositive compared to other factors when selecting or excluding a particular investment.

''ESG-Focused'' strategies focus on one or more ESG factors by using them as a significant or main consideration in selecting investments or in engaging with portfolio companies.[22] For example, such ESG-Focused strategies might exclude or include certain investments based on particular ESG criteria. These factors could include, for example, screens for carbon emissions, board or workforce diversity and inclusion, or industry-specific issues. ESG-Focused strategies could also include engagement with management of the issuers in which the fund or adviser invests through proxy voting or direct engagement.

Finally, ''ESG Impact'' strategies have a stated goal that seeks to achieve a specific ESG impact or impacts that generate specific ESG-related benefits.[23] Impact strategies generally seek to target portfolio investments that drive specific and measurable environmental, social, or governance outcomes.[24]

Funds and advisers also vary in how they analyze, select, and manage investments to achieve their ESG objectives. Third-party service providers and ESG consultants (hereafter referred to as ''ESG providers'') have emerged that provide data to evaluate ESG factors, including issuer-specific ratings or scores. Some advisers and funds rely on these analyses and ratings, while others use them in combination with internal analyses. Other funds and advisers track indexes designed to select investments based on various ESG factors. Index providers are playing a large role in driving the flow of assets towards issuers that meet the indexes' ESG methodology.[25]

Funds and advisers also take differing approaches regarding how they engage on ESG issues with the issuers in which they invest, such as through proxy voting or manager engagement.[26] ESG-Focused Funds and advisers often use proxy voting and other engagement with issuers in their portfolios as a more deliberate piece of their strategy than other investment products.[27] As institutional investors increasingly integrate ESG into their engagement with portfolio companies and comply with their own internal ESG policies or investor mandates, proxy voting advice

[15] *See* Goodsell, Dave, 2021 ESG Investor Insight Report ESG Investing: Everyone's on the bandwagon, Natixis Investment Managers (2021), *available at https://www.im.natixis.com/us/research/esg-investing-survey-insight-report.*

[16] *See* Ghoul, El-Sadouk and Karoui, Aymen. ''What's in a (green) name? The consequences of greening fund names on fund flows, turnover, and performance.'' Finance Research Letters 39: 101620 (2021).

[17] *See infra* text accompanying note 249.

[18] *See* US SIF, Report on U.S. Sustainable, Responsible and Impact Investing Trends (2016), *available at https://www.ussif.org/files/SIF_Trends_16_Executive_Summary(1).pdf* and US SIF, Sustainable Investing Basics (2020), *available at https://www.ussif.org/sribasics.*

[19] *See infra* section III.B.3.

[20] *See* Asset Management Advisory Committee Recommendations for ESG (July 7, 2021) p. 4 (''AMAC Recommendations''), *available at https://www.sec.gov/files/spotlight/amac/recommendations-esg.pdf.*

[21] *See* Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction, Investment Company Institute, p. 4 (July 2020), *available at https://www.ici.org/system/files/attachments/pdf/20_ppr_esg_integration.pdf.* Some market participants and commentators refer to funds that consider ESG factors as just one among many factors as ''ESG consideration'' funds. *See* Jon Hale, A Taxonomy of Sustainable Funds, Morningstar, (Mar. 7, 2019) *available at: https://www.morningstar.com/articles/918263/a-taxonomy-of-sustainable-funds. See also infra* at section II.A.1.a. for the Commission's proposed definition of ESG Integration.

[22] Unlike the terms ''integration'' and ''impact,'' which are currently used within this market, ''ESG-Focused'' is not currently a commonly used term and can encompass a number of ESG-related strategies and labels used in the market. *See infra* at Section II. *See also, e.g.,* Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction, Investment Company Institute, p. 5 (July 2020), *available at https://www.ici.org/system/files/attachments/pdf/20_ppr_esg_integration.pdf.* (discussing how sustainable investing strategies are distinct from ESG integration in that they use ESG analysis as a significant part of the fund's investment thesis) [hereinafter ICI White Paper]; A Practical Guide to ESG Integration for Equity Investing, Principles for Responsible Investment, *available at: https://www.unpri.org/listed-equity/esg-integration-techniques-for-equity-investing/11.article.*

[23] *See* Burton, M. Diane, Chadha, Gurveen, Cole, Shawn A., Dev, Abhishek, Jarymowycz, Christina, Jeng, Leslie, Kelley, Laura, Lerner, Josh, Palacios, Jaime R. Diaz, Xu, Yue (Cynthia), and Zochowski, Robert. ''Studying the U.S.-Based Portfolio Companies of U.S. Impact Investors,'' Harvard Business School Working Paper, No. 21–130, (May 28, 2021), *available at https://www.hbs.edu/ris/Publication%20Files/21-130_1fd65a3f-c144-4338-b319-7aa205339968.pdf* (stating that impact investing is characterized by seeking both financial returns and a non-financial, social or environmental impact). For purposes of the proposed rule, we define Impact Funds as a subset of ESG-Focused Funds. *See infra* at II.A.1.b.

[24] ICI White Paper, at p. 8.

[25] *See* Fourth Annual IIA Benchmark Survey Reveals Significant Growth in ESG, Continued Multi-Asset Innovation & Heightened Competition (Oct. 28 2020), *available at http://www.indexindustry.org/2020/10/28/fourth-annual-iia-benchmark-survey-reveals-significant-growth-in-esg-amid-continued-multi-asset-innovation-heightened-competition/.*

[26] In 2021, the Commission proposed amendments to Form N–PX to enhance the information mutual funds, exchange-traded funds, and certain other funds report about their proxy votes including votes on ESG issues. *See* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (Sept. 29, 2021) [86 FR 57478(Oct. 15, 2021)] *available at: https://www.sec.gov/rules/proposed/2021/34-93169.pdf.*

[27] *See* AMAC Recommendations, *supra* footnote 20 at 9–10 (''experts consulted by the subcommittee . . . noted that ESG investment products engage in share ownership activities as a more deliberate piece of their strategy than many, but not all, other investment products . . . Investors in these ESG products, and other investment products, would benefit from clear, consistent statement [*sic*] regarding how ownership responsibilities are carried out by the product'').

businesses have sought to meet this demand by offering proxy voting recommendations that consider ESG factors.[28] While funds are required to report information about how they vote proxies, less is disclosed regarding other engagements they may have with issuers in their capacity as a shareholder.[29]

3. The Need for Specific ESG Disclosure Requirements

Currently, funds and registered advisers are subject to disclosure requirements concerning their investment strategies. Funds must provide disclosures concerning material information on investment objectives, strategies, risks, and governance, and management must provide a discussion of fund performance in the fund's shareholder report. Registered advisers are required to provide information about their advisory services in narrative format on Form ADV Part 2—often referred to as a brochure—describing their firm's methods of analysis and investment strategies, fees, conflicts, and personnel. General disclosures about ESG-related investment strategies fall under these disclosure requirements, and failure to adhere to current disclosure requirements violates Federal securities laws, but there are no specific requirements about what a fund or adviser following an ESG strategy must include in its disclosures.[30]

While the Commission has not generally prescribed specific disclosures for particular investment strategies, ESG strategies differ in certain respects that we believe necessitate specific requirements and mandatory content to assist investors in understanding the fundamental characteristics of an ESG fund or an adviser's ESG strategy in order to make a more informed investment decision. First, the variation discussed above concerning ESG investing, combined with the lack of a more specific disclosure framework, increases the risk of funds and advisers marketing or labelling themselves as ''ESG,'' ''green,'' or ''sustainable'' in an effort to attract investors or clients, when the ESG-related features of their investment strategies may be limited. Such exaggerations can impede informed decision-making as the labels may cause investors to believe they are investing in—and potentially are paying higher fees for—a ''sustainable'' strategy that may actually vary little from ones without such a label.[31] Ultimately, this can frustrate investor expectations in the market for ESG investing, with some investors and market participants questioning whether and to what degree certain ESG funds are appreciably different than other types of funds.[32] Requiring comparable, consistent, and reliable information from all funds and advisers that use an ESG label would reduce the risk of exaggerated claims of the role of ESG factors in investing, thereby increasing the efficiency and reliability with which investors seeking an ESG strategy can find a fund or adviser that meets their investing preferences, better protecting and serving investors in the market for ESG-related investing as a whole.

In addition to the risk of exaggerated labels or claims, funds and advisers incorporating or focusing on ESG factors currently present inconsistent information concerning how they consider ESG factors in their investment strategies to investors, other market participants, and the Commission. We believe that a major reason for such inconsistency is the variety of perspectives concerning what ESG investing means, the issues or objectives it encompasses, and the ways to implement an ESG strategy. ''ESG investing,'' ''sustainable investing,'' or other terms can reasonably connote different investing approaches to different investors. Even when investors focus on the same ESG issue, such as climate change or labor practices, there are debates about how to address such issues, resulting in different, and sometimes opposing, assessments of whether a particular investment meets the investors' goals in furthering that issue.[33] We believe that requiring funds and advisers to disclose with specificity their ESG investing approach can help investors and clients understand the investing approach the fund or adviser uses. It can also help investors compare the variety of emerging approaches, such as employment of an inclusionary or exclusionary screen, focus on a specific impact, or engagement with issuers to achieve ESG goals. The proposed rules would help draw out these distinctions and better inform investors by providing them with decision-useful information to compare, for example, two funds that both refer to their strategy as ''sustainable'' but employ different approaches and areas of focus to implement their sustainable strategy.

Further, ESG investment products can have risk/return objectives that reflect a longer time horizon and have objectives that extend beyond risk/return goals.[34] Funds and advisers with ESG-related investing objectives can consider factors and measures in addition to those often used to measure financial return to manage the portfolio. They may also use additional key performance indicators specific to ESG objectives to assess the fund's or adviser's effectiveness in meeting these goals. Additionally, for ESG investing, investors might be more likely to have an interest in knowing

[28] Investors are increasingly interested in proxy voting practices that consider ESG factors to influence company behavior. *See, e.g.,* Peter Reali, Jennifer Grzech, and Anthony Garcia, ESG: Investors Increasingly Seek Accountability and Outcomes, Harvard Law School Forum on Corporate Governance, (Apr. 25, 2021), *available at https://corpgov.law.harvard.edu/2021/04/25/esg-investors-increasingly-seek-accountability-and-outcomes/; see also* Comment Letter of Gary Retelny, President and CEO, Institutional Shareholder Services Inc., *available at https://www.sec.gov/comments/climate-disclosure/cll12-8914286-244666.pdf.*

[29] *See* AMAC Recommendations, *supra* footnote 20 at 10 (''while the AMAC believes that the reporting of proxy voting is already well regulated, other ownership responsibilities, if significant to the product's strategy, should be noted'').

[30] *See, e.g.,* In the Matter of Pax World Management Corp., Investment Advisers Act Release No. 2761 (July 30, 2008) (settled action) (alleging that despite investment restrictions disclosed in its prospectus, statement of additional information, and other published materials that it complied with certain socially responsible investing restrictions the fund purchased securities contrary to those representations and failed to follow its own policies and procedures requiring internal screening to ensure compliance with those restriction).

[31] *See* Wursthorn, Michael, ''Tidal Wave of ESG Funds Brings Profit to Wall Street'', The Wall Street Journal (Mar. 16, 2021), *available at https://www.wsj.com/articles/tidal-wave-of-esg-funds-brings-profit-to-wall-street-11615887004* (noting that ETFs with strategies that focus on socially responsible investments have higher fees than ''standard ETFs'').

[32] Mackintosh, James, ''ESG Funds Mostly Track the Market'', The Wall Street Journal (Feb. 23, 2020), *available at https://www.wsj.com/articles/esg-funds-mostly-track-the-market-11582462980* (noting that an analysis found that ESG funds have inconsistent approaches, but on average hold slightly more technology stocks and fewer energy stocks than the S&P 500 index).

[33] Some have noted that the ''fluidity of the ESG rubric'' can lead to subjective application of ESG factors when applied to certain assets. For example, a recent journal article notes that one provider of ESG data and ratings found that about half of the ESG mutual funds it assessed scored as ''average or worse'' than non-ESG funds using the provider's own ESG scoring methodology, showing that managers often disagree on the ESG attributes of particular investments. In another example, the article posits that an issuer that investors may assess to be ''environmentally sound'' or ''beneficial'' could have what it perceives to be weak corporate governance controls or mistreat its workforce leaving an investor with subjective judgments in weighting E versus S versus G factors. Lastly, the article notes that there is substantial debate around how to assess the climate impacts of issuers that rely on certain types of energy production and the relative environmental impacts and risks of coal, oil, natural gas, and nuclear energy. *See* Schanzenbach, Max and Sitkoff, Robert ''Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee,'' 72 Stan. L. Rev. 381 (Feb. 2020), *available at: https://ssrn.com/abstract=3244665.*

[34] *See* AMAC Recommendations, *supra* footnote 20 at p. 6.

more about the investment selection and engagement process to ensure that the process aligns with the ESG-related values or priorities of the investor, rather than simply as a means for gauging effectiveness of the end result of financial return.[35] Accordingly, we believe that specific ESG-related disclosures would enable an investor to understand and analyze funds' and advisers' ability to meet any ESG-related objectives and would complement existing disclosures regarding objectives related to financial returns by helping the investor understand the relationship between ESG-related objectives and financial return objectives.[36]

B. Overview of the Proposal

In light of these observations, we are proposing to require additional specific disclosure requirements regarding ESG strategies to investors in fund registration statements, the management discussion of fund performance in fund annual reports, and adviser brochures.[37] We believe that these disclosures would promote consistent, comparable, reliable—and therefore decision-useful—information for investors. These changes also would allow investors to identify funds more readily and advisers that do or do not consider ESG factors, differentiate how they consider ESG factors, and help inform their analysis of whether they should invest. To address exaggerated claims about ESG strategies, we are proposing minimum disclosure requirements for any fund that markets itself as an ESG-Focused Fund, and requiring streamlined disclosure for Integration Funds that consider ESG factors as one of many factors in investment selections. We also propose that funds tag their ESG disclosures using the Inline eXtensible Business Reporting Language (''Inline XBRL'') structured data language to provide machine-readable data that investors and other market participants could use to more efficiently access and evaluate ESG funds. We believe that these requirements would provide improved transparency and decision-useful information to investors assisting them in making an informed choice based on their preferences for ESG investing.

To complement the disclosure in the prospectus, we are proposing to require that certain ESG-Focused Funds provide disclosures in their annual reports. Specifically, we are proposing that an Impact Fund summarize its progress on achieving its specific impact(s) in both qualitative and quantitative terms, and the key factors that materially affected the fund's ability to achieve the impact(s), on an annual basis. We also are proposing amendments to fund annual reports to require a fund for which proxy voting or other engagement with issuers is a significant means of implementing its strategy to disclose information regarding how it voted proxies relating to portfolio securities on particular ESG-related voting matters and information regarding its ESG engagement meetings.

Finally, the Commission is proposing a requirement for ESG-Focused Funds that consider environmental factors. Specifically, we are proposing to require disclosure of two greenhouse gas (''GHG'') emissions metrics for the portfolio in such funds' annual reports. We believe the proposed information would provide quantitative metrics related to climate for investors focused on climate risk while also providing verifiable data from which to evaluate environmental claims. This information also would benefit those investors that have made net zero or similar commitments by helping them determine whether a particular investment is consistent with the commitment they have made.[38] Disclosure of GHG metrics could better prevent exaggerated claims in this space by providing consistent, comparable, and reliable data that investors can use when reviewing funds that market themselves as focusing on climate factors in their investment processes. With access to GHG metrics, fund investors and market participants could review the relative carbon footprints and carbon intensity of ESG-Focused Funds against comparable funds and determine whether a fund's climate or sustainability disclosures align with its actual GHG metrics.

To complement the proposed ESG disclosures in fund registration statements and annual reports and adviser brochures, we are proposing to require certain ESG reporting on Forms N–CEN and ADV Part 1A, which are XML-structured forms on which funds and advisers, respectively, report census-type data. This reporting would provide the Commission, investors, and other market participants with structured data that can be used to understand industry trends in the market for ESG investment products and services.

II. Discussion

A. Proposed Fund Disclosures to Investors

1. Proposed Prospectus ESG Disclosure Enhancements

We are proposing to require a fund engaging in ESG investing to provide additional information about the fund's implementation of ESG factors in the fund's principal investment strategies. The proposed amendments are designed to provide investors clear and comparable information about how a fund considers ESG factors.[39] They also address the significant variability in the ways different funds approach the incorporation of ESG factors in their investment decisions by contemplating a range of strategies that funds use. The level of detail required by this enhanced disclosure would depend on the extent to which a fund considers ESG factors in its investment process. Additionally, because the information necessary to understand fully a fund's ESG methodology could lead to a large amount of disclosure, our proposed requirements contemplate layered disclosure. For example, open-end funds would provide an overview of their ESG strategy in the summary section of the prospectus, and would provide more details about the strategy in the statutory prospectus.[40] We designed this layered disclosure approach to highlight key information for investors to help them make better informed investment decisions as well as to promote disclosure that is inviting and usable to a broad spectrum of investors. This approach is designed so

[35] For example, investors often have differing priorities when it comes to ESG investment. Studies have shown that certain investors in socially responsible investments may be less sensitive to financial performance compared to other investors, perhaps because SRI investors derive utility from non-pecuniary attributes as well. *See infra* at text accompanying note 288.

[36] AMAC Recommendations, *supra* footnote 20, at 6–7.

[37] More specifically, we propose to amend Forms N–1A, N–2, N–CSR, N–8B–2, S–6, N–CEN, and ADV Part 2A.

[38] *See* Net Zero Asset Managers Initiative, *Net Zero Asset Managers initiative announces 41 new signatories, with sector seeing 'net zero tipping point'* (July 6, 2021) *available at: https://www.netzeroassetmanagers.org/net-zero-asset-managers-initiative-announces-41-new-signatories-with-sector-seeing-net-zero-tipping-point. See also* Glasgow Financial Alliance for Net Zero: ''Our Progress and Plan Towards a Net-Zero Global Economy'' (Nov. 2021) *available at: https://www.gfanzero.com/progress-report/.*

[39] This approach would complement existing requirements that funds use plain English and disclose essential information in a concise and straightforward manner to help investors make informed investment decisions about the fund. *See, e.g.,* General Instructions B.4.(c) and C.1–3(c) of Form N–1A [17 CFR 274.11A]; General Instruction for Part A and General Instructions for Parts A and B of Form N–2 [17 CFR 274.11a–1].

[40] While Closed-End Funds do not utilize a summary section in their prospectuses, our proposed requirements for closed-end funds still utilize principles of layered disclosure by requiring certain items to appear earlier in the prospectus.

the additional information that may be interest to some investors is available through layered disclosure.[41]

Specifically, and as discussed further below, funds that meet the proposed definition of ''Integration Fund'' would provide more limited disclosures. ''ESG-Focused'' Funds, which would include, for example, funds that apply inclusionary or exclusionary screens, funds that focus on ESG-related engagement with the issuers in which they invest, and funds that seek to achieve a particular ESG impact, would be required to provide more detailed information in a tabular format.[42] The proposed amendments would apply to open-end funds (including ETFs) and closed-end funds (including business development companies (''BDCs'')) that incorporate one or more ESG factors into their investment selection process.[43]

1. We are not proposing to define ''ESG'' or similar terms and, instead, we are proposing to require funds to disclose to investors (1) how they incorporate ESG factors into their investment selection processes and (2) how they incorporate ESG factors in their investment strategies. Is this approach appropriate? Should we seek to define ''ESG'' or any of its subparts in the forms? Should we provide a non-exhaustive list of examples of ESG factors in the forms? Should we define certain types of factors as being ESG but allow funds to add additional factors to that concept if they choose? Are there any other approaches that we should take in providing guidance to funds as to what constitutes ESG?

2. Should these disclosure requirements apply to registered open-end funds, registered closed-end funds, and BDCs, as proposed? Are there other substantive disclosure requirements that should differ based on the type of fund? Should our proposed disclosure requirements apply to insurance company separate accounts registered as management investment companies?

(a) Proposed Integration Fund Disclosure

We are proposing to require an Integration Fund to summarize in a few sentences how the fund incorporates ESG factors into its investment selection process, including what ESG factors the fund considers. For example, an Integration Fund might provide a brief narrative of how it incorporates factors, or provide an example to illustrate how it considers ESG factors with other factors.[44] This disclosure would be in addition to the information funds currently are required to provide in their prospectuses about their investments, risks, and performance. Open-end funds would provide this information in the summary section of the fund's prospectus, while closed-end funds, which do not use summary prospectuses, would disclose the information as part of the prospectus's general description of the fund.[45]

An Integration Fund, for this purpose, would be a fund that considers one or more ESG factors along with other, non-ESG factors in its investment decisions, but those 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. Such funds may select investments because those investments met other criteria applied by the fund's adviser (*e.g.,* investments selected on the basis of macroeconomic trends or company-specific factors like a price-to-earnings ratio).

We are proposing to require an Integration Fund to describe how it incorporates ESG factors into its investment selection process because we believe this is important information for investors that should be available for them to review in the same location in different funds' prospectuses.[46] At the same time, we are not proposing more extensive disclosure requirements in the summary prospectus. Requiring a more detailed discussion of ESG factors could cause an Integration Fund to overemphasize the role ESG factors play in the fund's investment selection process by adding ESG disclosure requirements that could result in a more detailed description of ESG factors than other factors. This overemphasis could impede informed investment decisions because ESG factors discussed at length would not play a central role in the fund's strategy.[47] For these reasons, we are proposing a layered disclosure approach for Integration Funds. Specifically, we are proposing to complement the concise description discussed above with a more detailed description of how an Integration Fund

[41] The Commission has taken multiple steps that recognize investors' preferences for concise and engaging disclosure of key information as well ensure that additional information that may be of interest to some investors is available through layered disclosure. *See, e.g., New Disclosure Option for Open-End Management Investment Companies,* Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)]; *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies,* Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)]; *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,* Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)]; *see also Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements,* Investment Company Act Rel. No. 33963 (Aug. 5, 2020) [85 FR 70716, 70720–21 (Nov. 5, 2020)] (stating that the ''vast majority of individual investors responding to questions in the Fund Investor Experience RFC about summary disclosure expressed a preference for summary disclosure . . . . [and that] Commenters' overall preference for summary disclosure is generally consistent with other information the Commission has received—through investor testing, surveys, and other information gathering—that similarly indicates that investors strongly prefer concise, layered disclosure'').

[42] Because we are proposing requirements specific to funds that seek to achieve a particular ESG impact, we are also proposing a distinct definition for this subset of ESG-Focused Funds. *See infra* at Section II.A.1.ii.

[43] For a BDC, certain proposed disclosure would be included in the management discussion and analysis, in the BDC's annual report on Form 10–K [17 CFR 249.310]. Also, a unit investment trust (''UIT'') would not be subject to the proposed annual report to shareholders requirements because a UIT is not required to provide management's discussion of fund performance (''MDFP'') disclosure in their annual reports.

[44] For example, an Integration Fund might disclose that it invests in companies consistent with its objective of risk-adjusted return; that it considers ESG factors alongside financial, industry-related and macroeconomic factors; that the specific ESG factors it evaluates are the impact and risk around climate change, environmental performance, labor standards, and corporate governance; and that its consideration of these factors would not necessarily result in a company being included or excluded from the evaluation process but rather would contribute to the overall evaluation of that company. Proposed Item 4(a)(2)(ii)(A) of Form N–1A [17 CFR 274.11A]; proposed Item 8.(2)(e)(2)(A) of Form N–2 [17 CFR 274.11a–1]. For purposes of section II.A.1., the term ''funds'' includes all management investment companies, including BDCs, but not unit investment trusts; *see also* General Instructions B.4.(c) and C.1.(a) of Form N–1A [17 CFR 274.11A]; General Instructions Part A: The Prospectus of Form N–2 [17 CFR 274.11a–1].

[45] *Id. See* 17 CFR 230.498 [Rule 498 under the Securities Act of 1933]. We estimate that as of Dec. 31, 2020, approximately 95% of mutual funds and ETFs use summary prospectuses. This estimate is based on data on the number of mutual funds and ETFs that filed a summary prospectus in 2020 in the Commission's Electronic Data, Gathering, Analysis, and Retrieval system (''EDGAR'') (10,739) and the Investment Company Institute's estimated number of mutual funds and ETFs as of Dec. 31, 2020 (11,323). *See* Investment Company Institute, 2021 Investment Company Fact Book, at 40, available at *https://www.ici.org/system/files/2021-05/2021_factbook.pdf.*

[46] For purposes of our proposed rule, investment selection encompasses the decision to invest in a particular security as well as the size or weighting of the particular security investment.

[47] Further, in a separate proposal, we are proposing to define the names of ''integration funds'' as materially deceptive and misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors. *See* 17 CFR 270.35d–1 [rule 35d–1 under the Investment Company Act] (the ''names rule''); *Investment Company Names,* Investment Company Act Release No. 34593 (May 25, 2022) (''Names Rule Proposing Release''), published elsewhere in this issue of the **Federal Register**.

incorporates ESG factors into its investment selection process in an open-end fund's statutory prospectus or later in a closed-end fund's prospectus.[48] This more detailed description would provide information about the fund's integration of ESG factors in its investment strategy to facilitate informed decision making by providing investors more detail about the extent to which the fund considers those ESG factors as compared to other factors in the fund's investment selection process.[49]

In addition to this general requirement, which would apply to all ESG factors that a fund considers, we are proposing a specific requirement for Integration Funds that consider GHG emissions to provide more detailed information in the fund's statutory prospectus or later in a closed-end fund's prospectus. Specifically, if an Integration Fund considers the GHG emissions of portfolio holdings as one ESG factor in the fund's investment selection process, we are proposing to require such a fund to describe how the fund considers the GHG emissions of its portfolio holdings.[50] This disclosure must include a description of the methodology that the fund uses as part of its consideration of portfolio company GHG emissions. For example, an Integration Fund that considers GHG emissions might disclose that it considers the GHG emissions of portfolio companies within only certain ''high emitting'' market sectors, such as the energy sector. The fund in this example would also be required to describe the methodology it uses to determine which sectors would be considered ''high emitting,'' as well as the sources of GHG emissions data the fund relied on as part of its investment selection process.

As discussed in more detail below, some investors have expressed particular demand for information on the ways in which funds consider GHG emissions as a factor in the investment selection process so that they can make better informed investment decisions, which can create an incentive for funds to overstate the extent to which portfolio company emissions play a role in the fund's strategy and therefore warrants specific disclosure requirements regarding the process for integrating this data. Moreover, as discussed below, there has been increasing acceptance and convergence around particular methodologies for calculating certain GHG emissions metrics,[51] but Integration Funds might vary substantially in how they utilize GHG emissions metrics data or otherwise consider portfolio company GHG emissions, which can impede informed decision-making if investors believe Integration Funds that consider GHG emissions do so in the same way or by reference to the same framework. We believe requiring more specific disclosure for Integration Funds that consider portfolio company GHG emissions, including the methodology the fund used for this purpose, will assist investors in better understanding how the fund integrates GHG emissions in its investment selection process and compare that process to that of other Integration Funds.

We are proposing to require funds to place this information outside of an open-end fund's summary prospectus and later in a closed-end fund's prospectus where more detailed information is available on a range of topics to balance the need for investors to have access to this information while mitigating the risk of overemphasis of ESG factors by an Integration Fund as discussed above.

We request comment on all aspects of our proposed approach to Integration Fund disclosure, including the following items:

3. Is the proposed definition of an Integration Fund appropriate and clear? Are there other alternative definitions we should consider? For example, is the aspect of the definition specifying that ESG factors ''may not be determinative in deciding to include or exclude any particular investment in the portfolio'' sufficiently clear? Would it be clearer to provide that ESG factors are ''not necessarily'' determinative, or would that imply a greater role of ESG factors than may be the case for many integration funds? Is the proposed definition over- or under- inclusive? For example, are there funds that do not currently consider themselves to integrate ESG factors but would fall under this definition and be required to provide disclosures? Conversely, are there funds that do not meet the proposed definition that do consider themselves to integrate ESG factors?

4. Will funds that engage in fundamental-oriented analysis, *i.e.,* funds that analyze a portfolio company's value by examining related economic and financial factors about their portfolio companies generally, consider themselves to be Integration Funds? Should such funds be Integration Funds because of their long-standing considerations of governance factors in their investment selection processes? For ESG disclosure requirements, should there be an Integration Fund category, as proposed, or should we limit disclosure requirements to ESG-Focused Funds? Alternatively, should there be additional categories of funds other than Integration Funds, ESG-Focused Funds, and Impact Funds, as proposed?

5. Should we, as proposed, require an Integration Fund to provide a brief description of how the fund incorporates any ESG factors into its investment selection process, including what ESG factors the fund incorporates? Should we require a fund to include example(s)? Should we require a specific type of example? What additional disclosure about an Integration Fund would be helpful for an investor? Where should that additional disclosure be located?

6. Should we, as proposed, require an Integration Fund that considers the GHG emissions of its portfolio holdings as an ESG factor in its investment selection process, to disclose how it considers the GHG emissions of its portfolio holdings? Should the description, as proposed, include a description of the methodology such a fund uses for this purpose? Would investors find this narrative disclosure useful to make better informed investment decisions? Should we require Integration Funds to disclose quantitative information or other GHG metrics, in addition to or in lieu of, the narrative disclosure? If so, what type of quantitative information of GHG metrics should be disclosed? For instance, should we require Integration Funds that consider GHG emissions as a part of their investment selection process to disclose the same standardized GHG metrics we are requiring of certain ESG-Focused Funds? Would such quantitative data be useful to investors?

7. Should Integration Funds provide the tabular disclosure we are proposing for ESG-Focused Funds, as discussed below? Would that disclosure overemphasize the role ESG factors play in an Integration Fund's portfolio or,

[48] *See* Proposed Instruction 1(a) to Item 9(b)(2) of Form N–1A [17 CFR 274.11A]; Proposed Instruction 9.a(1) to proposed Item 8.2.e(2)(B) of Form N–2 [17 CFR 274.11a–1].

[49] *See supra* Section II.A.1.3. (''The Need for Specific ESG-Disclosure Requirements'') (discussing why additional detail about the fund's integration of ESG factors in its investment selection process is important and necessary as the lack of a more specific ESG-disclosure framework may result in a fund marketing or labelling itself as ''ESG,'' ''green,'' or ''sustainable'' to attract investors even though the fund's consideration of ESG-related features in its investment strategy is limited).

[50] *See* Proposed Instruction 1(b) to Item 9(b)(2) of Form N–1A [17 CFR 274.11A]; Proposed Instruction 9.a(2) to proposed Item 8.2.e(2)(B) of Form N–2 [17 CFR 274.11a–1].

[51] *See infra* at text accompanying footnote 119.

conversely, would investors find the disclosure informative?

8. Is the placement of the proposed disclosure appropriate for funds? If not, is there a different place that would be more appropriate?

9. We are proposing to require an Integration Fund to provide a brief disclosure in the summary section of an open-end fund's prospectus and in the general description of the fund for a closed-end fund. The brevity of this disclosure is designed to avoid giving investors the impression that Integration Funds incorporate ESG factors more than they actually do as a result of lengthy ESG disclosure. Is it feasible for funds to meet the elements of the proposed disclosure requirement with a brief description or example? If not, should we modify any aspects of the disclosure requirements to promote brevity? Should we impose a word limit or use another method to ensure brevity, beyond including the general requirement that the disclosure be brief? Are there other ways to ensure balanced disclosure that would not overemphasize the role of ESG factors while also fostering meaningful disclosure about ESG factors? Conversely, should we delete the requirement that the disclosures be brief?

10. A fund is permitted to add a statement of its investment objectives, a brief description of its operations, or any additional information on its front cover page. That other information may include a text or design feature. Should we address a fund's use of a text or design feature on its front cover page? For example, should we provide that it would be materially deceptive and misleading for an Integration Fund to use a text or design feature on its front cover page that implies a focus on one or more ESG factors? Should we place limitations on the ability of an Integration Fund to use a text or design feature on its front cover page to indicate that the fund's investment decisions incorporate one or more ESG factors on the basis that such features might be misleading? Conversely, are there other formatting requirements that would help improve the salience and prominence, such as font size and bolding, that we should address?

11. Should we, as proposed, require an Integration Fund to provide a more detailed description of how the fund incorporates ESG factors into its investment selection process in an open-end fund's statutory prospectus or later in a closed-end fund's statutory prospectus? Would investors find this information useful for understanding the ESG integration process? Would this information overemphasize the extent to which an Integration Fund considers ESG factors in its investment selection process? Would the layered disclosure format that we are proposing be appropriate for Integration Funds? Should all or more information about the fund's ESG integration process be in the summary section of the prospectus? Conversely, should we require Integration Funds to put most or all of the information about their ESG integration process in the statutory prospectus (or, for closed-end funds, later in the prospectus), as proposed?

(b) Proposed ESG-Focused Fund Prospectus Disclosure

We are proposing to require an ESG-Focused Fund, which would include an ESG Impact Fund, to provide specific disclosure about how the fund focuses on ESG factors in its investment process. An ''ESG-Focused Fund'' would mean a fund that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments or (2) in its engagement strategy with the companies in which it invests.[52] Thus, ESG-Focused Funds under this proposed definition would include, for example, funds that track an ESG-focused index or that apply a screen to include or exclude investments in particular industries based on ESG factors.[53] The category would likewise include a fund that has a policy of voting its proxies and engaging with the management of its portfolio companies to encourage ESG practices or outcomes.[54]

Additionally, to help ensure that any fund that markets itself as ESG provides sufficient information to investors to support the claim, the proposed definition of an ESG-Focused Fund explicitly includes (i) any fund that has a name including terms indicating that the fund's investment decisions incorporate one or more ESG factors and (ii) any fund whose advertisements or sales literature indicates that the fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments.[55] Accordingly, any fund that markets itself, whether through its name or marketing materials as having an ESG focus, would be required to provide the proposed ESG Strategy Overview Table discussed below.[56] We believe this aspect of the proposed definition can help deter funds from making exaggerated claims by requiring funds that market themselves as, for example, ''ESG,'' ''green,'' ''sustainable,'' or ''socially conscious'' to provide specific information in their prospectuses to substantiate such claims.

A fund's use of advertisements or sales literature that mention ESG factors, but not as a ''significant or main consideration'' in the fund's investment or engagement strategy, would not alone cause the fund to be an ESG-Focused Fund. This aspect of the proposed definition of an ESG-Focused Fund would permit Integration Funds to discuss the role of ESG factors in their advertisements or sales literature—including the relationship between ESG factors and other investment factors and that ESG factors might not be dispositive—while deterring marketing materials that imply that ESG factors are a significant or the main consideration of a fund.

We also propose to define an ''Impact Fund'' as an ESG-Focused Fund that seeks to achieve a specific ESG impact or impacts.[57] For example, a fund that invests with the goal of seeking current income while also furthering the fund's disclosed goal of financing the construction of affordable housing units would be an Impact Fund under the

[52] *See* Proposed Item 4(a)(2)(i)(B) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(1)(B) of Form N–2 [17 CFR 274.11a–1].

[53] While we are not suggesting any ESG-related minimum characteristics that such index or screen would have, an ESG-Focused Fund that uses the index or screen to focus on one or more ESG factors by using them as a significant or main consideration in selecting investments would be required, as discussed below, to provide disclosure about the index or screen under our proposed amendments.

[54] *See infra* at section II.A.1.b.3 for the discussion of what we propose constitutes engagement for these purposes.

[55] For purposes of the proposed definition of an ESG-Focused Fund, the term ''advertisements'' is defined pursuant to 17 CFR 230.482 under the Securities Act of 1933, and the term ''sales literature'' is defined pursuant to 17 CFR 270.34b–1 under the Investment Company Act of 1940.

[56] For example, ABC Solar Energy ETF invests in the securities that comprise the XYZ solar index. Because the fund has a name that indicates it considers ESG factors based on the industry in which the fund invests, the fund would be required to provide the proposed ESG-Focused Fund disclosure. As another example, DEF Growth Fund has sales materials that state it focuses on companies that ''provide solutions to sustainability challenges.'' DEF Growth Fund would be required to provide the ESG-Focused Fund disclosure because its marketing materials indicate that ''sustainability'' is a significant consideration in selecting investments. Providing the proposed disclosure for ESG-Focused Funds would not provide assurance or a safe harbor that such name or marketing materials are not materially deceptive or misleading. Funds must continue to consider the application of the Federal securities laws including, but not limited to, the general antifraud provisions and the names rule to their name or other marketing materials. *See* Names Rule Proposing Release, *supra* footnote 47.

[57] Proposed Item 4(a)(2)(i)(C) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(1)(C) of Form N–2 [17 CFR 274.11a–1].

proposal. A fund that invests with the goal of seeking to advance the availability of clean water by investing in industrial water treatment and conservation portfolio companies is another example of an Impact Fund under the proposal. As these examples illustrate, an Impact Fund's stated goal of pursuing a specific impact is what would distinguish Impact Funds under the proposal from other ESG-Focused Funds. An Impact Fund would be required to provide the disclosures proposed for all ESG-Focused Funds. Additionally, and as discussed further below, an Impact Fund would have additional disclosure requirements, including how the fund measures progress towards the stated impact; the time horizon used to measure that progress; and the relationship between the impact the fund is seeking to achieve and the fund's financial returns.[58] We believe additional disclosure requirements are appropriate for these funds to clarify the impact the fund is seeking to achieve as well as to allow investors to evaluate the fund's progress in achieving that impact.

ESG-Focused Funds would provide key information about their consideration of ESG factors in a tabular format—an ESG Strategy Overview table—in the fund's prospectus. An open-end fund would be required to provide the disclosure at the beginning of its ''risk/return summary,'' the section of the prospectus that summarizes key information about the fund's investments, risk and performance, while a closed-end fund would provide the table at the beginning of the discussion of the fund's organization and operation.[59] The disclosure would be in the following tabular format:

[ESG] Strategy Overview

Overview of the Fund's [ESG] strategy	
	The Fund engages in the following to implement its [ESG] Strategy: □ Tracks an index □ Applies an inclusionary screen □ Applies an exclusionary screen □ Seeks to achieve a specific impact □ Proxy voting □ Engagement with issuers □ Other
How the Fund incorporates [ESG] factors in its investment decisions	
How the Fund votes proxies and/or engages with companies about [ESG] issues	

Requiring all ESG-Focused Funds to provide concise disclosure, in the same format and same location in the prospectus, is designed to provide investors a clear, comparable, and succinct summary of the salient features of a fund's implementation of ESG factors. This information would help an investor determine if a given ESG-Focused Fund's approach aligns with the investor's goals. We are proposing consistent titles in the rows of the table to help investors to compare and analyze different ESG-Focused Funds

[58] *See infra* at Section II.A.1.b.(2).

[59] Proposed Item 4(a)(2)(ii)(B), Instruction 1 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 1 of Form N–2 [17 CFR 274.11a–1] (providing that the ESG Strategy Overview table would precede the risk/return summary (for open-end funds) or discussion of the fund's organization and operation (for closed-end funds), and disclosure in the table need not be repeated in the narrative disclosure that will follow the table in the risk/return summary of discussion of the fund's organization and operation).

more easily as they make investment decisions.[60]

To facilitate a layered disclosure approach, the amendments would require an ESG-Focused Fund to complete each row with the brief disclosure required by that row—and only the information required by the relevant form instructions—with lengthier disclosure or other available information required elsewhere in the prospectus.[61] In an electronic version of the prospectus, that is, a prospectus posted on the fund's website, electronically delivered to an investor, or filed on EDGAR with the Commission, the fund also would be required to provide hyperlinks in the table to the related, more detailed disclosure later in the prospectus to help investors easily access the information.[62] We discuss the disclosure that would be required by each row of the table further below.

We request comment on all aspects on the proposed definitions of ESG-Focused Fund and Impact Fund, the general approach to layered disclosure and the design of the ESG Strategy Overview Table, including the following items:

12. Are there additional distinctions that the disclosure rules should make besides the proposed distinctions between Integration Funds and ESG-Focused Funds, as proposed, for the level of detail required in prospectus disclosures?

13. Should we, as proposed, define an ESG-Focused Fund as a fund that focuses on one or more ESG factors by using them as a significant or main consideration in selecting its investment or its engagement strategy with issuers of its investments?

14. As discussed above, a fund that applies a screen to include or exclude investments based on ESG factors would meet the proposed definition of an ESG-Focused Fund. Should our definition of an ESG-Focused Fund specifically reference a fund that follows an ESG-related index or a screen based on ESG factors to include or exclude investments? Should our definition take into account whether a fund's use of an ESG-related index or screen is to promote ESG goals? Should the reference to engagement be a means of identifying Impact Funds, rather than ESG-Focused Funds generally?

15. Should we include the proposed elements in the definition of ESG-Focused Fund related to the use of ESG-related names or advertising or other materials? In particular, does the proposed definition provide appropriate flexibility to allow an Integration Fund to describe its integration process accurately in advertising or other materials, while assuring that funds that market themselves as having an ESG focus provide sufficient information to support such claim?

16. An Integration Fund may be categorized by a third-party marketer or a third-party rater as an ESG-Focused Fund. Are there circumstances where we should attribute the third party characterization to the fund and require the fund to report as an ESG-Focused Fund? For example, should we require such reporting if the fund's adviser has explicitly or implicitly endorsed or approved the information after its publication (such as by including it in the fund's marketing materials), or has involved itself in the preparation of the information?

17. Would the ESG Strategy Overview table's layered disclosure approach provide a concise presentation for investors who want a comprehensive summary of ESG-related aspects of the fund in one place, with more detailed information available later in the prospectus? Are there alternatives that would be more helpful to investors?

18. Should we, as proposed, limit the disclosure in the ESG Strategy Overview Table to the information required by the instructions? Is there any information we should permit but not require?

19. Should we, as proposed, require that the ESG Strategy Overview table precede the other disclosure required in the section of the prospectus to which we propose to add the table (*i.e.,* Item 4(a)(2)(ii)(B) of Form N–1A or proposed Item 8.2.e.(2)(B) of Form N–2)?

20. Since closed-end funds do not have a summary section of the prospectus, we have proposed an alternative approach by requiring the ESG Strategy Overview Table to precede other disclosures in that Item 8.2.e.(2) of the prospectus, while permitting the more detailed ESG information to be disclosed later in the same item. Is this approach appropriate for closed-end funds? Are there alternatives we should consider?

21. Should we require a fund to provide a cross-reference or hyperlink in the prospectus to other parts of the registration statement, as proposed? Are there other sections of the registration statement where we should permit an ESG-Focused Fund to provide a cross-reference or hyperlink? If so, to what sections should we permit an ESG-Focused Fund to provide that cross-reference or hyperlink in the registration statement?

22. Should we, as proposed, permit a fund to replace the term ''ESG'' in the ESG Strategy Overview table with another term or phrase that more accurately describes the ESG factors that the fund considers? Should a fund be required to replace ESG with a different term in certain circumstances, such as when it focuses on a particular issue or set of issues? Should we mandate that funds choose from a list of alternative terms to improve comparability, and, if so, what terms should those be?

23. Should we allow flexibility in how funds label each row in the table beyond the flexibility provided regarding the term ESG and the pronouns used?

24. Should ESG-Focused Funds disclose information other than what we have proposed about their ESG strategy? By contrast, is there any of the proposed disclosures that an ESG-Focused Fund would make that should not be adopted by the Commission?

Overview of the Fund's ESG Strategy

First, in the row ''Overview of [the Fund's] [ESG] strategy,'' we are proposing that an ESG-Focused Fund provide a concise description in a few sentences of the factor or factors that are the focus of the fund's strategy.[63] For example, a fund might disclose that it focuses on environmental factors, and in particular, on greenhouse gas emissions. Further, the fund would be required to include a list of common ESG strategies as indicated in the ESG Strategy Overview table and, in a ''check the box'' style, indicate all strategies in that list that apply.[64] These check boxes would identify common ESG strategies, namely, the tracking of an index, the application of an exclusionary or inclusionary screen, impact investing, proxy voting, and engagement with issuers. An ESG-Focused Fund would not be required to check any of the boxes if none of the common ESG strategies applied to the fund, and instead, would check the ''other'' box.

[60] Proposed Item 4(a)(2)(ii)(B), Instruction 3 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 3 of Form N–2 [17 CFR 274.11a–1]. A fund would be allowed to replace ''ESG'' in each row with another term that more accurately describes the applicable ESG factors the fund considers. Similarly, a fund would be permitted to replace the term ''the Fund'' in each row with an appropriate pronoun, such as ''we'' or ''our.'' *Id.*

[61] Proposed Item 9(b)(2), Instruction 2 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B). Instruction 9.b of Form N–2 [17 CFR 274.11a–1].

[62] Proposed Item 4(a)(2)(ii)(B), Instruction 3 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 3 of Form N–2 [17 CFR 274.11a–1].

[63] Proposed Item 4(a)(2)(ii)(B), Instruction 4 of Form N–1A [17 CFR 274.11A]; proposed Item 8.2.e.(2)(B) Instruction 4 of Form N–2 [17 CFR 274.11a–1].

[64] *Id.*

This ''check the box'' presentation is designed to allow an investor immediately to identify the ESG strategies a fund employs. Together, the disclosure in this row is designed to help investors quickly compare different funds' area of focus and approaches to ESG investing and to provide context for the more specific disclosure in the rows that follow.

25. Should we, as proposed, require an ESG-Focused Fund to provide a concise description in a few sentences of the ESG factor or factors that are the focus of the fund's strategy? Is beginning the table with an overview helpful? Would it give investors a way to quickly discern the particular ESG-focus of the fund?

26. Should we, as proposed, require funds to include the types of common ESG strategies in a ''check box'' format? Is this format useful to an investor so that the investor can quickly and easily understand the fund's ESG strategy and compare it with the ESG strategies used by other funds? Alternatively, as opposed to listing all the strategies and checking the ones that apply, should funds list only the ESG strategies that apply to them?

27. Should the instructions include definitions or descriptions for each common strategy on the list, or are they sufficiently self-explanatory?

28. Would there be instances where a fund might face ambiguity as to whether a strategy on the list accurately describes a technique the fund utilizes? For example, are there instances where it might be ambiguous whether a fund applies an inclusionary or exclusionary screen? If so, is there alternative disclosure a fund should provide?

29. Are there any common ESG strategies that should be included on the list, or any that we proposed that should be excluded? Would the ''other'' box, as proposed, be helpful in allowing funds to identify that they pursue a strategy other than those specified in the other check boxes or, conversely, would that result in funds tending to select ''other'' and making the check-box disclosure less informative to investors?

30. The ESG Strategy Overview table provides a number of check boxes for common ESG strategies. Does the number of those check boxes present the possibility that a fund could overstate and/or present the appearance to an investor of overstating the fund's ESG strategy because of the number of those check boxes? Should certain of those check boxes be combined? If so, which ones? Are there other alternatives to the check boxes that would be consistent with the disclosure goals of the check boxes?

(1) Description of the Fund's Incorporation of Any ESG Factors in Investment Decisions

Second, in the row ''How the Fund incorporates [ESG] factors in its investment decisions,'' we are proposing that an ESG-Focused Fund summarize how it incorporates ESG factors into its process for evaluating, selecting, or excluding investments.[65] Funds would be required to provide specific information in this row and supplement the overview in this row with a more detailed description later in the prospectus.[66] The fund would provide specific information, in a disaggregated manner, with respect to each of the common ESG strategies applicable to the fund as identified by the ''check the box'' disclosure.[67] For example, a fund would have to explain an inclusionary screen distinctly from an exclusionary screen. To help ensure this information would be presented in a clear format, a fund would be permitted to use multiple rows in the table or other text features to clearly identify the disclosure related to each applicable common ESG strategy.[68] We discuss below each of the disclosures that would be required in this row, if applicable.

First, if the fund applies an inclusionary or exclusionary screen to select or exclude investments, the fund's summary must briefly explain the factors the screen applies, such as particular industries or business activities it seeks to include or exclude, and if applicable, what exceptions apply to inclusionary or exclusionary screen.[69] In addition, such fund would be required to state the percentage of the portfolio, in terms of net asset value, to which the screen applies, if less than 100%, excluding cash and cash equivalents held for cash management and to explain briefly why the screen applies to less than 100% of the portfolio.

We understand that many ESG-Focused Funds commonly apply inclusionary or exclusionary screens to select investments based on ESG criteria. A fund applying an inclusionary screen would use the screen to select investments based on the fund's ESG criteria. This includes, for example, funds that select companies that perform well relative to their industry peers based on ESG factors, such as greenhouse gas emissions or workforce diversity. Conversely, a fund applying an exclusionary screen would start with a given universe of investments and then exclude investments based on ESG criteria, such as by excluding investments in companies that operate in certain industries or that engage in certain activities.

Requiring funds that apply inclusionary or exclusionary screens to explain briefly the factors the screen applies, as well as the percentage of the portfolio covered by the screen if applicable, is designed to help investors understand how ESG factors guide the fund's investment decisions. A fund applying an inclusionary screen to select investments based on a company's performance on certain ESG factors relative to peers in its sector might disclose an overview of this process and the primary ESG factors it considers to select investments. A fund applying an exclusionary screen might disclose, for example, that it invests in the securities of a given index, excluding companies in the index that derive significant revenue from the extraction or refinement of fossil fuels or sale of alcohol. This would allow an investor to understand the kinds of investments a fund was focusing on or avoiding and determine if the fund's approach aligned with the investor's own view of ESG investing. Finally, we are proposing to require a fund to state the percentage of the portfolio, in terms of net asset value, to which the screen is applied, if less than 100%, excluding cash and cash equivalents held for cash management, and to explain briefly why the screen applies to less than 100% of the portfolio. We believe that knowing that a portion of the portfolio is selected without regard to a particular screen would be important to an investor so that the investor would understand the extent to which the fund considers ESG factors. We propose to provide an exception for cash management to make clear that funds that generally apply the screen to their entire portfolio do not have to include disclosure in this row regarding small portions held for

[65] Proposed Item 4(a)(2)(ii)(B), Instruction 5 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 5 of Form N–2 [17 CFR 274.11a–1].

[66] Open-end funds would provide the additional information in response to Item 9 of Form N–1A, as we propose to amend it, which covers a fund's investment objectives, principal investment strategies, related risks, and portfolio holdings. Closed-end funds would provide the additional information in response to Item 8 of Form N–2, as we propose to amend it, which requires a general description of the fund, including its investment objectives and policies and other matters. Proposed Item 9(b)(2), Instruction 2 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 9 of Form N–2 [17 CFR 274.11a–1].

[67] Proposed Item 4(a)(2)(ii)(B), Instruction 4 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 4 of Form N–2 [17 CFR 274.11a–1].

[68] *Id.*

[69] *Id.*

operational purposes, such as meeting redemptions.

As with other items discussed in this row, the fund also would be required to provide a more detailed description of any inclusionary or exclusionary screen later in the prospectus. That disclosure would cover the factors applied by any inclusionary or exclusionary screen, including any quantitative thresholds or qualitative factors used to determine a company's industry classification or whether a company is engaged in a particular activity.[70] This disclosure would allow an investor that is interested in the additional detail to understand how a fund applies the inclusionary or exclusionary screen. To build on the examples above, the fund might disclose in the prospectus how it analyzes whether a company derives significant revenue from the extraction or refinement of fossil fuels or sale of alcohol, including how a fund defines ''significant'' for this purpose, such as a specific percentage of a company's revenue derived from fossil fuels or alcohol.

Second, if the fund uses an internal methodology, a third-party data provider, or a combination of both, in evaluating, selecting, or excluding investments, the fund's disclosure in this row must describe how the fund uses the methodology, third-party data provider, or combination of both, as applicable.[71] We understand that some ESG-Focused Funds evaluate, select, or exclude investments using internal methodologies, and/or base their investment decisions, at least in part, on the data or analysis of a third-party data provider, such as scoring or ratings provider, that evaluates or scores portfolio companies based on the provider's ESG criteria. This disclosure, if applicable, would help an investor understand how these methodologies and/or providers guide the fund's investment decisions. Specifically, we understand that different advisers or third-party data providers conducting internal analyses can disagree on how to analyze how companies fare on various ESG factors.[72] Accordingly, funds that have a similar ESG strategy and focus could have different, sometimes even contradicting, views on an investment depending on the analysis the funds conduct or the third-party data provider they use.[73] The required disclosures protect investors by providing them detailed information to help determine whether the fund's process for analyzing investments aligns with the ESG-related priorities of the investor.

In addition, because the description of an internal methodology or third-party data provider's methodology can be lengthy, the summary in the table would be complemented by a more detailed description later in the prospectus.[74] There, the fund would provide, if applicable, a more detailed description of any internal methodology used and how that methodology incorporates ESG factors. If the fund used a third-party data provider, the fund would provide a more detailed description of the scoring or ratings system used by the third-party data provider. We believe the placement of information about additional third-party data providers later in the prospectus balances the benefits of the information to investors regarding the use of third-party data providers generally, while encouraging brevity in the ESG Strategy Overview Table and limiting disclosure to those analyses most likely to directly influence investment selection. For both scoring providers and other third-party data providers, the disclosure would be required to include how the fund evaluates the quality of the data from such provider, which we believe would help protect investors by allowing them to assess the reliability of the information and the extent of the independent analysis performed by the fund's adviser.[75]

Third, if the fund tracks an index, the summary must identify the index and briefly describe the index and how it utilizes ESG factors in determining its constituents.[76] For example, a fund tracking the XYZ Sustainability Index would disclose that it tracks this index and provide an overview of the kinds of companies included in the index. This would inform an investor that the fund's investments are driven by the composition of the index, as well as how that index is constructed.

Because the description of an index's methodology can be lengthy, the summary in the table would be complemented by a more detailed description later in the prospectus. Specifically, a fund tracking an index also would provide later in the prospectus the index's methodology, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors.[77] The disclosure in the ESG Strategy Overview table would give investors an overview of the index's construction—and thus the fund's investments—with additional information in the prospectus about the index methodology thereby protecting investors by providing them sufficient information to determine whether an index's methodology aligns with the ESG-related priorities of the investor.

Finally, we are also proposing that an ESG-Focused Fund provide in this row an overview of any third-party ESG frameworks that the fund follows as part of its investment process.[78] Consistent with our approach to the other disclosure items required by the row, the fund would provide an overview of those standards in the row, with the more detailed description of any applicable ESG framework and how it applies to the fund later in the prospectus. We recognize that many advisers to ESG-Focused Funds have expressed a commitment to follow frameworks, such as the United Nations Sustainable Development Goals (''UN SDG'') or the United Nations Principles for Responsible Investing (''UN PRI'').[79] In these cases, requiring a fund to disclose that the fund's investments will follow such a framework would help an investor understand how the fund considers such ESG frameworks in its investment strategy. For example, under the proposed amendments, a fund might disclose in its ESG Strategy Overview table that the fund's investment objective is to seek long-term capital appreciation while also contributing to positive societal impact aligned to the UN SDG by limiting the fund's investments to companies that contribute to at least one of those goals. The fund would then be required to disclose later in its prospectus more information about any UN SDG goal on which the fund focuses and how the fund determines that a portfolio company contributes to that goal.[80]

[70] Proposed Item 9(b)(2)(d) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 9.b.(4) of Form N–2 [17 CFR 274.11a–1].

[71] *Id.*

[72] *See infra* section II.A.1.b.

[73] *See supra* footnote 33 and accompanying text.

[74] Proposed Item 9(b)(2), Instruction 2 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 9.b of Form N–2 [17 CFR 274.11a–1].

[75] *Id.*

[76] Proposed Item 4(a)(2)(ii)(B), Instruction 5.(c) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 5.c. of Form N–2 [17 CFR 274.11a–1].

[77] Proposed Item 4(a)(2)(ii)(B), Instruction 5(a) of Form N–1A [17 CFR 274.11A]; proposed amended Item 9(b)(2), Instruction 2(a) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 9.b.(1) of Form N–2 [17 CFR 274.11a–1].

[78] Proposed Item 4(a)(2)(ii)(B), Instruction 6 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 6 of Form N–2 [17 CFR 274.11a–1].

[79] These standards are just examples included for illustrative purposes. More information about the UN SDG is available at *https://sdgs.un.org/goals.* More information about the UN PRI is available at *https://www.unpri.org.*

[80] Proposed Item 9(b)(2), Instruction 2(e) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.e.2.(2)(B), Instruction 9.b.(5) of Form N–2 [17 CFR 274.11a–1].

We request comment on all aspects of our proposal with respect to disclosure by ESG-Focused Funds regarding investment selection disclosure for ESG-Focused Funds, including the following items:

31. Is there additional information concerning the investment selection process in addition to the proposed disclosures for ESG-Focused Funds that would be helpful to investors? Should we require that additional information be included in the table or in another disclosure item? Is there information in this proposed requirement that should not be in the table and should be placed elsewhere instead? Where should that information be placed, and how will the alternative locations(s) help ensure investors receive key information in a readily accessible location?

32. Should we, as proposed, require that information with respect to each investment process be provided in a disaggregated manner if both apply? What manner of presentation of the information would be helpful to investors?

33. Is the proposed level of disclosure and the division of that disclosure between the summary section of prospectus and statutory prospectus (*i.e.,* Items 4 and 9 of Form N–1A) appropriate? Similarly, is the proposed level and the division of that disclosure between earlier and later in the prospectus (*i.e.,* proposed Item 8.2.e.(2), Instruction 3 and Instruction 9 of Form N–2) appropriate? Is there information that we are proposing to require in the table that we should consider allowing to be disclosed later in the prospectus? Conversely, is there information that we are proposing to require later in the prospectus that we should require earlier in the prospectus?

34. Is the information that we are proposing to require an ESG-Focused Fund to disclose about how the fund incorporates ESG factors into its investment process for evaluating, selecting, and excluding investments appropriate and sufficiently clear?

35. Should we specifically require, as proposed, an ESG-Focused Fund to disclose in the ESG Overview Table whether it seeks to select or exclude issuers that engage in certain activities, or whether the fund seeks to select or exclude issuers from particular industries?

36. Our proposed amendments include definitions of inclusionary and/or exclusionary screens. Should those definitions be modified? Do definitions of the screens help a fund determine if its investment process is considered a screen for purposes of indicating the fund uses a screen as a strategy? Should we include examples of inclusionary or exclusionary screens? If so, what examples should the instructions include?

37. As proposed, funds that apply an inclusionary or exclusionary screen would be considered an ESG-Focused Fund regardless of how extensive or narrow the screen is. For example, a fund that applies an exclusionary screen to just a few industries would be an ESG-Focused Fund and provide the ESG Strategy Overview Table. Should we prescribe how extensive an inclusionary or exclusionary screen must be in order for a fund applying the screen to be an ESG-Focused Fund under our proposed amendments? For example, if an exclusionary screen would exclude companies on the basis of an ESG criterion that involved such an unusual set of facts that no or few companies would be excluded, should that fund instead be considered an Integration Fund, requiring the more streamlined disclosure as opposed to a table? Do more limited screens raise concerns that investors would be misled into believing the screen is more comprehensive than it is? Conversely, would the required disclosures about the screen and the fund's ESG investing generally address any such concerns if the fund were treated as an ESG-Focused Fund?

38. Should we, as proposed, require funds to describe any exceptions to their screening mechanism? How common is it for a fund that applies a screen to its investments to except certain investments from its screening mechanism, that is, to make investments that otherwise would be excluded by the screen? What methodologies or factors do funds have for processing such exceptions? Should that information be disclosed to investors, either in the ESG Strategy Table or elsewhere in the prospectus?

39. Should we require all funds to disclose the percentage of the portfolio to which the screen applies, even if it is 100%? Are there funds that currently apply a screen only to a portion of their portfolio? Should we include an explicit requirement that the fund explain its approach to applying a screen to only part of a portfolio, as proposed?

40. Should we, as proposed, require a fund that implements its ESG strategy by applying an inclusionary or exclusionary screen to disclose the percentage of the portfolio, in terms of net asset value, to which the screen is applied, if less than 100%, excluding cash and cash equivalents held for cash management? Should the scope of exclusions to which the screen would be applied be expanded, such as also excluding similar investments held for cash management and/or excluding the amount of any borrowings held for investment purposes? Is ''cash management'' sufficiently understood or would guidance about cash management be helpful? Alternatively, should we specify a percentage of any non-ESG assets, even if not for cash management, that would be considered *de minimis* and not need to be disclosed?

41. Should we, as proposed, require funds to provide disclosure later in the prospectus about the factors applied by any inclusionary or exclusionary screen? Should such disclosure, as proposed, include the quantitative thresholds or qualitative factors used to determine a company's industry classification or whether a company is engaged in a particular activity? Should any part of this information be required to be in the ESG Strategy Overview Table? Is there any other disclosure that we should require funds to provide, either in the ESG Strategy Overview Table or later in the prospectus relevant to a screen?

42. Would the disclosure that we would be requiring in the fund's statutory prospectus (*e.g.,* Item 9 of Form N–1A) about the index methodology used and how that methodology incorporates ESG factors be difficult for retail investors to understand? Are there ways in which we could tailor those requirements to make that disclosure more useful at conveying information to help protect investors? Would an example be helpful?

43. Should we, as proposed, require funds to disclose in the ESG Strategy Overview Table an overview of their use of third-party data providers, such as scoring or ratings providers and/or internal methodologies? Are there specific aspects of this disclosure that we should require in the table? Are there any competitive concerns with disclosing internal methodologies? Are there alternatives that would mitigate such concerns and still achieve the goal of helping investors understand the process of how ESG factors are used in investment selection?

44. To what extent do funds use multiple third-party data providers? Should we permit or require funds to provide only the information about the fund's primary third-party data provider (''primary'' in the sense that a fund utilizes that third-party data provider more than others when making investment decisions)? If so, should we provide additional instructions for funds to determine which scoring provider is the primary third-party data provider? Should we, as proposed,

require funds to disclose more detailed information later in the prospectus about a third-party data provider's and/or the fund's internal methodologies? Does this requirement strike an appropriate balance for providing investors with complete information while providing investors an overview toward the beginning of the prospectus that is not overwhelming? Should we, as proposed, require funds to provide a description of their evaluation of the data quality from such providers? When a fund uses multiple third-party data providers, should the fund disclose how it considers conflicting assessments of companies by such providers?

45. Would the proposed requirements regarding third-party data providers and internal methodologies produce disclosure that would be difficult for retail investors to understand? If so, are there ways in which we could tailor those requirements to make that disclosure more accessible for retail investors? Would an example of how the fund evaluates the quality of the third-party data provider's ESG information/analysis be helpful? Are there other ways, such as through the use of various features (such as a chart, check-the-box, or bullet points) that might be useful in helping an investor to understand the disclosure?

46. The disclosure, as proposed, about any index that an ESG-Focused Fund tracks to implement its ESG strategy is more information than what we require about other indexes that funds may track. Would this disclosure be useful to an investor? Would more or less information about how the fund tracks such ESG-focused index be useful to an investor? Are there alternatives to this proposed disclosure that we should consider?

47. Would the disclosure, as proposed, about any index that the fund may track and how the index utilizes ESG factors in determining its constituents; any internal methodology or third-party data provider or combination thereof that the fund may use; or any inclusionary or exclusionary screen that the fund may apply be helpful to investors? Should any part of this information be required to be in the ESG Strategy Overview Table?

48. Do third-party data providers and indexes currently provide funds with the information that we would be requiring ESG-Focused Funds to disclose later in their prospectuses? What are the costs to a fund to obtain and disclose this information from third-party providers?

49. We are proposing that a fund disclose any third-party ESG frameworks it follows. Is the level of detail about that third-party ESG framework appropriate? Should we limit the scope of what is reported about the third-party ESG framework? If so, how? Is there other information about the third-party ESG framework that should be disclosed? If so, what types of information should be disclosed? Is there additional information about how the fund follows the third-party ESG framework that would be helpful?

50. Are there any licensing or other issues that a fund would have to address if we were to require a fund to, as proposed, disclose information concerning a third-party data provider, index, or any third-party ESG framework? If so, what might those issues entail and how could we mitigate any concerns or costs while still providing investors with complete information about the ESG investment selection process?

51. Are there any particular asset classes that ESG-Focused Funds would invest in that should have specific disclosure requirements? For example, are there any particular attributes of green bonds, social bonds and/or sustainability-linked bonds that warrant specific disclosures tailored to these investments?

(2) Impact Fund Disclosure

In addition to the proposed disclosures described above, an Impact Fund, *i.e.,* a fund that selects investments to seek to achieve a specific ESG impact or impacts, would be required to provide in the row ''How [the Fund] incorporates [ESG] factors in its investment decisions'' an overview of the impact(s) the fund is seeking to achieve, and how the fund is seeking to achieve the impact(s). The overview must include (i) how the fund measures progress toward the specific impact, including the key performance indicators the fund analyzes, (ii) the time horizon the fund uses to analyze progress, and (iii) the relationship between the impact the fund is seeking to achieve and financial return(s).[81] As with other proposed requirements, the fund would provide a more detailed description later in the prospectus to complement the overview provided in the ESG Strategy Overview Table.[82]

This information is designed to protect investors by providing them with specific information concerning the impact(s) the fund seeks to achieve. Requiring the fund to disclose the desired impact(s), as well as how the fund measures its progress toward achieving that impact and the related time horizon, is designed to help an investor to understand and evaluate what strategies the fund uses to achieve the impact(s). It also would address the risk of investors being misled through exaggerated ESG claims by distinguishing Impact Funds from other kinds of funds that have more general aspirations or goals, or from other ESG-Focused Funds, particularly funds that primarily use inclusionary or exclusionary screens but without seeking to achieve any specific ESG impact. In addition, requiring the fund to disclose relationship between the impact(s) the fund is seeking to achieve and financial returns is designed to require funds to disclose, if true, that financial returns are secondary to achieving the fund's stated impact—or conversely, that achieving the fund's stated impact is intended to enhance financial returns.[83] We believe an investor needs to understand this relationship to make an informed investment decision.

For example, an Impact Fund might disclose that it seeks total return while pursuing investment opportunities that finance the construction of affordable housing units. The fund also would include how it measures progress toward this goal, such as disclosing that it reviews as a key performance indicator the number of affordable housing units it financed annually. Finally, the fund would discuss the relationship between its goal of financing affordable housing units and its goal of seeking total return over, for example, a ten-year period. We believe such information would allow an investor to evaluate if a fund's specific impact(s) align with the investor's own objectives and to understand how the fund assesses progress in achieving the impact.

In addition to disclosure in the ESG Strategy Overview table, we also are proposing to require an Impact Fund to

[81] Proposed Item 4(a)(2)(ii)(B), Instruction 7 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 7 of Form N–2 [17 CFR 274.11a–1]. In addition, an Impact Fund would have to state that it reports annually on its progress in achieving the impact in the Fund's annual report. Proposed Item 27(b)(7)(i)(B) of Form N–1A [17 CFR 274.11A].

[82] Proposed Instruction 2(f), Item 9(b)(2) of Form N–1A [17 CFR 274.11A]; Proposed Item 8.2.e.(2)(B), Instruction 9.b.(5) of Form N–2 [17 CFR 274.11a–1].

[83] Letter from Federated Hermes to Vanessa Countryman (May 5, 2020) (discussing the distinction between collateral benefits ESG and risk-return ESG and how that distinction turns on the investor's motive, and attaching Max Schanzenbach and Robert Sitkoff ''Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee,'' 72 Stan. L. Rev. 381 (Feb. 2020)) submitted in Request for Comments on Fund Names, SEC File No. S7–04–20, *available at https://www.sec.gov/comments/s7-04-20/s70420-216512.pdf.*

disclose in its investment objective the ESG impact that the fund seeks to generate with its investments.[84] Open-end funds disclose their investment objectives at the beginning of the prospectus. Because closed-end funds are not required to disclose their investment objectives until later in the prospectus, the proposed instruction for closed-end funds would require an Impact Fund to disclose the ESG impact that the fund seeks to generate with its investments where the fund first describes its objective in the filing.[85] For both open- and closed-end funds, this requirement is designed to highlight for investors any ESG-related impact an Impact Fund is seeking to achieve, given that such specific or measurable impacts differentiate Impact Funds from other ESG-Focused Funds. We request comment on all aspects of our proposal with respect to disclosure by Impact Funds in the prospectus, including the following items:

52. Are Impact Funds appropriately considered a subset of ESG-Focused Funds, or are they sufficiently distinct that they need a separate set of disclosure requirements in the prospectus beyond the specific proposed instruction for Impact Funds? Should we require additional disclosures for Impact Funds beyond what we have proposed? Is there any disclosure about an Impact Fund we have proposed that the Commission should not adopt?

53. Should we, as proposed, require an Impact Fund disclose the relationship between the impact the Fund is seeking to achieve and financial return(s)? Should we require this disclosure of all ESG-Focused Funds?

54. Should we, as proposed, require an Impact Fund to disclose how it is seeking to achieve its impact, including how it measures progress towards impact? Should we instead define an Impact Fund as an ESG-Focused Fund that seeks to achieve ''measurable'' ESG impact or impacts rather than define an ESG-Focused Fund as a fund that seeks to achieve a specific impact, as proposed?

55. Should we require, as proposed, an Impact Fund to describe the fund's time horizon for progressing on its impact objectives and any key performance indicators that the fund uses to analyze or measure the effectiveness of the its engagement?

56. Should we, as proposed, require the statement that the fund reports annually on its progress in achieving its impact in the fund's annual report to shareholders or annual report on Form 10–K as applicable? Would that statement be helpful to an investor to be aware of an obligation by the fund to report progress, which the investor may want to review in making an initial investment decision?

57. Should we, as proposed, require an Impact Fund to disclose the ESG impact it is seeking to generate in the fund's investment objective section of the prospectus? Should we, as proposed, require a closed-end fund to provide this disclosure where the Impact Fund first describes its objective in the filing?

(3) Proxy Voting or Engagement With Companies

A common way for advisers to funds to advance ESG goals is through using their power as an investor.[86] In most cases, a fund's adviser votes the proxies of the fund's portfolio companies voting securities on the fund's behalf. [87] In these cases, a fund adviser's stewardship can include strategies for how the fund will vote proxies on ESG-related voting matters that arise. Further, advisers may engage with the management of issuers through meetings or statements of policy. As a result, funds have significant power that can be used to influence the actions of portfolio companies, whether through formal actions such as proxy voting or through other forms of engagement such as meetings with management or statements of policy. Investors have an interest in how funds in which they invest exercise their influence with regard to ESG issues.[88] We are proposing additional disclosure on these topics to help investors in ESG-Focused Funds understand how the fund's adviser engages with portfolio companies on ESG issues.

Specifically, we are proposing that funds for which engagement with issuers, either by voting proxies or otherwise, is a significant means of implementing their ESG strategy check the appropriate box in the first row of the ESG Strategy Overview Table.[89] A fund that checks either the proxy voting or engagement box in the first row of the ESG Strategy Overview Table indicating that proxy voting or engagement with issuers is a significant means of implementing its ESG strategy would be required to provide a brief narrative overview in the last row of the ESG Strategy Overview table of how the fund engages with portfolio companies on ESG issues. This could include, for example, an overview of the fund's voting of proxies and meetings with management.[90] As discussed further below, a fund that does not check the box in the first row would still be required to include this item in the ESG Strategy Overview Table and would disclose that neither proxy voting nor engagement with issuers is a significant part of its investment strategy.

Unlike other common strategies for which we are proposing check boxes in the first row of the ESG Strategy Overview Table, where a fund would check the box as a result of any use of the strategy described by the check box, we are proposing that a fund would only check the boxes regarding proxy voting or engagement with issuers if either such strategy is a ''significant'' means of implementing the fund's ESG

[84] Proposed instruction to Item 2 of Form N–1A [17 CFR 274.11A]; Proposed Instruction 10 to Item 8.2.e.(2)(B) of Form N–2 [17 CFR 274.11a–1].

[85] Proposed Instruction 10 to Item 8.2.e.(2)(B) of Form N–2 [17 CFR 274.11a–1].

[86] *See* Letter from Morningstar to Chair Gensler (June 9, 2021) attaching Sustainable Funds U.S. Landscape Report—More funds, more flows, and impressive returns in 2020, Morningstar Manager Research (Feb. 19, 2021) *available at https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf;* Climate Action 100+, *available at https://www.climateaction100.org/* (an initiative of more than 370 institutional investors that uses proxy voting power to ensure action on climate change); *see, e.g., Managers Wield Proxy Votes to Target Corporate Governance,* Lisa Fu, *Fund Fire* (Mar. 18, 2020) *available at https://www.fundfire.com/c/2686753/328173/managers_wield_proxy_votes_target_corporate_governance.* Staff has observed that funds that invest in other parts of the capital structure, for instance through holding debt or investing in asset-backed securities, also engage on ESG issues; discussion herein of fund engagement with issuers also includes fund engagement as a debt holder, asset-backed security investor, or similar stakeholder due to investment in an issuer.

[87] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25922 (Jan. 31, 2003) [68 FR 6563 (Feb. 7, 2003)] (''N–PX Adopting Release''), *available at https://www.sec.gov/rules/final/33-8188.htm* (recognizing that while the fund's board of directors, acting on the fund's behalf, has the right and the obligation to vote proxies relating to the fund's portfolio securities, this function is typically delegated to the fund's investment adviser); *see also* Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from Proxy Rules for Proxy Advisory Firms, Staff Legal Bulletin No. 20 (IM/CF) (June 30, 2014), *available at https://www.sec.gov/investment/slb20-proxy-voting-responsibilities-investment-advisers* at text accompanying n.4.

[88] *See also* Enhanced Reporting of Proxy Votes by Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Act Rel. No. 34389 (Sept. 29, 2021) [86 FR 57478 (Oct, 15, 2021)]; *see also* Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Company Act Rel. No. 33605 (Aug. 21, 2019) [84 FR 47416 (Sept. 10, 2019)].

[89] Proposed Item 4(a)(2)(ii)(B), Instructions 4 and 8 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.e.(2)(B), Instructions 4 and 8 of Form N–2 [17 CFR 274.11a–1]. *See also* Section II.A.1.b.

[90] Proposed Item 4(a)(2)(ii)(B), Instruction 8 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.e.(2)(B), Instruction 8 of Form N–2 [17 CFR 274.11a–1].

strategy.[91] Funds that invest in voting securities generally vote proxies they receive as a result, and without clarification, a fund may incorrectly believe that simply voting on ESG proxy matters could be sufficient for the fund to check the associated box in the ESG strategy overview row. Likewise, funds may hold meetings with certain issuers on an infrequent or ad hoc basis rather than as a significant part of their strategy, and may incorrectly believe that such infrequent or ad hoc engagement would be sufficient for them to claim that engagement is a part of their strategy. We believe that the proposed additional requirement for the fund to make proxy voting or other engagement a ''significant'' portion of its strategy in order to check the associated box results in the strategy being appropriately limited to funds that proactively use proxy voting or engagement with issuers as a means of implementing of their ESG strategy. While a fund's determination of whether either strategy is significant would depend on the facts and circumstances, we generally believe a fund that regularly and proactively votes proxies or engages with issuers on ESG issues to advance one or more particular ESG goals the fund has identified in advance would be using voting and engagement as a significant means to implement its strategy.[92]

We are proposing that this overview identify the specific methods, both formal and informal, that funds use to influence issuers. First, we are proposing that a fund would be required to identify whether the fund has specific or supplemental proxy voting policies and procedures that include one or more ESG considerations for companies in its investment portfolio and, if so, state which ESG considerations those policies and procedures address. We believe that investors will find it useful to be able to understand whether any such policies exist in order to help them understand and evaluate the fund's claims about its voting practices on ESG voting matters.

Additionally, if an ESG-Focused Fund seeks to engage with issuers on ESG matters other than through voting proxies, such as through meetings with or advocacy to management, the fund would be required to disclose in this row an overview of the objectives it seeks to achieve with its engagement strategy. We believe investors are interested in understanding a fund's engagement on ESG issues through means other than voting proxies when considering ESG investments.[93] Finally, if the fund does not engage or expect to engage with issuers on ESG issues, the Fund must provide that disclosure in the row. As is the case for funds' voting policies, we believe it is important for investors to understand if an ESG-Focused Fund does not engage or expect to engage with issuers on ESG issues because investors may expect that an ESG-Focused Fund that holds voting securities generally would engage with issuers on topics within the fund's ESG goals.

A fund that does not check the proxy voting box or the engagement box in the first row would still be required to include this row in the ESG Strategy Overview Table and would disclose that neither proxy voting nor engagement with issuers is a significant means of implementing its investment strategy. Even though in many cases a fund may not use proxy voting or engagement as a significant means of implementing its ESG engagement strategy, the fund may still vote proxies if it holds voting securities, or it may engage with issuers on a limited basis, and investors may wish to understand how it votes or engages on ESG issues. In addition, we believe it is important for investors to understand if the fund does *not* vote proxies or engage on ESG issues, as investors in an ESG-Focused Fund might otherwise be misled because they reasonably expected the fund to engage in these practices. For example, we believe that investors should understand when an ESG-Focused Fund holds voting securities but does not use proxy voting or other engagement as a means of implementing their ESG strategy, as this may be contrary to the investor's expectations. For funds that invest only in non-voting securities, we believe it would be helpful to state this fact for investors.

As with other ESG disclosures, we are proposing a layered disclosure approach for this information. The concise disclosure provided by the fund would be in the ESG Strategy Overview table and would be complemented by additional information in an open-end fund's statutory prospectus and later in a closed-end fund's prospectus, which would provide investors with complete information to evaluate a fund's engagement while not overwhelming investors with information at the front of the prospectus. Specifically, a fund that engages or expects to engage with companies in its portfolio on ESG would be required to disclose specific information on the objectives it seeks to achieve with its engagement strategy, including the Fund's time horizon for progressing on such objectives and any key performance indicators that the Fund uses to analyze or measure of the effectiveness of such engagement.[94] Collectively, these disclosures are designed to help an investor monitor how the fund engages on ESG issues, for example by implementing the ESG strategies it advertises to investors, and to understand the role of voting and engagement activity with respect to the fund's ESG focus and strategy.

We request comment on all aspects of our proposal with respect to engagement disclosure for ESG-Focused Funds, including the following items:

58. Should we, as proposed, provide separate check boxes for proxy voting and engagement? Should we, as proposed, include both proxy voting and engagement in the row ''How the Fund votes proxies and/or engages with companies about [ESG] issues?'' How commonly do funds voting proxies as a significant means of implementing their ESG strategy also use engagement as a significant means of implementing their ESG strategy, or vice versa? Do funds engage with issuers in ways other than through voting proxies and meeting with management that we should address in the disclosure rules? What are those other ways? Should we require disclosure about those other ways of engaging with issuers? What would that disclosure include?

59. As proposed, any fund for which proxy voting or engagement with issuers is a significant means of implementing the Fund's ESG strategy would indicate it pursues the applicable strategy by checking the box for proxy voting or engagement (or both, as applicable). Should this be the case, even for a fund that uses investment selection as the primary method for achieving its ESG goal? Is the proposed requirement that proxy voting or engagement with issuers be a ''significant'' means of

[91] For example, a fund checking this box might pursue a strategy of purchasing securities of an issuer that is performing poorly on ESG metrics, such as a company that has historically focused on fossil fuel production that the fund believes does not have a strategy to allocate capital to other sectors of the energy market, and run a proxy campaign to elect board members who it believes would promote a shift in its capital allocation strategy.

[92] Proposed Item 4(a)(2)(ii)(B), Instruction 4 of Form N–1A [17 CFR 274.11A]; Proposed Item 8.e.(2)(B), Instruction 4 of Form N–2 [17 CFR 274.11a–1].

[93] Funds have long discussed their practice of ''behind the scenes'' engagement. *See, e.g.,* N–PX Adopting Release, *supra* footnote 87, at Section II.B. The lack of consistent disclosure regarding this practice has been highlighted by advisory groups. *See, e.g.,* text accompanying note 27.

[94] Proposed Instruction 2(f) to Item 9(b)(2) of Form N–1A [17 CFR 274.11A]; proposed Instruction 9.b.(6) to Item 8.e.(2)(B) of Form N–2 [17 CFR 274.11a–1].

implementing the fund's ESG strategy clear? Should we provide additional guidance on what constitutes a ''significant'' means of implementing a fund's ESG strategy? Should we provide that a fund's proxy voting would only be a ''significant'' means of implementing the fund's ESG strategy if the fund engages in activity beyond simply exercising its right to vote, for example by developing or proposing initiatives directly? Should we provide for additional requirements in order for a fund to check the applicable box indicating that it uses proxy voting or engagement with issuers to implement its ESG strategy?

60. Should we, as proposed, require an ESG-Focused Fund that does not expect to vote proxies or engage with issuers to provide such disclosure in the ESG Strategy Overview table? If a fund does not expect to vote proxies or engage with its issuers, should it be required to affirmatively state this fact, as proposed, or would it instead be appropriate to require a different disclosure, such as a statement that the row is ''not applicable?'' Would such disclosure help an investor understand how a fund does or does not engage with issuers to implement its ESG strategy? Are there circumstances in which an ESG-Focused Fund's disclosure of its proxy voting or engagement practices could result in the fund making decisions that are not in the fund's best interest? Should we provide an exception from this disclosure for ESG-Focused Funds that do not expect to invest in voting securities, or would describing such strategy provide investors with helpful information? Should we require an ESG-Focused Fund that does not expect to invest in voting securities to affirmatively disclose this fact to investors in the ESG Strategy Overview table? Are there other ways in which funds that invest in non-voting securities engage with issuers and, if so, should we modify the proposed requirement to explicitly refer to such practices as being relevant disclosure for purposes of this item?

61. Is there additional information that should be disclosed in the statutory prospectus about the ESG-Focused Fund's specific or supplemental proxy voting policies regarding how it votes on ESG issues? For example, should we require a fund to provide a narrative description of its specific or supplemental proxy voting policies regarding how it votes on ESG issues? Can those policies be described briefly in a way that is understandable to investors? What other disclosure would help an investor understand how the fund votes proxies on ESG issues?

2. Unit Investment Trusts

In addition to management investment companies, some UITs provide exposures to portfolios selected based on ESG factors.[95] Accordingly, we are proposing to require these UITs to provide investors with clear information about how portfolios are selected based on ESG factors. The proposed amendment would require any UIT with portfolio securities selected based on one or more ESG factors to explain how those factors were used to select the portfolio securities.[96]

A UIT, by statute, is an unmanaged investment company that invests the money that it raises from investors in a generally fixed portfolio of stocks, bonds, or other securities.[97] Investors can review that portfolio before investing and, therefore, know the portfolio in which they will be investing for the duration of their UIT investment. Unlike a management company, a UIT does not trade its investment portfolio, and does not have a board of directors, officers, or an investment adviser to render advice during the life of the UIT. In addition, UITs that do not serve as variable insurance contract separate account vehicles or that are not ETFs typically have a limited term of 12 to 18 months.[98]

We designed our proposed amendment to provide UIT investors with the ability to understand the role ESG factors played in the portfolio selection process. In contrast to the amendments that we are proposing for other types of funds, the level of detail required by the proposed amendment reflects the unmanaged nature of UITs. In particular, we are not proposing to differentiate disclosure based on whether a UIT's selection process was an integration model or an ''ESG-focused'' model as the portfolio is fixed, and such model will not be used for continued investment selection after the UIT shares are sold. UIT trustees generally engage in ''mirror voting'' of shares, that is, vote the UITs' shares in a portfolio company in the same proportion as the vote of all other holders of the portfolio company's shares. Accordingly, we are not requiring disclosure of engagement with portfolio companies.

We request comment on all aspects of our proposed ESG disclosure for UITs, including the following items:

62. Should the ESG disclosure requirement apply to UITs, as proposed? Should the substantive disclosure requirement for UITs differ from that of other types of funds, as proposed?

63. A UIT invests the money that it raises from investors in a generally fixed portfolio of stocks, bonds, or other securities. However, the focus of certain investments of the UIT's fixed portfolio might ''drift'' away from the ESG factors that formed the basis for those investments' inclusion in the portfolio during the UIT's limited term. Should the amendments address such situations?

64. Are there elements of the proposed disclosure requirements for other types of funds that we should require of UITs? For example, should we differentiate disclosure requirements for UITs whose depositors integrate ESG factors and those whose depositors used ESG factors as a more significant or main consideration for portfolio selection? Are there currently any UITs for which the depositor selected the securities for the UITs portfolio with the goal of achieving one or more specific ESG impact and, if so, should we differentiate disclosure requirements for such UITs?

65. Should the Commission require ESG disclosure for all types of UITs, including insurance company separate accounts organized as UITs and UITs operating as ETFs?

66. Should the ESG disclosure requirement for UITs address proxy voting? Are there circumstances where the trustee would not ''mirror'' vote? If so, what are those circumstances?

[95] According to public filings with the Commission, as of Oct. 26, 2021, there were 35 UITs registered on Form S–6 that incorporated an ESG strategy.

[96] *See* Proposed Instruction 2 to Item 11 of Form N–8B–2 under the Investment Company Act [17 CFR 274.12]. A UIT registers the trust on Form N–8B–2 under the Investment Company Act [17 CFR 274.12] and each series of the trust on Form S–6 under the Securities Act of 1933 [17 CFR 239.16]. Form S–6 generally requires the registrant to provide in its prospectus the information required by the disclosure items in Form N–8B–2. *See* Instruction 1. Information to be Contained in Prospectus of Form S–6 [17 CFR 239.16].

[97] *See* 15 U.S.C. 80a–4(2) (defining a UIT, in part, to mean an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities).

[98] Fund of Fund Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) [84 FR 1286 (Feb. 1, 2019)] at n. 169 (''Fund of Funds proposing release''). The proposed amendment does not require insurance company separate accounts organized as UITs to provide additional ESG disclosure because investors in those UITs allocate their investments to subaccounts invested in mutual funds that, in turn, would provide any required disclosure under the proposal about their ESG investing. Further, the proposed amendment does not have additional disclosure requirements for UITs operating as ETFs because, as of Dec. 1, 2021, there were only five UITs that operated as ETFs and those ETFs do not pursue ESG strategies, and because funds have not sought to create new ETF UITs for 19 years.

67. Should the ESG disclosure requirements for UITs address ESG engagement? Are there circumstances where the depositor, trustee, or principal underwriter engages with issuers regarding ESG issues? If so, what are those circumstances, given the unmanaged nature of UITs?

3. Fund Annual Report ESG Disclosure

In addition to the proposed amendments to fund prospectuses, we are proposing several amendments to fund annual reports to provide additional ESG-related information. For registered management investment companies, the proposed disclosure would be included in the management's discussion of fund performance (''MDFP'') section of the fund's annual shareholder report. Currently, the MDFP provides, among other things, a narrative discussion of the factors that materially impacted the fund's performance during the most recently completed fiscal year, a line graph providing the account values for each of the most recently completed 10 fiscal years based on an initial $10,000 investment in the fund compared to the returns of an appropriate broad based index for the same period, and a table showing the fund's average annual total returns for the past 1-, 5-, and 10-year periods.[99] Although funds have flexibility in deciding what information they include in the MDFP, funds are required to disclose factors that materially impacted the fund's financial performance and operations. For BDCs, the proposed disclosure would be included in the management discussion and analysis, or ''MD&A,'' in the fund's annual report on Form 10–K.[100] That section of the annual report is similar to a fund's MDFP in that it requires a narrative discussion of the financial statements of the company and an opportunity to look at a company ''through the eyes of management.''

Specifically, we are proposing to require Impact Funds to discuss the fund's progress on achieving its impact in both qualitative and quantitative terms during the reporting period.[101] The Impact Fund would also be required to discuss the key factors that materially affected the fund's ability to achieve its impact. Additionally, funds for which proxy voting is a significant means of implementing their ESG strategy would be required to disclose certain information regarding how the fund voted proxies relating to portfolio securities on ESG issues during the reporting period.[102] Funds for which engagement with issuers on ESG issues through means other than proxy voting is a significant means of implementing their ESG strategy would also be required to disclose certain information about their engagement practices.[103] Finally, the proposal would require an ESG-Focused Fund that considers environmental factors to disclose the aggregated GHG emissions of the portfolio.[104] We discuss each of these proposed amendments below.

68. Should we require funds to provide the impact, engagement, and GHG emissions disclosure in their annual reports in the MDFP or MD&A as applicable, as proposed? Should we instead require these disclosures to be in another regulatory document such as the fund's prospectus, or Forms N–CEN, N–CSR, or N–PORT? Should we require the disclosure to be on the fund's website? Are there any modifications or enhancements to all the proposed disclosures in annual reports and Forms N–CEN, N–CSR, or N–PORT that we should adopt? If the changes to the shareholder report discussed above that the Commission proposed in August 2020 are adopted substantially as proposed, should we require this disclosure to be included in one of the new sections that the Commission proposed to be added to the report, such as the fund statistics section? Should we require funds to make some or all these disclosures more frequently than annually? For example, should registered investment companies provide the disclosure in both their annual and semi-annual reports to shareholders? Would more frequent disclosure, such as quarterly disclosure, be appropriate? Could more frequent reporting, for example, help mitigate the potential for window dressing, *i.e.,* buying or selling portfolio securities shortly before the date as of which a fund's investments are reported?

69. We are not proposing to extend these requirements to UITs.[105] Because they are unmanaged, we are not aware of any UITs that engage in impact investing, or vote proxies or engage with issuers as a significant means of implementing an ESG strategy. Should we require UITs to provide certain or all of the information we are proposing to require to be included in funds' annual reports? For example, should we require UITs to provide additional information regarding their ESG impacts, results of their proxy voting, results of their ESG engagement, or GHG emissions? How, or to what extent, should any such disclosure requirements differ for UITs, which are not managed, and in the case of UITs that would be covered by this proposal, typically have a limited term, sometimes of 12–18 months? Where should UITs provide the disclosure? For example, should a UIT provide some or all of this disclosure on Form N–CEN?

70. Should we, as proposed, require BDCs to provide certain or all of the information we are proposing to require registered management investment companies to include in MDFP? Is the proposed instruction in Form N–2 that a BDC should provide this disclosure in Item 7 of its annual report filed under the Exchange Act sufficiently clear? Are there instructions on Form N–2 or Form 10–K that we should add?

(a) ESG Impact Fund Disclosure

As discussed above, Impact Funds are seeking to achieve specific ESG impacts with their investments. Therefore, how the fund performed with respect to the fund's ESG impact is relevant to investors, in addition to the currently required information about the fund's financial performance. Some Impact Funds voluntarily disclose information regarding their progress towards achieving their impact in fund fact sheets, shareholder reports, or impact reports. However, information provided to investors of Impact Funds varies across funds. Additionally, voluntary disclosures without minimum requirements can create the potential for funds to exaggerate their ESG-related accomplishments.

[99] In Aug. 2020, the Commission proposed a layered approach to the shareholder report disclosure framework that would streamline the shareholder report delivered to shareholders, with additional information available online upon request. As part of this proposal, the Commission proposed targeted amendments to the MDFP requirements to make the disclosure more concise, but generally did not propose amendments to the current content requirements of the MDFP. *See* Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 33963 (Aug. 5, 2020) [85 FR 70716 (Nov. 5, 2020)] (''Streamlined Shareholder Report Proposal'').

[100] Proposed Instruction 10 to Item 24 of Form N–2 [17 CFR 274.11a–1]. BDC annual reports do not include MDFP.

[101] Proposed Item 27(b)(7)(i)(B) of Form N–1A; Proposed Instruction 4.(g)(1)(B) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[102] Proposed Item 27(b)(7)(i)(C) of Form N–1A; Proposed Instruction 4.(g)(1)(C) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[103] Proposed Item 27(b)(7)(i)(E) of Form N–1A; Proposed Instruction 4.(g)(1)(D) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[104] Proposed Item 27(b)(7)(i)(E) of Form N–1A; Proposed Instruction 4.(g)(1)(E) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[105] For this reason, for purposes of this Section II.A.3 of this release, the term ''fund'' does not include UITs.

Accordingly, we believe that creating a common disclosure requirement in annual reports specifically tailored to the ESG strategies of Impact Funds would provide investors who seek to engage in impact investing with information to help these investors to make more informed investment decisions and receive information to assist them in analyzing how effectively funds in which they invest are achieving their ESG impacts. Specifically, we are proposing to require an Impact Fund to summarize briefly the Fund's progress on achieving its specific impact(s) in both qualitative and quantitative terms during the reporting period, and the key factors that materially affected the Fund's ability to achieve the specific impact(s), on an annual basis in the annual report.[106] For example, a community development fund that seeks to enhance services in underserved communities by investing in the construction of community facilities may disclose that, during the reporting period, the companies in which the fund invests constructed a specific number of recreational centers in target communities. As another example, a fund that seeks to conserve natural resources by investing in the construction of certified ''green'' buildings might report the number of ''green'' buildings built by the fund's portfolio companies over the reporting period along with a qualitative discussion of how green buildings are defined and how they contribute to conservation of natural resources.

This type of information would allow investors who are seeking, based on the examples above, to enhance services in underserved communities or conserve natural resources with their investments to evaluate, in both qualitative and quantitative terms, how their investment is achieving their ESG goals in a given year and over time. It would also protect investors from exaggerated claims about ESG impacts by requiring Impact Funds to substantiate such claims on an annual basis by disclosing their progress. Additionally, to the extent different Impact Funds use the same or similar key performance indicators to measure their progress in achieving a specific impact, this requirement would allow investors to compare different Impact Funds with similarly stated ESG impacts.

We request comment on all aspects of our proposed amendments to require an Impact Fund to report progress on achieving its specific impact on an annual basis in the annual report, including the following items.

71. Should we, as proposed, require Impact Funds to discuss their progress on achieving its ESG impact? To what extent do affected funds already provide this disclosure in their annual reports or elsewhere?

72. Should we, as proposed, require the annual report disclosure for Impact Funds to be in both qualitative and quantitative terms? Are there burdens or other issues related to this requirement? Would this result in more comparable information across funds? Are there impacts that commenters do not believe can be conveyed effectively in quantitative terms? Should we allow, but not require, an Impact Fund to provide a qualitative discussion and quantitative information? Should we instead only require Impact Funds to provide a qualitative discussion of its progress? Alternatively, should we require Impact Funds to provide their progress only in quantitative terms?

73. Instead of requiring an Impact Fund to disclose its progress towards achieving its specific impact in the annual report as proposed, should we instead require it to be disclosed in another regulatory document such as the fund's prospectus, or Forms N–CEN, N–CSR, or N–PORT? Should we allow the fund to omit the disclosure in its annual report or other regulatory document if the fund provides the information on its website? If so, should the regulatory documents provide a link to the website?

74. As discussed above, the Commission proposed amendments to fund shareholder reports that would significantly shorten the shareholder reports and change its contents.[107] If the amendments to shareholder reports in that proposal were adopted, should the disclosure regarding an Impact Fund's progress on achieving its specific impact go in a different section of the shareholder report (other than the MDFP) as the Commission proposed to amend it? For example, under the proposed rule, the shareholder report would contain a new section entitled ''fund statistics,'' where funds would be required to disclose certain key fund statistics, including the fund's net assets, total number of portfolio holdings, and portfolio turnover rate. A fund would also be allowed to include additional statistics that are reasonably related to a fund's investment strategy. To the extent the proposed rule is adopted, should we require or allow disclosure of an Impact Fund's progress towards achieving its specific impact to be included in the fund statistics section of the proposed shareholder report?

75. Are the proposed instructions for the disclosure by Impact Funds sufficiently clear? Are there portions of the instructions that we should clarify? Are there alternative instructions that would provide investors in Impact Funds with meaningful information about a fund's progress towards its objectives? For example, if an Impact Fund changes the methodology it uses to calculate its progress towards achieving its specific impact, should the instructions require such a fund to describe the change in methodology and the reasons for the change?

76. Should we require all ESG-Focused Funds and/or Integration Funds to provide MDFP or MD&A disclosure regarding how effectively they implemented their ESG strategies? For example, do ESG-Focused Funds that primarily use an inclusionary or exclusionary screen track any key performance indicators to analyze the effectiveness of the screen in furthering the ESG issues that are relevant to fund? Do Integration Funds track any key performance indicators? Would this disclosure of such key performance indicators be helpful to investors? Would it lead to potential for investors to be misled through overemphasis of ESG factors relative to such funds' actual level of consideration of such factors?

(b) ESG Proxy Voting Disclosure

We are also proposing amendments to fund annual reports to require an ESG-Focused fund for which proxy voting is a significant means of implementing its ESG strategy to disclose certain information regarding how it voted proxies relating to portfolio securities on particular ESG-related voting matters.[108] Specifically, the proposed amendments would require the fund to disclose, in the MDFP or MD&A section of the annual report as applicable, the percentage of ESG-related voting matters during the reporting period for which the Fund voted in furtherance of the initiative.[109] The fund would be

[106] Proposed Item 27(b)(7)(i)(B) of Form N–1A; Proposed Instruction 4.(g)(1)(B) to Item 24 of Form N–2 [17 CFR 274.11a–1]. This requirement would apply to any fund that meets the definition of Impact Fund included in Item 4(a)(2)(i)(C) of Form N–1A and Item 8.2.e.(1)(C) of Form N–2. *See supra* Section II.A.1.b.(2).

[107] *See* Streamlined Shareholder Report Proposal, *supra* footnote 99.

[108] Proposed Item 27(b)(7)(i)(C) of Form N–1A; Proposed Instruction 4.(g)(1)(C) to Item 24 of Form N–2 [17 CFR 274.11a–1]. This requirement would apply to any fund that checks the proxy voting box included in the proposed amendments to Item 4 of Form N–1A and Item 8 of Form N–2. *See supra* Section II.A.1.b.(3).

[109] Take, for example, a fund focused on deforestation. During the reporting period, the fund

Continued

permitted to limit the disclosure to voting matters involving ESG factors that the fund incorporates into its investment decisions. Additionally, a fund would be required to refer investors to the fund's full voting record filed on Form N–PX by providing a cross reference, and for electronic versions of the annual report, including a hyperlink, to the fund's most recent complete proxy voting record filed on Form N–PX.[110]

We believe that this disclosure regarding the percentage of the fund's votes in furtherance of relevant ESG initiatives would complement the prospectus disclosure we are proposing funds to provide regarding how they use proxy voting to influence portfolio companies, as well as the existing granular report funds provide with their full proxy voting records on Form N–PX.[111] The proposed disclosure would allow an investor immediately to see the extent to which the fund was voting in favor of relevant ESG initiatives, while directing investors to the more detailed disclosure of the fund's voting record filed on Form N–PX for investors interested in that more detailed information.

We request comment on all aspects of these proposed amendments, including the following items.

77. Should we, as proposed, require any fund that indicates that it uses proxy voting as a significant means of implementing its ESG strategy to disclose the percentage of voting matters during the reporting period for which the fund voted in furtherance of the initiative? Should we permit the fund to limit this disclosure to voting matters involving the ESG factors the fund incorporates into its investment decisions, as proposed? Would investors and other market participants find this information helpful? Is there any additional information regarding their proxy voting that we should require funds to provide?

78. Are there any complexities with calculating the aggregate percentage of fund votes in furtherance of an ESG voting matter? For example, to what extent would there be ambiguity as to whether a voting matter involves the ESG factors the fund incorporates into its investment decisions? Are there cases in which it may be unclear whether or not a shareholder proposal that relates to an ESG factor a fund incorporates into its investment decisions advances the particular ESG goal? Could there be situations in which a shareholder proposal may be related to a particular ESG factor the fund incorporates into its investment decisions but the fund nonetheless votes against the proposal, for instance because it believes the proposal would not be a constructive way to address the particular ESG matter? Would funds that wish to provide additional context in these or similar situations be able to do so effectively and concisely within the MDFP or MD&A disclosure?

79. Should funds be required to provide a narrative explanation of how they cast their proxy votes on ESG matters, either instead of or in addition to statistics on ESG matters? If we required a narrative, what elements should a fund be required to include?

80. Should we, as proposed, require funds to provide cross-references to the more detailed disclosure regarding the fund's full proxy voting record on Form N–PX? Should we also require funds to cross reference their ESG proxy voting policies and procedures?

(c) ESG Engagement Disclosure

We are proposing amendments to fund annual reports that would require funds for which engagement with issuers through means other than proxy voting is a significant means of implementing their ESG strategy to disclose progress on any key performance indicators of such engagement.[112] The amendments we are proposing also require disclosure of the number or percentage of issuers with whom the fund held ESG engagement meetings during the reporting period related to one or more ESG issues and total number of ESG engagement meetings. Funds have previously asserted that much of their influence is asserted in private communications outside of formal shareholder votes.[113] We believe that this disclosure would allow investors to evaluate critically the disclosure of funds whose ESG strategy involves engagement other than or in addition to proxy voting in order to reduce the potential for exaggerated claims of engagement, as well as to allow investors to understand better whether these funds are accomplishing their objectives.[114]

We are proposing to define ''ESG engagement meeting'' for this purpose to mean a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with management regarding this goal. This definition is intended to identify substantive interactions on ESG issues and distinguish an ''ESG engagement meeting'' for this purpose from other meetings or interactions for which advocacy on ESG issues is not a focus, or from aspects of a fund's ESG engagement strategy that are not directed to a particular company, such as letters to all issuers in a fund's portfolio or policy statements describing a fund's ESG priorities. For example, if a fund adviser met with management of an issuer in the fossil fuel industry to urge the issuer to divest carbon-intensive assets by the year 2030 due to their impact on the environment, with a list of measurable interim steps that could be made in each period and a follow-up meeting scheduled with management in six months to discuss progress toward that goal, the each such meeting would be an ESG engagement

was eligible to vote on 100 voting matters that would have limited deforestation. If the fund voted in favor of 75 of those matters, then the fund would report that it voted in furtherance of limiting deforestation 75% of the time during the reporting period.

[110] The requirement to refer investors to the fund's full voting record filed on Form N–PX would not apply to BDCs because they do not file reports on Form N–PX.

[111] The Commission has proposed amendments to Form N–PX that would require filers to select from a standardized list of categories to identify the subject matter of each of the reported proxy voting items, including categories of proxy votes relating to numerous ESG matters. *See* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Act Release No. IC–34389 (Sep. 29, 2021) [86 FR 57478 (Oct. 15, 2021)]. Commenters on that proposal requested that the Commission propose additional comprehensive disclosure on funds' ESG engagement, whether by proxy voting or other means, to complement the disclosure on Form N–PX. *See* Letter from Vanguard Group Center regarding Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File No. S7–11–21), *available at https://www.sec.gov/comments/s7-11-21/s71121-20109559-263921.pdf.*

[112] *See* Proposed Item 27(b)(7)(i)(D) of Form N–1A; Proposed Instruction 4.(g)(1)(D) to Item 24 of Form N–2.

[113] *See* N–PX Adopting Release, *supra* footnote 87, at Section II.B (''[C]ommenters argued that mandatory disclosure of proxy votes would undermine their ability to change corporate governance practices of portfolio companies through 'behind the scenes' private communications''). Public interest groups have noted the influence that may be wielded through engagement meetings and have suggested that the nonpublic nature of such meetings makes it difficult for investors to understand whether their interests are being served. *See* Letter from Mercatus Center regarding Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File No. S7–11–21), *available at https://www.sec.gov/comments/s7-11-21/s71121-9374387-262127.pdf.*

[114] *See also* Section I.A.3 (discussing need for a disclosure framework that allows investors to understand specific information about an ESG investment strategy in light of the different approaches taken by ESG investors).

meeting under the proposed definition.[115]

We recognize that funds may be incentivized to report a higher number or percentage of engagements, and this may result in funds construing the term ''ESG engagement meeting'' differently. For example, certain funds could perceive pressure to report a high number or percentage of engagements and thus adopt a more expansive understanding of what constitutes an engagement than an investor would expect. In order to support compliance with the Federal securities laws, funds should generally consider including in their compliance policies and procedures a requirement that employees memorialize the discussion of ESG issues, for example by creating and preserving meeting agendas and contemporaneous notes of engagements relating to ESG issues to assure accurate reporting on the number of engagements, as we propose to define it.[116]

On the other hand, a ''meet and greet'' between a fund's adviser and the management of an issuer in the fossil fuel industry where the topic is mentioned, but only at a high level would be unlikely to meet the definition, even if the adviser and the issuer's management do discuss transitioning away from fossil fuels. Likewise, a fund adviser that issues a press release announcing a policy that issuers in its portfolio will be expected to divest from their carbon-intensive assets by 2030 due to their impact on the environment could not treat this press release as an ESG engagement meeting because it is not tailored to the operations of a particular company and does not actually interact or engage with anyone at the company, but instead is part of a dialogue with the public, rather than the issuer.[117]

We recognize that, unlike the proposed disclosure requirements relating to a fund's proxy voting, the level of subjectivity involved in determining whether a discussion meets the definition of an ESG engagement meeting could diminish the comparability across funds of the statistics reported pursuant to this instruction. While this metric is only one of several means by which investors could compare ESG-Focused Funds, we believe that it is important to provide this information for investors to allow them to evaluate the efficacy of their fund's engagement activities and to provide some basis for comparison among funds. Though there may be some ambiguities in the inputs for the calculation, we believe that in many cases this would be straightforward for funds to calculate and useful for investors as they consider investments. We believe it would provide investors with enhanced means to monitor whether the results of ESG engagement strategy comport with investor expectations and the fund's prospectus disclosure, as opposed to solely relying on qualitative statements, as well as to compare ESG-Focused Funds. Moreover, we recognize that forms of engagement other than ESG engagement meeting as we propose to define the term may be a valuable part of a fund's engagement strategy, and the proposal would not preclude a fund from also discussing these other efforts in the fund's MDFP or MD&A as applicable.

We request comment on all aspects of these proposed amendments, including the following items.

81. Should we, as proposed, require disclosure of the number or percentage of issuers with which the fund engaged and total number of ESG engagement meetings, as we propose to define that term? Would this information be useful to investors? Instead of, or in addition to, ESG engagement meetings, are there other metrics that we could require to be disclosed in relation to a fund's engagement strategy? Should we require funds to provide additional context to this information beyond the number or percentage of issuers with which the fund engaged and number of engagement meetings?

82. What incentives for funds, issuers, or others would exist as a result of the proposed requirement that funds report the number of ESG engagement meetings they have? For example, will management of certain issuers be more or less likely to engage with a fund if they believe it would be reported? Will funds be more or less likely to engage on certain types of issues? For example, will funds only engage with management of issuers on ESG issues where the fund believes that management already agrees with it? Would disclosure of engagement result in funds or issuers being influenced by other parties who become aware of the engagement, including parties that are not investors in the fund or the applicable issuer, and, if so, should we take any steps as a result of this influence?

83. Is our proposed definition of ''ESG engagement meeting'' sufficiently clear? Is it appropriate that in order for a discussion to constitute an ESG engagement meeting, the meeting must be a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with the issuer regarding this goal? Are there additional criteria that we should require in order for a discussion to constitute an ESG engagement meeting, for example, by requiring that meetings be with personnel of a particular seniority (such as executive officer or board member) of an issuer, requiring that the meeting must only discuss ESG issues?

84. Is it possible that funds will construe the term ''ESG engagement meeting'' more liberally than investors, resulting in a higher reported number than if the definition of ESG engagement meeting were more narrow? Should we provide additional guidance on the definition of ESG engagement meeting or require additional policies and procedures, recordkeeping, or disclosure in order to assist in making funds' approaches to what constitutes an ESG engagement meeting more consistent between funds and more consistent with investors' expectations? For example, should we require funds to develop written documentation regarding their engagement objectives, performance indicators to measure progress, monitoring and evaluation of ESG engagement meetings, or development of relationships with issuers? How do funds currently set and track their ESG engagement objectives? Is the requirement that progress toward an ESG goal be ''measurable'' sufficiently clear? Should we provide additional guidance or context regarding the definition of ''measurable'' as used in this instruction? Are there certain ESG goals where progress is not measurable where it would be appropriate for funds to be required to describe their engagement strategy?

85. Should funds be required to provide additional information regarding their engagement strategy, either instead of or in addition to the

[115] In many cases, we recognize that fund advisers meet with management of issuers on behalf of several funds they advise. When an adviser meets with management of an issuer on behalf of multiple funds, each fund for which the meeting is within its ESG strategy would count the engagement meeting in its annual report. *See* proposed Item 27(b)(7)(i)(D) of Form N–1A; proposed Instruction 4.(g)(1)(D) to Item 24 of Form N–2.

[116] *See* 17 CFR 270.38a–1 under the Investment Company Act and Investment Company Act Section 34(b) [15 U.S.C. 80a–33(b)].

[117] After issuing the press release, the fund adviser may follow up with a particular issuer to discuss the specific ways in which the policy announced in the press release would impact the issuer's business and identify specific goals the fund expected the issuer to achieve. Such a meeting would generally constitute an ESG engagement meeting because, unlike a press release or open letter, the fund and the issuer actually discussed how it should be applied to the issuer.

proposed narrative explanation and statistics regarding number of ESG engagement meetings and progress toward key performance indicators? If we required additional information, what elements should a fund be required to include? Could the proposed disclosure of narrative information or statistics regarding ESG engagement meetings result in investors being misled as to the nature or results of a fund's ESG strategy?

86. As proposed, the form would require funds to report statistics regarding the number of ESG engagements meetings across their entire portfolio, irrespective of the ESG goal of the meeting; should we instead require funds to break down their engagement statistics based on category? Would this provide helpful detail for an investor seeking to assess a fund's engagement on a particular topic? Would the breadth of potential categories make it difficult to convey the overall extent of a fund's engagement? Are there particular categories of engagement where investors would find it useful for ESG engagement meeting statistics to be presented separately? Would subcategorizing the statistics in this fashion present any challenges, such as administrative burden for funds or complexity in determining the particular category into which an ESG engagement meeting falls?

(d) GHG Emissions Metrics Disclosure

(1) Scope of Proposed Rule

Investors who seek to invest in environmentally focused funds have shown an increasing interest in consistent and comparable climate-related disclosures, including emissions metrics.[118] Environmentally focused funds have taken various approaches to address this investor interest. Some environmentally focused funds provide metrics or other quantifiable information in fund shareholder reports or marketing materials regarding the amount of GHG emissions financed by such funds.[119] However, this type of disclosure is inconsistent across funds, and funds vary in the methodologies they use to generate such GHG-related quantitative data. Other funds make vague or broad claims regarding the GHG emissions of their portfolio of investments.[120]

The current lack of consistent, comparable and decision-useful data makes it difficult for investors to make better informed investment decisions that are in line with their ESG investment goals and to assess any GHG-related claims a fund has made. It also may lead to potential greenwashing and compromise the reliability of sustainable investment product disclosures.[121] These concerns are heightened for funds that make specific claims regarding the GHG emissions or emissions intensity of their portfolios because such claims may give rise to specific investor expectations regarding the impact of the fund's investments on the environment. At the same time, we are requesting comment on ways in which registrants could have flexibility in making the necessary disclosures.

Therefore, we are proposing to require an ESG-Focused Fund that considers environmental factors as part of its investment strategy to disclose the carbon footprint and the weighted average carbon intensity (''WACI'') of the fund's portfolio in the MDFP or MD&A section of the fund's annual report as applicable.[122] This proposed requirement would apply to ESG-Focused Funds that indicate that they consider environmental factors in response to Item C.3(j)(ii) on Form N–CEN, but do not affirmatively state that they do not consider issuers' GHG emissions as part of their investment strategy in the ''ESG Strategy Overview'' table in the fund's prospectus (''environmentally focused fund'').[123] As discussed in more detail below, the carbon footprint and WACI metrics are generally aligned with the recommendations from the TCFD [124] and Partnership for Carbon Accounting Financials (''PCAF'') frameworks and based on emission data consistent with those defined by the GHG Protocol framework.[125]

We recognize, however, that not all ESG-Focused Funds that consider environmental factors as part of their investment strategies consider the GHG emissions of the issuers in which they invest as part of their investment strategies. Therefore, and as discussed above, a fund would not be required to disclose its GHG emissions metrics if it affirmatively states in the ''ESG Strategy Overview'' table in the fund's prospectus that it does not consider issuers' GHG emissions as part of its investment strategy.[126] We believe it is appropriate to limit the scope of funds that would be required to disclose GHG emissions data to those funds where GHG emissions data play a role in the fund's stated investment strategy. We believe that this approach appropriately limits the scope of this disclosure to funds that consider GHG emissions in their investment strategies, and ensures that investor expectations on a fund's approach to GHG emissions are aligned with the fund's actual investment strategy.

These requirements also would apply to a BDC that is an environmentally focused fund. The Commission has proposed in a separate release to require

[118] *See, e.g.* Robeco Survey Reveals Big Investor Shift on Climate Change and Decarbonization (Mar. 22, 2021), *available at https://www.robeco.com/en/media/press-releases/2021/robeco-survey-reveals-big-investor-shift-on-climate-change-and-decarbonization.html* (stating that a survey of 300 of the world's largest institutional and wholesale investors revealed that, while climate change is a significant factor in the investment policy of almost three-quarters (73%) of investors who were surveyed, 44% of surveyed investors viewed the lack of data and reporting as the biggest obstacle to implementing decarbonization). Additionally, investor demand for improved climate-related metric disclosure has recently developed in the private equity market. A coalition of private equity firms has formed to standardize ESG disclosures by selecting 6 quantitative metrics, including a GHG emissions metric, that portfolio companies will have to report and that private equity funds would then report to their limited partners. *See* Institutional Limited Partners Association, ESG Data Convergence Project, *available at https://ilpa.org/ilpa_esg_roadmap/esg_data_convergence_project/.*

[119] *See* CDP's ''The Time to Green Finance,'' (''CDP Report'') *available at https://www.cdp.net/en/research/global-reports/financial-services-disclosure-report-2020.*

[120] *See* Sustainable finance and market integrity: promise only what you can deliver, A regulatory perspective on environmental impact claims associated with sustainable retail funds in France, 2investinginitiative, July 2021, *available at Sustainable-Finance-and-Market-Integrity.pdf* (*2degrees-investing.org*)*; see also* CFA Institute, Global ESG Disclosure Standards for Investment Products (2021), *available at https://www.cfainstitute.org/-/media/documents/ESG-standards/Global-ESG-Disclosure-Standards-for-Investment-Products.pdf* (explaining that, because of the wide variety of methods that the investment management industry uses to incorporate ESG into its investment process and the lack of standardized disclosures around ESG, it is difficult for investors to sort these products into well-defined categories).

[121] *See supra* at text following footnote 4 (describing greenwashing).

[122] *See* proposed Item 27(b)(7)(i)(E) of Form N–1A; proposed Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[123] Except as otherwise provided or the context requires, when we refer to an ''environmentally-focused fund'' in this release, we are referring to an ESG-Focused Fund that considers environmental factors as part of its investment strategy that has not made this affirmative disclosure in the ''ESG Strategy Overview'' table in the fund's prospectus.

[124] *See supra* footnote 10 (defining the TCFD).

[125] In this regard, several studies have found that GHG emissions data prepared pursuant to the GHG Protocol have become the most commonly referenced measurements of a company's exposure to climate-related risks *See, e.g.,* C. Kauffmann, C. Tébar Less, and D. Teichmann (2012), *Corporate Greenhouse Gas Emission Reporting: A Stocktaking of Government Schemes,* OECD Working Papers on International Investment, 2012/01, OECD Publishing, at 8, *available at http://dx.doi.org/10.1787/5k97g3x674lq-en* (''For example, the use of scope 1, 2, 3 to classify emissions as defined by the GHG Protocol has become common language and practice today.'').

[126] *See* proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

BDCs to provide climate-related information in their annual reports on Form 10–K, including a BDC's Scope 3 emissions if material or if Scope 3 emissions are part of an announced emissions reduction target.[127] We believe the GHG emission disclosure we are proposing in this release would complement that climate disclosure, if both proposals were adopted. As discussed in more detail below, 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. We believe these specific measures are appropriate for environmentally focused funds, regardless of whether the fund is a registered open- or closed-end fund or business development company.

We believe that these requirements would advance the Commission's mission by meeting the demands of investors in environmentally focused funds for consistent and reasonably comparable quantitative information regarding the GHG emissions associated with those funds' portfolios. Investors may need GHG-related quantitative data in environmentally focused funds where GHG emissions data play a role in the fund's investment strategy because such disclosures would provide investors with consistent, comparable, and decision-useful information about their portfolio of investments that are relevant to their investment decisions. This information would better allow investors to make decisions in line with their ESG investment goals and expectations set by the fund, and allow investors in these funds to assess GHG-related claims that a fund has made or to compare the fund's GHG data against the fund's investment strategy.

(2) Emissions Reporting Frameworks and the Development of Financed Emissions Metrics for Investment Portfolios

The GHG Protocol has become the most widely used global greenhouse gas accounting standard for companies.[128] The GHG Protocol's Corporate Accounting and Reporting Standard provides uniform methods to measure and report the greenhouse gases covered by the Kyoto Protocol.[129] It also introduced the concept of ''scopes'' of emissions to help delineate those emissions that are directly attributable to the reporting entity and those that are indirectly attributable to the company's activities.[130] The GHG Protocol has been updated periodically since its original publication and has been broadly incorporated into sustainability reporting frameworks, including, among others, the TCFD and the PCAF frameworks for reporting of Scope 3 financed emissions at the investment portfolio level. These frameworks are discussed in more detail below.

As fund investors' interest in GHG emissions has increased, substantial work also has been done to develop effective means to present aggregated GHG emissions information at a portfolio level in a comparable, consistent, and decision-useful way. Specifically, to address investor concerns and expectations, the TCFD developed a framework to foster consistent climate-related financial disclosures that could be used by organizations across sectors and industries, including funds.[131] As part of its recommendations initially published in 2017, the TCFD suggested several metrics that asset managers and asset owners, including funds, can use to calculate the GHG emissions of their investments.[132] These metrics initially focused on calculating financed Scope 1 and Scope 2 emissions and included, among others, the WACI and carbon footprint metrics.[133] Several international third-party ESG organizations and regulators have endorsed the TCFD framework, including its GHG emissions metrics, and have worked to implement the framework and converge around a unified approach to climate reporting.[134]

There has been significant progress in the development of GHG metric calculations since 2017, particularly in the area of financed GHG emissions.[135] In November of 2020, PCAF established the first global carbon accounting standard for the measurement and disclosure of financed emissions (''PCAF Standard''),[136] which has

[127] *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, 33–11042 (Mar. 21, 2022) [87 FR 21334 (Apr. 11, 2022)] (''Climate Disclosure Proposing Release'').

[128] *See, e.g.,* letters from ERM CVS; and Natural Resources Defense Council; *see also* Greenhouse Gas Protocol, *About Us | Greenhouse Gas Protocol (ghgprotocol.org).* For example, the Environmental Protection Agency (''EPA'') Center for Corporate Climate Leadership references the GHG Protocol's standards and guidance as resources for companies that seek to calculate their GHG emissions. *See, e.g.,* EPA Center for Corporate Climate Leadership, *Scope 1 and Scope 2 Inventory Guidance, available at https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance.*

[129] The Kyoto Protocol, adopted in 1997, implemented the United Nations Framework Convention on Climate Change by obtaining commitments from industrialized countries to reduce emissions of the seven identified gasses according to agreed targets. *See* United Nations Climate Change, *What is the Kyoto Protocol?* The EPA includes these seven greenhouse gases in its greenhouse gas reporting program. *See, e.g.,* EPA, GHGRP Emissions by GHG.

[130] *See* World Business Council for Sustainable Development and World Resources Institute, *The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard* REVISED EDITION. Under the GHG Protocol, Scope 1 emissions are direct GHG emissions that occur from sources owned or controlled by the company, such as emissions from company-owned or controlled machinery or vehicles. Scope 2 emissions are those indirect emissions primarily resulting from the generation of electricity purchased and consumed by the company. Scope 3 emissions are all other indirect emissions not accounted for in Scope 2 emissions. These emissions are a consequence of the company's activities but are generated from sources that are neither owned nor controlled by the company.

[131] *See supra* footnote 10; *See* UN Environment Programme Finance Initiative, Task Force on Climate-Related Financial Disclosures, *available at https://www.unepfi.org/climate-change/tcfd/.*

[132] *See* Final Report, Recommendations of the TCFD (June 2017), *available at https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf* (''2017 TCFD Guidance'').

[133] *See* Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (Oct. 2021) (''Updated TCFD Guidance''), *available at https://www.fsb.org/wp-content/uploads/P141021-4.pdf.* (defining the WACI metric as a portfolio's exposure to carbon-intensive companies, expressed in tons of carbon dioxide equivalents (''CO_2e'') per million dollars of the portfolio company's revenue and defining the carbon footprint metric as the total carbon emissions for a portfolio normalized by the market value of the portfolio, expressed in tons CO_2e per million dollars invested).

[134] *See e.g.,* Reporting on Enterprise Value Illustrated with a Prototype Climate-related Financial Disclosure Standard, CDP, CDSB, GRI, IIRC, and SASB, (Dec. 2020) *available at Reporting-on-enterprise-value_climate-prototype_Dec20.pdf* (*netdna-ssl.com*); *see also* Financial Conduct Authority (''FCA''), Enhancing Climate Related Disclosures by Asset Managers, Life Insurers, and FCA-Regulated Pension Providers (2021), *available at https://www.fca.org.uk/publication/consultation/cp21-17.pdf* (''FCA Consultation Paper'') (proposal to make TCFD-aligned disclosures mandatory in the UK); *see also* New Zealand Government Press Release, New Zealand Becomes First in the World to Require Climate Risk Report (Sept. 15, 2020), *available at https://www.beehive.govt.nz/release/new-zealand-first-world-require-climate-risk-reporting* (adopting a mandatory climate-related financial disclosure regime in line with the TCFD framework).

[135] Scope 3 emissions include the financed emissions of an investment portfolio and are calculated based on the GHG emissions of each company in which the investment portfolio invests. *See infra* footnote 155 (defining Scope 3 emissions).

[136] *See* Partnership for Carbon Accounting Financials, The Global GHG Accounting and Reporting Standard for Financial Industry (Nov. 2020), *available at https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf.* Financed emissions are emissions that are financed by loans and investments in a portfolio of a financial institution, including mutual fund portfolios. Financed emissions fall within the Greenhouse Gas Protocol's (''GHG Protocol's'') Scope 3 downstream emissions, specifically listed as category 15 Scope 3 emissions.

subsequently been endorsed by the TCFD[137] in updated guidance issued by the TCFD in 2020 and reviewed by the GHG Protocol.[138] Under the PCAF Standard, a financial institution (including a fund) measures and reports the Scope 1 and Scope 2 emissions of the investments it holds as of its fiscal year-end using the PCAF methodologies.[139]

In addition, under the PCAF Standard, the disclosure of a portfolio investment's Scope 3 emissions are separate from its Scope 1 and Scope 2 emissions. Because of the limited information regarding Scope 3 emissions currently available, PCAF follows a phased-in approach to Scope 3 reporting, with reporting of Scope 3 emissions only for certain select sectors that provide Scope 3 emissions data. PCAF recognized the difficulties inherent in the comparability, coverage, transparency, and reliability of Scope 3 data of the investments held by a financial institution when attempting to capture the Scope 3 dimension of financed emissions. Therefore, by separating Scope 3 emissions from Scope 1 and 2 emissions and having Scope 3 emissions reported by sector, the PCAF Standard seeks to make Scope 3 emissions reporting more common practice by improving data availability and quality over time.

TCFD endorsed the PCAF Standard in its updated guidance and recommended that asset owners disclose the appropriate financed-emissions metric based on PCAF's methodology along with the WACI metric, if relevant.[140] Several foreign jurisdictions are considering regulations that would require financial institutions, including funds and advisers, to disclose GHG emissions data.[141]

(3) Proposed Fund Metrics Reporting Requirement

The proposal would require environmentally focused funds to disclose the carbon footprint and the WACI of the fund's portfolio in the MDFP or MD&A section of the fund's annual report as applicable.[142] Carbon footprint is the total carbon emissions associated with the fund's portfolio, normalized by the fund's net asset value and expressed in tons of CO_2e per million dollars invested in the fund.[143] Carbon footprint is an economic measure of the amount of absolute GHG emissions that a fund portfolio finances, through both equity ownership and debt investments, normalized by the size of the fund. This measure would allow investors to understand the extent to which their investments are exposed to carbon-related assets and their associated risks, as well as the climate impact of fund's investment decisions. For example, if a company has an ''enterprise value'' of $100 million in equity capital and no debt, and a fund buys $10 million of the fund's equity securities, this measure treats the fund as having ''financed'' 10% of the company's emissions and attributes those emissions to the fund. Where the sum of the financed emissions is divided by the net asset value of the fund, as we are proposing, this provides a normalized value of the fund's financed emissions that allows an investor to compare funds of different sizes with each other. Without normalizing for the fund's size, a larger fund might have a larger carbon footprint than a smaller fund simply because of the larger fund's size.

To calculate the fund's carbon footprint under the proposal, a fund would first calculate the portfolio company's enterprise value.[144] Enterprise value is the sum of the portfolio company's equity value plus its total debt.[145] We are proposing to include both equity and debt because a portfolio company can use capital raised from either or both of equity and debt to finance its business activities that generate GHG emissions. A fund would then calculate the carbon emissions associated with each portfolio holding by dividing the current value of the fund's investment in the portfolio company by the portfolio company's enterprise value, then multiplying the resulting amount by the portfolio company's Scope 1 and Scope 2 GHG emissions. Finally, the fund would add up the carbon emissions associated with each portfolio holding and divide the resulting amount by the current net asset value of the portfolio to derive the fund's carbon footprint.

Using the example above to illustrate the calculation, the portfolio company had an enterprise value of $100 million and the fund owned equity securities equal to 10% of the company's enterprise value. If a company's Scope 1 and 2 emissions totaled 2 metric tons of CO_2e in the last year, the emissions attributable to the fund for this calculation would be 10% of 2 metric tons of CO_2e (or 0.2 metric tons of CO_2e). The fund would repeat this calculation for each of its portfolio holdings and then add up the resulting values for all of its portfolio holdings. The fund would then divide the resulting amount by the net asset value of the fund to derive the fund's carbon footprint.

WACI is the fund's exposure to carbon-intensive companies, expressed in tons of CO_2e per million dollars of the portfolio company's total revenue.[146] A fund's WACI measures a fund's exposure to carbon-intensive companies. That is, this measure allows an investor to see, in quantitative terms, the portfolio companies' carbon intensity—the portfolio companies' GHG emissions relative to their revenue—rather than the companies' absolute GHG emissions. For example, if 10% of the fund was invested in XYZ company, the fund would determine XYZ company's carbon emissions per million dollars of revenue by dividing the company's Scope 1 and 2 GHG emissions by the company's total revenue (in millions of dollars). These emissions would then be attributed to the fund in proportion to the weight of the investment in the fund's portfolio: ten percent of the emissions would be attributable to the fund because the

[137] *See* Updated TCFD Guidance, *supra* footnote 133.

[138] *See id. See also* GHG Protocol Press Release, *New Standard Developed to Help Financial Industry Measure and Report Emissions* (Mar. 2021), *available at https://ghgprotocol.org/blog/new-standard-developed-help-financial-industry-measure-and-report-emissions.*

[139] *See* the PCAF Standard, *supra* footnote 136.

[140] The TCFD also recommended that asset owners consider providing other carbon footprinting and exposure metrics that they believe are decision useful for investors.

[141] *See* Sustainable Finance and EU Taxonomy: Commission takes further steps to channel money towards sustainable activities, *available at https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1804* (summarizing the European Commission's proposed mandatory TCFD-aligned disclosure within new Corporate Sustainability Reporting Directive, including data regarding GHG emissions); *see also* FCA Consultation Paper, *supra* footnote 134, at 32 (proposal by the FCA to require certain FCA regulated entities, including funds, to disclose carbon emissions consistent with the TCFD framework and PCAF Standard).

[142] *See proposed* Item 27(b)(7)(i)(E) of Form N–1A; proposed Instruction 4.(g)(1)(E) to Item 24 of Form N–2; Proposed Instruction 10 to Item 24 of Form N–2 [17 CFR 274.11a–1].

[143] Expressing GHG emissions in terms of CO_2e is the common unit of measurement to indicate the global warming potential of a greenhouse gas. *See infra* footnote 153. We are proposing to require this expression to be presented per millions of dollars, rather than dollars, invested in the fund to avoid smaller calculations that may be less informative to investors and more difficult to calculate.

[144] *See* proposed Instruction 1(a)(i) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(a)(i) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[145] A portfolio company's total debt is the sum of the book value of its short- and long-term debt.

[146] WACI is consistent with the emissions metrics suggested by the TCFD. *See* Updated TCFD Guidance, *supra* footnote 137; *see also* Climate Disclosure Proposing Release, *supra* footnote 127 (proposing to require corporate issuers to disclose their GHG intensity in terms of metric tons of CO_2e per unit of total revenue and per unit of production for the fiscal year).

holding represents 10% of the fund's net asset value.[147]

To calculate the fund's WACI under the proposal, as reflected in the example above, a fund would first calculate the portfolio weight of each portfolio holding by dividing the value of the fund's investment in the portfolio company by the current net asset value of the fund.[148] The fund would then calculate the carbon emissions of each portfolio company by dividing the portfolio company's Scope 1 and Scope 2 GHG emissions by the portfolio company's total revenue (in millions of dollars). These emissions would then be attributed to the fund in proportion to the weight of the investment in the fund's portfolio, that is, if the fund's investment in ABC Company represented 10% of the fund's net asset value and ABC Company's Scope 1 and 2 GHG emissions divided by revenue was 1 million metric tons of CO_2e, the emissions attributable to the fund under this calculation for ABC Company would be 10% of 1 million. The fund would perform this calculation for each portfolio company in its portfolio and the sum of the emissions attributable to the fund would be the fund's WACI.

We believe these measures 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. For example, a fund's carbon footprint would help investors understand the extent to which a fund's investments contribute to emissions and how that changes over time and compare it to other environmentally focused funds. On the other hand, a fund's WACI would allow investors to analyze more effectively the fund's exposure to climate risk and to reasonably compare the exposure to climate risk of different funds. For example, a fund's WACI highlights for investors the extent to which a fund's portfolio is exposed to portfolio companies with higher carbon intensity. These portfolio companies may be more susceptible to transition risk, that is, risks related to the expected transition to a lower carbon economy.[149] These measures also are familiar to environmentally focused investors and fund managers, as they are generally consistent with standards developed by the PCAF (a measure similar to carbon footprint) and the TCFD (WACI).

For both the carbon footprint and WACI measures, the proposed rules do not permit a fund to reduce the GHG emissions associated with a portfolio company as a result of the company's use of purchased or generated carbon offsets.[150] We believe that disclosing GHG emissions data without giving effect to any purchased or generated carbon offsets is appropriate, not only because such a measure would provide investors with important information about the magnitude of climate-related risk posed by a fund portfolio's financed GHG emissions, but also because the value of offsets may change due to restrictions imposed by regulation or market conditions. A fund could disclose such offsets separately from its financed emissions if it believed this information was helpful to investors because funds are not restricted from providing additional information in the MDFP beyond what is permitted or required in the form.[151] Similarly, if a fund engages in a short sale of a security, the proposed requirements do not include a provision that would permit the fund to subtract the GHG emissions associated with the security from the GHG emissions of the fund's portfolio that are used to calculate the fund's WACI or carbon footprint. A short sale would allow the fund to profit from a decline in value of the security, but would not reduce the extent of the fund's financed emissions and may not offset the transition risk expressed by the fund's WACI.

We also are proposing several specific instructions that would apply to a fund's calculation of its carbon footprint and WACI. First, the proposal would define CO_2e to mean the common unit of measurement to indicate the global warming potential (''GWP'') [152] of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide.[153] Additionally, the proposal would define GHG emissions to mean the direct and indirect greenhouse gases expressed in metric tons of CO_2e.[154] The proposal would also provide definitions for the types of emissions that should be calculated within financed Scopes 1, 2, and 3.[155] For purposes of the definition

[147] The current value of the portfolio's investment in the portfolio company and the fund's current net asset value would be calculated as of the end of the most recently completed fiscal year.

[148] See proposed Instruction 1(b)(i) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(b)(i) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[149] Transition risks are the actual or potential negative impacts on a portfolio company's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks, such as increased costs attributable to changes in law or policy, reduced market demand for carbon-intensive products leading to decreased prices or profits for such products, the devaluation or abandonment of assets, risk of legal liability and litigation defense costs, competitive pressures associated with the adoption of new technologies, reputational impacts (including those stemming from a portfolio company's customers or business counterparties) that might trigger changes to market behavior, consumer preferences or behavior, and portfolio company's behavior.

[150] Carbon offsets represent an emissions reduction or removal of greenhouse gases in a manner calculated and traced for the purpose of offsetting company's GHG emissions. *See,* EPA, *Offsets and RECs: What's the Difference?,* available at *https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf.*

[151] This proposed approach is again similar to the approach of the GHG Protocol as well as the PCAF Standard. *See* GHG Protocol, Corporate Accounting and Reporting Standard, Chapter 9; *see also* the PCAF Standard, *supra* footnote 136 at text accompanying n. 12.

[152] The proposal would also define GWP as a factor describing the global warming impacts of different greenhouse gases. It is a measure of how much energy will be absorbed in the atmosphere over a specified period of time as a result of the emission of one ton of a greenhouse gas, relative to the emissions of one ton of carbon dioxide. *See* proposed Instruction 1(d)(ii) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(ii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[153] *See* proposed Instruction 1(d)(i) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(i) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[154] Under the proposal, direct emissions are GHG emissions from sources that are owned or controlled by a portfolio company and indirect emissions are GHG emissions that result from the activities of the portfolio company, but occur at sources not owned or controlled by the portfolio company. *See* proposed instruction 1(d)(iv) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(iv) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2. The proposal would also define ''Greenhouse gases,'' in turn, to mean carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, or sulphur hexafluoride. *See* proposed instruction 1(d)(iii) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(iii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[155] Under the proposal, Scope 1 emissions would be defined as the direct GHG emissions from operations that are owned or controlled by a portfolio company. Scope 2 emissions would be defined as indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a portfolio company. Finally, Scope 3 emissions would be defined as all indirect GHG emissions not otherwise included in a portfolio company's Scope 2 emissions, which occur in the upstream and downstream activities of a portfolio company's value chain. *See* proposed Instructions 1(d)(v) through (vii) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(v) through (vii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2. Upstream activities in which Scope 3 emissions might occur include: a portfolio company's purchased goods and services, a portfolio company's capital goods; a portfolio company's fuel and energy related activities not included in Scope 1 or Scope 2 emissions; transportation and distribution of purchased goods, raw materials, and other inputs; waste generated in a portfolio

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of Scope 3 emissions, the proposal also defines the term value chain to mean, in part, the upstream and downstream activities related to a portfolio company's operations, including activities by a party other than the portfolio company.[156] These definitions are generally consistent with the definitions provided in the GHG Protocol and PCAF Standard.[157]

Additionally, for both the carbon footprint and WACI measures, the fund would determine the GHG emissions associated with each ''portfolio company'' (or ''portfolio holding''), which we are proposing to define as: (a) an issuer that is engaged in or operates a business or activity that generates GHG emissions; or (b) an investment company, or an entity that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Investment Company Act (a ''private fund''), that invests in issuers described in clause (a), except for an investment in reliance on 17 CFR 12d1–1 (''rule 12d1–1'') under the Investment Company Act (*i.e.,* investments in money market funds).[158] This definition is designed to identify companies engaged in business activities that generate GHG emissions. Therefore, fund investments that are not ''portfolio companies''—for example, cash, foreign currencies (or derivatives thereof), and interest rate swaps—would be excluded from the GHG metrics calculations because these investments do not generate GHG emissions.

The definition would require a fund to take into account GHG emissions when the fund invests in other funds or private funds to avoid a fund investing in portfolio companies through such a fund structure without reflecting the associated emissions in the investing fund's GHG metrics. If the underlying fund itself were an environmentally focused fund required to report its carbon footprint and WACI, the investing fund could determine the GHG emissions associated with the investment for purposes of calculating the investing fund's carbon footprint and WACI by taking its pro rata share of the underlying fund's GHG emissions. If the underlying fund was not required to disclose that information, the investing fund could look through its investment in the fund or private fund and take the investing fund's pro rata share of the emissions of the portfolio holdings of the fund or private fund. For this purpose we believe it would be sufficient to identify an underlying fund's holdings based on the underlying fund's most recent financial statements. We are proposing an exception for fund investments in money market funds to allow the fund to invest in money market funds for cash management purposes without having to consider potential GHG emissions associated with the investment. Money market funds, which are regulated extensively under 17 CFR 270.2a–7 (''rule 2a–7''), also may be more limited in their financed emissions because of their relatively limited holdings of commercial paper and similar investments.[159]

Additionally, if a fund obtains its exposure to a portfolio company by entering into a derivatives instrument, the derivatives instrument for purposes of the GHG metrics calculations would be treated as an equivalent position in the securities of the portfolio company that are referenced in the derivatives instrument.[160] For example, if a fund enters into an equity total return swap on XYZ Company with a notional amount of $100 million, the fund would treat this investment as an investment in $100 million of the company's equity securities when computing the fund's carbon footprint and WACI. This approach would avoid creating an incentive for funds to invest in derivatives instead of cash market investments to avoid including the GHG emissions associated with those holdings in the portfolio-level GHG metric calculations.

Third, the proposed instructions specify where the fund must obtain information required to perform the calculations. Funds would be required to obtain the information necessary to calculate a portfolio company's enterprise value and the portfolio company's total revenue from the company's most recent public report required to be filed with the Commission pursuant to the Securities Exchange Act of 1934 or the Securities Act of 1933 (''regulatory report''), containing such information.[161] We believe a portfolio company's most recent regulatory filings would be the most reliable sources of this information where available. Absent a regulatory report containing the necessary information, the fund would calculate the portfolio company's enterprise value and total revenue based on information provided by the company. Furthermore, if a portfolio company reports its revenue in currency other than U.S. dollars, the proposed instructions would require a fund to convert the portfolio company's revenue into U.S. dollars using the exchange rate as of the date of the relevant regulatory report providing the company's revenue. This conversion is necessary so that all of the financial information underlying the fund's carbon footprint and WACI is expressed in U.S. dollars.

Additionally, where the calculations require the value of the fund's holding in a portfolio company or the fund's net asset value, the fund would use the values as of the end of the fund's most recently completed fiscal year (*i.e.,* the values included in the fund's annual report in which the carbon footprint and WACI disclosure would appear).[162] We recognize that the value of the fund's net assets and the value of any particular portfolio holding likely would be as of a date that differs from the date of the data related to the

company's operations; business travel by a portfolio company's employees; employee commuting by a portfolio company's employees; and a portfolio company's leased assets related principally to purchased or acquired goods or services. Downstream emissions in which Scope 3 emissions might occur include: transportation and distribution of a portfolio company's sold products; goods or other outputs; processing by a third party of a portfolio company's sold products; use by a third party of a portfolio company's sold products; end-of-life treatment by a third party of a portfolio company's sold products; a portfolio company's leased assets related principally to the sale or disposition of goods or services; a portfolio company's franchises; and investments by a portfolio company.

[156] *See* proposed instruction 1(d)(viii) of proposed Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(viii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[157] *See supra* footnotes 128–131 and accompanying text.

[158] *See* proposed Instruction 1(d)(ix) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(ix) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[159] Under the proposal, a portfolio company would not include an investment in a money market fund in reliance on rule 12d1–1. That rule defines a money market fund to mean a registered open-end management investment company regulated as a money market fund under rule 2a–7, or certain private funds that are limited to investing in the types of securities and other investments in which a money market fund may invest under rule 2a–7 and undertake to comply with that rule's requirements.

[160] *See* proposed Instruction 1(d)(xiii) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xiii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2. The proposal would define a derivatives investment to include any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing instruments, or any similar instrument. This list of instruments is consistent with the Commission's rule regarding funds' use of derivatives. *See* 17 CFR 270.18f–4.

[161] *See* proposed Instruction 1(d)(x) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(x) to instruction 4.g.(1)(E) of Item 24 of Form N–2. For example, an issuer's equity value, total debt, and total revenue is generally included in registration statements and reports on Form 10–K or Form 20–F. Form 20–F is the Exchange Act form typically used by a foreign private issuer for its annual report or to register securities under the Exchange Act.

[162] See proposed Instruction 1(d)(xii) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xii) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

portfolio company, which would be based on the portfolio company's fiscal year end. We believe that any data anomalies that may occur in a given year are justified by the benefits of transparency, comparability and simplicity of implementation derived from the proposed approach.

The proposed instructions also would address the sources of portfolio companies GHG emissions. We are proposing a data hierarchy for sources that funds would be required to use in obtaining portfolio company GHG emissions data. Specifically, if a portfolio company discloses its Scopes 1 and 2 emissions in a regulatory report, the fund would be required to use these disclosed emissions from the most recent regulatory report when calculating carbon footprint and WACI.[163] Issuers also may disclose GHG information in regulatory reports absent a current specific regulatory requirement to do so. We believe that GHG emissions information that is filed with the Commission in a regulatory report, if available, would be the most reliable source of such information.[164] If a portfolio company does not file such regulatory reports, or they do not contain the GHG information necessary for the fund to calculate carbon footprint and WACI, the fund would be required to use GHG emissions information that is otherwise publicly provided by the portfolio company, such as a publicly available sustainability report published by the company.[165] Using a publicly available source of the information provided by the company would help provide consistency among different funds' calculations of carbon footprint and WACI where the information is not disclosed in a regulatory report.

We recognize that some portfolio companies do not report GHG emissions in regulatory reports and may not otherwise make the information publicly available (''non-reporting portfolio companies''). If a fund, after conducting a reasonable search, does not identify Scope 1 and Scope 2 emissions information publicly provided by the portfolio company, the fund would use a good faith estimate of the portfolio company's Scope 1 and Scope 2 emissions.[166] Requiring a fund to make a good faith estimate—rather than excluding non-reporting portfolio companies altogether—would allow the fund to ascribe GHG emission information to each of its portfolio holdings and therefore provide portfolio-wide measures of the fund's carbon footprint and carbon intensity.

We are not proposing to require that funds use a particular estimation method. We understand there are different approaches to estimating a portfolio company's GHG emissions that funds could use when calculating their WACI or carbon footprint under the proposal. For example, under the PCAF Standard, funds use a non-reporting portfolio company's primary physical activity data, such as the company's energy consumption, where available.[167] Where that data is not available, funds use other economic-activity emissions factors for estimates, including sector-specific industry averages. We also understand that third-party service providers provide estimated emissions data for portfolio companies that a fund could take into account in forming a good faith estimate.[168]

While there has been a significant increase in the public availability and quality of corporate GHG emissions data,[169] the proposed requirement to perform good faith estimates in certain cases reflects that not all of the companies in which an environmentally focused fund may invest will currently provide the GHG information necessary for the fund to calculate the proposed financed emissions disclosures.[170] We recognize that the methodologies and assumptions underlying different good faith estimates of a company's GHG emissions data may impact the consistency of the data across different portfolio holdings of one fund as well as the comparability of funds with the same or similar portfolio holdings. GHG information produced by companies themselves, rather than estimated by a fund, also may not be fully comparable, due to the differences in assumptions and approaches at each company. We believe, however, that the proposed disclosure requirements would provide investors with an effective depiction of the GHG emissions associated with fund's investments and provide a reasonable basis for comparison among funds, notwithstanding that the GHG information underlying the disclosures may not be calculated using identical methods and assumptions.[171]

In order for investors to understand the extent to which a fund's carbon footprint and WACI metrics are based on estimated GHG emissions, a fund that uses estimates in these calculations would be required to disclose the percentage of the aggregate portfolio GHG emissions that was calculated using the fund's good faith estimation process.[172] The fund also would be required to provide a brief explanation of the process it used to calculate its good faith estimates of its portfolio company GHG emissions, including the data sources the fund relied on to generate these estimates. This brief explanation is designed to provide context for the fund's carbon footprint and WACI and allow investors to take into the account the extent to which these calculations rely on estimates and the information on which those estimates are based.

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[163] *See* proposed Instruction 1(d)(xi)(A) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xi)(A) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[164] For example, information filed by a portfolio company with the Commission in Exchange Act periodic reports is subject to disclosure controls and procedures, which we believe help to ensure that such a company maintains appropriate processes for collecting and communicating any GHG emissions information included in the report. *See* 17 CFR 240.13a–15.

[165] *See* proposed Instruction 1(d)(xi)(B) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xi)(B) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2. Portfolio company GHG emissions information that is only accessible from a third-party service provider would not be considered information that is publicly provided by the portfolio company. *See infra* footnote168 and related text (stating that funds could take into account information provided by third party service providers as part of the good faith estimation process).

[166] *See* proposed Instruction 1(d)(xi)(C) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xi)(C) of Instruction 4.(g)(1)(E) to Item 24 of Form N–2.

[167] *See* the PCAF Standard, *supra* footnote 136, at text following n.65 (explaining that estimates using emissions factors from production-based models (*i.e.,* emission intensity per physical activity) are preferred over emissions factors from revenue-based models (*i.e.,* emission intensity per revenue)).

[168] There are a number of third-party service providers that currently provide GHG emissions data to funds.

[169] *See e.g.,* Azar *et al.,* The Big Three and corporate carbon emissions around the world, (2021), at n.9, available at *https://reader.elsevier.com/reader/sd/pii/S0304405X21001896?token=23AED5DA8B483D8297FDF29337EC3D429A8E4A88984AF54214180DF07617BB9F51FE2357B456C9023ED605E67363FBA7&originRegion=us-east-1&originCreation=20220201195451* (noting that some ESG third-party vendors provide corporate issuer carbon emissions data for 80% of global market capitalization); *see also* Bolton P., Kacperczyk M. 2020. Do investors care about carbon risk?, National Bureau of Economic Research *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3398441.*

[170] Id.

[171] *See* Timo Busch, Matthew Johnson, Thomas Pioch, Corporate carbon performance data: Quo vadis? (2020), *available at* Corporate carbon performance data: Quo vadis?—Busch—2022—Journal of Industrial Ecology—Wiley Online Library (comparing available corporate carbon emission data across several main providers and finding, among other things, that the consistency of data is high in scopes 1 and 2 when the outliers are removed).

[172] *See* proposed Instruction 1(d)(xi)(C) of Item 27(b)(7)(i)(E) of Form N–1A and proposed Instruction 1(d)(xi)(C) to instruction 4.g.(2)(B) of Item 24 of Form N–2.

The brief explanation also would be complemented by additional, more granular information about the fund's process for calculating and estimating its portfolio's GHG emissions in order to facilitate investors' decision making.[173] Specifically, we are proposing to require a fund to provide additional information on Form N–CSR regarding any assumptions and methodologies the fund applied in calculating the portfolio's GHG emissions, and any limitations associated with the fund's methodologies and assumptions, as well as explanations of any good faith estimates of GHG emissions the fund was required to make.[174]

While these additional disclosures provide important contextual information to investors and other industry participants regarding the fund's process for calculating GHG metrics, this information can be technical and complex. If we were to require funds to include this information in the annual report, it could make the report substantially longer and more difficult to understand. Therefore, we are proposing a layered approach to this disclosure, requiring a fund to disclose GHG metrics data in the annual report along with a brief summary of the sources of the data and the amount of estimated GHG emissions used, while providing more detailed information regarding the fund's process and methodology for calculating and estimating GHG metrics on Form N–CSR for investors and other industry participants who wish to access this additional information.[175]

In addition to the above metrics, an environmentally focused fund would also be required to disclose the Scope 3 emissions of its portfolio companies, to the extent that Scope 3 emissions data is reported by the fund's portfolio companies.[176] Scope 3 emissions would be disclosed separately for each industry sector in which the fund invests, and would be calculated using the carbon footprint methodology discussed above.[177] We believe that presenting the Scope 3 emissions separately and not combined with the fund's financed Scope 1 and 2 emissions would alleviate some of the concerns related to the possibility of double counting emissions when adding Scope 3 emissions to a fund's financed Scope 1 and 2 emissions.[178] Additionally, we recognize that Scope 3 emissions typically result from the activities of third parties in a portfolio company's value chain, making it more difficult for a fund to estimate the Scope 3 emissions associated with its portfolio companies as compared to Scope 1 and 2 emissions. Therefore, funds would not be required to estimate the Scope 3 emissions of their portfolio companies under the proposal.

In addition, because financed Scope 3 emissions would already be broken out by sector, providing two metrics for each sector (*i.e.,* one WACI and one carbon footprint metric for each sector) could result in an amount of GHG-related disclosure that may be confusing to investors. We believe that carbon footprint is an effective measure for this purpose because it is a relatively simple measure, depicting the scale of the fund's financed emissions, normalized by the size of the fund.

We request comment on all aspects of the proposed amendments to fund annual reports and related disclosure in proposed Item 7 of Form N–CSR requiring GHG emissions disclosures for certain funds, including the following items.

87. Should we, as proposed, require environmentally focused funds to disclose their GHG emissions? Would such disclosure help investors interested in investing in such funds select a fund that is appropriate for them? To what extent would requiring GHG metrics reporting help prevent greenwashing?

88. Should we, as proposed, limit the GHG emissions reporting requirements to environmentally focused funds that do not affirmatively state that they do not consider GHG emissions of the issuers in which they invest as part of their ESG strategy? Should the GHG emissions reporting requirement be limited to fund strategies where the fund's adviser considers GHG emissions information in executing the fund's strategy? If so, would this approach achieve this goal? Are there other environmentally focused funds that should not be subject to the GHG emissions reporting requirements? Alternatively, should we propose modified or different GHG emissions reporting requirements for certain environmentally focused funds, such as funds that focus on investing in carbon capture technology?

89. Do commenters agree that, with respect to BDCs that are environmentally focused funds, the GHG emission disclosure we are proposing in this release would complement the GHG disclosure proposed in the Climate Disclosure Proposing Release if both proposals were adopted? Conversely, should a BDC only be required to disclose the GHG emissions disclosure proposed in this release or only provide the disclosure proposed in the Climate Disclosure Proposing Release?

90. Are there any potential unintended effects in requiring GHG emissions reporting? For example, are there investments that might report high emissions that could nonetheless help the fund achieve an investment objective related to the environment generally or climate change specifically, such as the GHG emissions generated from investments in the construction of windmills or electric cars? If so, would our proposed approach to limit GHG reporting to environmentally focused funds that do not affirmatively state that they do not consider GHG emissions of the issuers in which they invest help alleviate potential unintended effects of the GHG emissions reporting requirement? Rather than our proposed approach to limit the scope of funds subject to the GHG reporting requirement, should we instead require these funds to report alternative metrics that they consider in making investment decisions?

91. Are there alternative metrics that funds focused on climate change consider in making investment decisions that we should require funds to report alongside or instead of the proposed GHG emission metrics?

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[173] *See* proposed Item 7 of Form N–CSR. *See also* proposed Instruction 10 to Item 24 of Form N–2 (requiring BDCs to disclose, on Form 10–K, the information requiring by Item 7 of Form N–CSR).

[174] *Id.*

[175] This layered approach to disclosure is in line with the Commission's approach in other contexts. *See, e.g.,* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)]; *see also* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)]; Streamlined Shareholder Report Proposal, *supra* footnote 99.

[176] *See* proposed Instruction 1(d)(x) of Item 27(b)(7)(i)(E) of Form N–1A; proposed Instruction 1(d)(x) of Item 24.4.g.(2)(B) of Form N–2. As with Scopes 1 and 2 emissions information, the proposal would also require funds to use Scope 3 emissions that are reported by a portfolio company in the company's most recently filed regulatory report, if available. In the absence of reported Scope 3 emissions data from a portfolio company in a regulatory report, the fund would be required to use Scope 3 emissions information that is otherwise publicly provided by the portfolio company, such as a publicly available sustainability report published by the company, if available. *See supra* footnotes 166 and 164 and accompanying text.

[177] Funds would not be required to disclose their financed Scope 3 emissions using the WACI methodology.

[178] *See* the PCAF Standard, *supra* footnote 136 at n.40 (noting that double counting occurs between the different Scopes of emissions from loans and investments when a fund invests in portfolio companies that are in the same value chain because the Scope 1 emissions of one company can be the upstream Scope 2 or 3 emissions of its customer).

92. In addition to requiring environmentally focused funds to disclose their GHG emissions, should we also require Integration Funds that state that they use GHG metrics in their integration or investment process, or Integration Funds that consider environmental factors generally, to disclose their GHG emissions? Alternatively, should we require all ESG funds, regardless of their focus on E, S or G, to disclose these metrics? Alternatively, should we require all funds, regardless of whether they are ESG funds, to disclose their GHG emissions? Are investors in funds that do not involve ESG factors nonetheless interested in the GHG emissions associated with the funds' portfolios?

93. Should we, as proposed, require funds to disclose the Scope 1 and Scope 2 GHG emissions of their portfolio holdings using the carbon footprint and the WACI metrics? Do these metrics provide investors with useful information about the emissions associated with the fund's portfolio? Are we correct in our understanding that investors would benefit from seeing both metrics to appreciate the climate impact of the fund's investment decision as well as the fund's exposure to transition risks? Alternatively, should we require only one of these metrics to be disclosed? What are the costs associated with requiring the disclosure of a portfolio's Scope 1 and Scope 2 emissions?

94. Should we require funds to disclose other metrics? Rather than requiring funds to disclose carbon footprint and WACI, should we allow funds to use any reasonable methodology to calculate the GHG emissions associated with their portfolios and provide an explanation of their methodology?

95. The carbon footprint and WACI metrics we are proposing are generally consistent with the metrics recommended by the PCAF Standard and the TCFD. Are there alternative calculation methodologies that we should require funds to use? For example, should we require funds to disclose the carbon emissions of the portfolio as a whole? For example, would investors benefit from seeing the fund's carbon footprint not normalized for the size of the fund, to focus investors on the absolute level of GHG emissions associated with fund portfolios?

96. Should we, as proposed, require funds to calculate their GHG emissions without including a provision permitting a fund to give effect to any purchased or generated carbon offsets? Alternatively, should we allow funds to provide GHG emissions net of such carbon offsets in lieu of an absolute presentation?

97. Should we, as proposed, require funds to combine the Scope 1 and Scope 2 emissions of their portfolios? Alternatively, should we require funds to report separately their portfolio Scope 1 emissions from their portfolio Scope 2 emissions?

98. Are the proposed methods of calculating the carbon footprint and WACI metrics described above appropriate? Is there a better methodology for calculating a portfolio's carbon footprint and WACI? For example, should we require funds to use total assets, rather than net asset value as proposed, in the calculation of carbon footprint and WACI? Should we require funds to express the portfolio emissions in dollars, rather than millions of dollars as proposed?

99. Is the proposed approach to calculating enterprise value appropriate? Is there a better way to calculate enterprise value?

100. If an environmentally focused fund invests in a portfolio company with a holding company structure, should the fund's carbon footprint and WACI include the consolidated emissions of all subsidiaries owned by that holding company as Scope 2 emissions, or should the calculations include solely the Scope 1 and 2 emissions of the holding company? Are there alternative approaches to account for the holding company's control over the emissions of its subsidiaries?

101. Should we, as proposed, require the disclosure of portfolio companies' Scope 3 emissions to the extent they are publicly reported by a portfolio company? Should we require funds to estimate these Scope 3 emissions when they are not reported? How burdensome would this be for funds? Would the estimated Scope 3 emissions be reliable?

102. Should we, as proposed, require the calculation of portfolio companies' Scope 3 emissions using the carbon footprint methodology only? Alternatively, should we require funds to disclose these Scope 3 emissions using both the carbon footprint and the WACI metrics? Are there other metrics that we should require for portfolio company Scope 3 emissions?

103. Should we, as proposed, require the disclosure of portfolio companies' Scope 3 emissions separately for each industry sector in which the fund invests? Is ''industry sector'' the appropriate category for the portfolio companies' Scope 3 emissions? Alternatively, should we permit or require funds to use the same reasonably identifiable category for portfolio company Scope 3 emissions that they use to depict the portfolio holdings of the fund in the graphical representation of holdings section of the annual report?[179] Alternatively, should we require the disclosure of a single metric for all these portfolio companies' Scope 3 emissions?

104. Should we, as proposed, require the calculation of Scope 1 and Scope 2 emissions separately from Scope 3 emissions? Alternatively, should we require funds to disclose all three emission types as a single metric?

105. Are the proposed instructions related to the calculation of GHG metric methodologies clear, easily understandable, and appropriate?

106. Are our proposed definitions of CO_2e, GWP, GHG, GHG emissions, and Scopes 1, 2 and 3 appropriate? Are we correct in our understanding that these defined terms are generally accepted as the appropriate basis for measuring emissions, including financed emissions of portfolios? Are they consistent with the GHG Protocol, the TCFD and PCAF Standards? Are there alternative defined terms that we should adopt? Rather than defining these terms, should we instead allow funds to use their own definitions and provide an explanation of such terms?

107. Is our definition of ''portfolio company,'' which includes the types of fund investments that should be included in the GHG metric calculations, appropriate? Should we, as proposed, include a fund's investments in other funds and private funds in the definition of the types of fund investments that should be included in the GHG emissions calculations? What are the costs associated with such a requirement?

108. Should we prescribe how the fund must determine the GHG emissions associated with its investments in a fund or private fund? If the underlying fund or private fund discloses the GHG emissions of its portfolio, should funds be allowed to rely on the underlying fund's disclosed GHG emissions data as proposed? Alternatively, should the fund be required to look through its investment in the underlying fund regardless of whether such underlying fund discloses its GHG emissions?

109. Should our definition of ''portfolio company'' exclude investments in money market funds, as proposed? To what extent do money market funds' investments finance emissions? Should this exclusion be limited to government money market

[179] *See* Item 27(d)(2) of Form N–1A; *see also* Instruction 6(a) to Item 24 of Form N–2.

funds, as defined in rule 2a–7, which invest 99.5 percent or more of their total assets in cash, government securities, and/or repurchase agreements that are collateralized fully?

110. Are there asset classes or investments that are not included in the proposed definition of a ''portfolio company'' that we should include in the definition? For example, should a ''portfolio company'' include sovereign bonds, cash, foreign currencies, and/or interest rate swaps and other derivatives that do not reference a ''portfolio company''? Would it be practical to include these holdings and how would funds calculate the financed emissions attributable to them? Are there other types of fund investments that we should include or exclude? Should funds be required to separately disclose the percentage of the fund's investments that were not included in the GHG emissions calculations? If so, where should such disclosure appear?

111. Are there particular types of investments that should be treated differently for purposes of a fund's carbon footprint or WACI? For example, should fixed-income securities or securities sold short be treated differently? When a bond is issued for a specific purpose or project, should the GHG emissions associated with the bond be limited to those associated with the purpose or project? Is sufficient information available for such an attribution? When a security is sold short, should the GHG emissions associated with the security be subtracted from a fund's WACI or carbon footprint? To what extent would special instructions for particular types of investments such as special-purpose bonds or securities sold short increase the complexity of the calculation and attendant costs?

112. Is our proposed approach to the calculation of GHG metrics related to derivative instruments appropriate? To what extent do funds that would be subject to this disclosure requirement enter into derivatives? Is the proposed treatment of derivatives appropriate and clear as applied to these derivatives? Alternatively, should we exclude derivatives instruments from the definition of a ''portfolio company'' or ''portfolio holding'' so that funds would be not be required to attribute GHG emission to these investments?

113. Should we, as proposed, require funds to obtain all the information necessary to calculate a portfolio company's enterprise value from their most recent regulatory report? Would this approach ease the burdens and costs associated with complying with the proposal? Would it enhance the comparability of the information across funds with similar investments? Alternatively, should we require funds to obtain more recent data, if such information is voluntarily provided by the portfolio company?

114. For non-U.S. portfolio companies, should we require funds to obtain all the information necessary to calculate a portfolio company's enterprise value from non-U.S. regulatory reports, if available? If so, would funds experience challenges in identifying relevant non-U.S. regulatory reports and determining if they contain information that can be used to calculate the fund's WACI or carbon footprint?

115. For fund investments in private companies or other portfolio companies that do not file regulatory reports, should we require funds to obtain all the information necessary to calculate private company's enterprise value data related to those holdings directly from the companies, as proposed? What are the burdens and costs associated with such an approach? Would such information be consistent and reliable across portfolio companies? If this information is not available, should we require funds to estimate the data necessary to calculate the company's enterprise value?

116. Should we, as proposed, require all necessary data related to the fund to be provided as of the fund's most recently completed fiscal year and all necessary data related to the portfolio company as of the date of the relevant regulatory report filed by the portfolio company containing the necessary information? Would the inconsistency in the ''as of'' dates of the data used in the calculation of GHG metrics affect the quality of the fund's GHG emissions disclosure?

117. If a portfolio company reports its total revenue in currency other than U.S. dollars, should we, as proposed, require a fund to convert the reported revenue to U.S. dollars using the exchange rate as of the date of the portfolio company's regulatory report? What are the costs associated with such a requirement? Should we instead allow a fund to use the exchange rate as of the fund's most recently completed fiscal year or, alternatively, the current exchange rate?

118. If a portfolio company reports zero revenue in a given year, how should funds represent the carbon emissions for such portfolio companies in the fund's calculation of its WACI? For example, should funds be required to use ''1'' as the revenue for a portfolio company with zero revenue when calculating the WACI to avoid incorrectly reporting zero emissions for such a portfolio company? Alternatively, should funds exclude portfolio companies that report zero revenue from the fund's calculation of its WACI and disclose the percentage of the fund's NAV represented by these portfolio companies?

119. Should we, as proposed, include a data hierarchy for the sources of GHG emissions information? Is the specific proposed hierarchy—*i.e.,* regulatory reports, followed by other public reports, and then good faith estimates of emissions—appropriate? Are there any sources of data we should explicitly include or remove? If we were to add sources of data, where in the hierarchy should they be placed? For example, should we require funds to use data from portfolio companies filed with non-U.S. securities or banking regulators if available, instead of other publicly reported data? Should we, instead of establishing a hierarchy, require funds to form a reasonable estimate of each portfolio company's GHG emissions in all cases and permit funds to use whatever data they believe in good faith to be the most reliable?

120. Should we, as proposed, require that a fund use the Scope 1, Scope 2, and Scope 3 emissions of a portfolio company from the company's most recent regulatory report if the report includes that information? Would this approach ease the burdens and costs associated with complying with the proposal to the extent portfolio companies include the relevant GHG information in their regulatory reports? Would it enhance the comparability of the information across funds with similar investments? Are we correct in our understanding that data provided in a regulatory report filed with the Commission is always more reliable than information disclosed on portfolio company website and GHG emissions estimates generated by an ESG provider? Alternatively, should we require funds to seek to obtain more recent data from the portfolio company? What are the costs and burdens associated with such an alternative approach?

121. For portfolio companies that do not report or otherwise provide their Scope 1 and Scope 2 emissions (''non-reporting portfolio companies''), should we, as proposed, require funds to use a good faith estimate of the portfolio companies' Scope 1 and Scope 2 emissions? Should we provide additional guidance on performing these calculations?

122. How burdensome would it be to estimate Scope 1 and Scope 2 emissions and how reliable would the estimates be? Are there ways to ease such burdens

that we should adopt? For example, should we provide a safe harbor from liability for fund disclosure of GHG emissions data because the disclosure will be based on information provided by third parties? If so, should any safe harbor apply to all of the GHG disclosures we are proposing for funds, or should it be more limited, such as only applying to the Scope 3 emissions of the fund's portfolio companies, and/or a fund's good faith estimates of Scope 1 and Scope 2 financed emissions? How should any safe harbor operate? Should the safe harbor provide that the disclosure will not be a fraudulent statement if certain conditions are met? What conditions would be appropriate? For example, should a safe harbor require a fund to perform a certain level of diligence to take advantage of the safe harbor, to ensure that the fund does not receive the benefit of the safe harbor without appropriate diligence? How should any diligence requirement or required state of mind be worded? For example, should the safe harbor be available only if the fund's disclosure of GHG emissions have a reasonable basis and were disclosed in good faith? How should we define a ''fraudulent statement'' for purposes of such a safe harbor, and are there are any antifraud provisions in the Securities Act, Exchange Act, Investment Company Act, or any other provisions of the Federal securities laws, to which the safe harbor should not apply?

123. If a portfolio company does not provide GHG emissions data in a regulatory report, but does provide it in other publicly available documents or on its website, should we require a fund to use this information, as proposed? Alternatively, should we allow a fund to form its own good faith estimate even when a portfolio company publicly provides its GHG emissions data? Would it be difficult for a fund to determine with high confidence that a given portfolio company does not publicly report GHG information outside of the company's regulatory reports?

124. Rather than requiring a fund to estimate a non-reporting company's GHG emissions, should we exclude non-reporting companies from a fund's GHG emission calculations? If so, should we also limit a fund's ability to invest in non-reporting companies? For example, should we limit a fund's ability to invest in non-reporting companies to 20% of a fund's net asset value?

125. Should we, as proposed, require a fund to briefly discuss in the MDFP or MD&A how the fund estimates any GHG emissions, including the sources of data for determining such estimates, and the percentage of the fund's aggregated GHG emissions for which the fund used estimates rather than reported emissions? Is it clear to funds what this description should include? Is there any additional guidance that we should provide? For example, if a fund bases its estimate on information provided by an ESG service provider, is there any additional information that we should explicitly require regarding these service providers? Would this additional information be helpful to investors in understanding how a fund calculates its GHG emissions?

126. Should we, as proposed, require a fund to narratively explain on Form N–CSR the methodologies and assumptions it applied when calculating any good faith estimates of a portfolio company's GHG emissions? Is it clear to funds what this description should include? For funds that base their estimates on information provided by ESG service providers, would the funds be able to describe the underlying methodologies and assumptions used by these service providers?

127. Is our layered approach to the disclosure of GHG emissions appropriate? Should we require a fund to state, in the shareholder report, that additional information regarding the underlying assumptions and methodologies is available on Form N–CSR? Would investors be sufficiently familiar with Form N–CSR to understand the cross reference? Would funds be able to provide a hyperlink or other more specific reference even though the fund may not have filed its report on Form N–CSR at the time it delivers the shareholder report? Alternatively, should we require a fund to summarize briefly the underlying methodologies and assumptions, including any limitations of the methodology, in the shareholder report?

4. Inline XBRL Data Tagging

We are proposing to require that funds submit all proposed ESG-related registration statement and fund annual report disclosure filed with the Commission in a structured, machine-readable data language.[180] Specifically, we would require such funds to submit the specified information to the Commission in Inline XBRL, which allows investors and other market participants, such as data aggregators *(i.e.,* entities that, in general, collect, package, and resell data) to use automated analytical tools to extract the information sought wherever it may be located within a filing.[181]

To implement the proposed structured data requirements, we propose to amend 17 CFR 232.405 (''rule 405 of Regulation S–T'') to reference the ESG-specific form provisions.[182] The information required to be tagged in Inline XBRL would have to satisfy the requirements of rule 405 of Regulation S–T in accordance with the EDGAR Filer Manual.

Background

All open- and registered closed-end funds and BDCs are currently subject to Inline XBRL structured data requirements.[183] In 2009, the

[180] The requirement to submit this information in Inline XBRL would apply to open- and registered closed-end funds and BDCs, and to UITs that file with the Commission on Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a-1], or S–6 [17 CFR 239.16] and to annual shareholder reports filed on Form N–CSR [17 CFR 274.128] and annual reports filed on Form 10–K [17 CFR 249.310]. This tagging requirement would be implemented by including cross-references to rule 405 of Regulation S–T in each fund registration form (and, as applicable, updating the cross-references to rule 405 in those registration forms that currently require certain information to be tagged in Inline XBRL—that is, Form N–1A and Form N–2); revising rule 405(b) of Regulation S–T to include the tagging of the ESG-related disclosures. Pursuant to 17 CFR 232.301 (''rule 301 of Regulation S–T''), the EDGAR Filer Manual is incorporated into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging for operating companies and investment companies, including the requirement in rule 405(a)(3) to use Inline XBRL as the specific structured data to use for tagging disclosures.

[181] The Commission has an open source Inline XBRL Viewer that allows the user to make an Inline XBRL data human-readable and allows filers to more readily filter and identify errors. Anyone with a recent standard internet browser can view any Inline XBRL filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system at no cost. More information about the Commission's Inline XBRL Viewer is available at *https://www.sec.gov/structureddata/osd-inline-xbrl.html.* In addition, our proposed amendments to 17 CFR 232.11 (''rule 11 of Regulation S–T''), which would include Forms N–8B–2 and S–6 in the definition of an ''Interactive Data File,'' mean that an UIT that files on those forms would, as registrants that file on Forms N–1A, N–3, N–4, and N–6, automatically be suspended from the ability to file a post-effective amendment for immediate effectiveness if the UIT fails to submit any Interactive Data File required by the form on which it files its post-effective amendment. *See* proposed amendments to 17 CFR 230.485 (''rule 485'') and 17 CFR 230.497(c) and (e) (''rule 497(c) and (e)''). We also are proposing to amend these rules to simplify the current structured data rule requirements prescribed by those rules. *Id.*

[182] *See* proposed 17 CFR 232.405(b)(2)(i) and (b)(3)(iii); *see also* proposed amendments to 17 CFR 232.11 (amending the term ''related official filing,'' in part, to include references to Form N–8B–2 [17 CFR 274.12] and Form S–6 [17 CFR 239.16]).

[183] Many funds are already required to tag certain registration statement disclosure items using Inline XBRL; however, UITs that register on Form N–8B–2 and file post-effective amendments on Form S–6 are not currently subject to any tagging requirements. The costs of these requirements for

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Commission adopted rules requiring operating company financial statements and mutual fund risk/return summaries to be submitted in XBRL entirely within an exhibit to a filing.[184] In 2018, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL to reduce the time and effort associated with preparing XBRL filings and improve the quality and usability of XBRL data for investors.[185] In 2020, the Commission adopted new Inline XBRL requirements for registered closed-end funds and BDCs that will be effective no later than February 2023.[186] The Commission has also adopted requirements for most registered investment companies to file monthly reporting of portfolio securities on a quarterly basis, in a structured data language.[187] Much of this information is publicly available as structured data on the Commission's website at *www.sec.gov.*

Discussion

We believe that requiring funds to tag their ESG disclosures using Inline XBRL would benefit investors, other market participants, and the Commission by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. The proposed tagging requirements using Inline XBRL would enable automated extraction and analysis of data regarding the ESG disclosures for investors and other market participants who seek to access information about funds that provide ESG disclosures, both directly and through information intermediaries such as data aggregators and financial analysts. Providing a standardized, structured data framework could facilitate more efficient investor large-scale analysis and comparisons across funds and across time periods. An Inline XBRL requirement would facilitate other analytical benefits, such as more easily extracting/searching ESG-related disclosures (rather than having to manually run searches for those disclosures through entire documents), automatically compare/redline these disclosures against prior periods, and perform targeted assessments of specific narrative disclosures rather than the entire unstructured document. For investors and other market participants, requiring funds to tag their ESG disclosures in a structured data language would both increase the availability, and reduce the cost, of collecting and analyzing such information, potentially increasing transparency and mitigating the potential informational costs as compared to unstructured disclosure. Further, for filers, Inline XBRL can enhance the efficiency of review, yield time and costs savings, and potentially enhance the quality of data compared to other machine-readable standards, as certain errors would be easier to correct because the data is also human readable. This aspect of our proposed amendments is in keeping with the Commission's ongoing efforts to implement reporting and disclosure reforms that take advantage of the benefits of advanced technology to modernize the fund reporting regime and to, among other things, help investors and other market participants better assess different funds.

We request comment on all aspects of our proposed Inline XBRL requirements, including the following items:

128. Should any of the proposed disclosure items be excepted from the proposed Inline XBRL requirement? What would be the effects on data quality and usability to investors and other data users with excepting such disclosure items from the requirement to submit data in Inline XBRL?

129. Should we require or permit funds to use a different structured data language to tag the proposed disclosures? If so, what structured data language should we require or permit, and why?

130. What costs or other burdens (*e.g.,* related to personnel, systems, operations, compliance, etc.) would the proposed Inline XBRL requirements impose on funds? Please provide quantitative estimates to the extent available.

131. How long is it likely to take for vendors and filers to develop solutions for tagging the disclosure required by our proposed amendments?

132. Are any other amendments necessary or appropriate to require the submission of the proposed information required to be submitted in Inline XBRL? What changes should we make and why?

133. To what extent do investors and other market participants find information that is available in Inline XBRL useful for analytical purposes? Is information that is narrative, rather than numerical, useful content for analytical tools?

134. Are there any funds, such as smaller funds, that we should except from the Inline XBRL requirements? Should we, as proposed, apply the Inline XBRL requirements to UITs?

B. Adviser Brochure (Form ADV Part 2A)

Given the rising significance investors place on the consideration of ESG factors when making investment decisions, we also are proposing amendments to Form ADV Part 2A to include information about registered

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funds that are currently subject to tagging requirements and those that newly would be required to tag certain disclosure items are discussed in the Economic Analysis. *See* section III.C.2 *infra.*

[184] *Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)]; *Interactive Data for Mutual Fund Risk/Return Summary,* Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748] (Feb. 19, 2009)]) (''2009 Risk/Return Summary Adopting Release'').

[185] *Inline XBRL Filing of Tagged Data,* Investment Company Act Rel. No. 33139 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)] (''Inline XBRL Adopting Release''). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851.

[186] *Securities Offering Reform for Closed-End Investment Companies,* Investment Company Act Rel. No. 33814 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020) at 33318] (''Closed-End Fund Offering Reform Adopting Release'') (requiring BDCs to submit financial statement information, and registered closed-end funds and BDCs to tag Form N–2 cover page information and specified prospectus disclosures using Inline XBRL). In 2020, the Commission also adopted Inline XBRL requirements for separate accounts registered as management investment companies. *See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,* Investment Company Act Rel. No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Contract Summary Prospectus Adopting Release'') (requiring variable contracts to use Inline XBRL to submit certain required prospectus disclosures). Most recently, the Commission adopted amendments that revise most fee-bearing forms, schedules, statements, and related rules to require all fee calculation information to be in a filing fee exhibit that must be tagged in Inline XBRL. *See Filing Fee Disclosure and Payment Methods Modernization,* Investment Company Act Rel. No. 34396 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)] (''Filing Fee Adopting Release'').

[187] Registered investment companies (other than money market funds and small business investment companies) must report information about their monthly portfolio holdings to the Commission in a structured data format on a quarterly basis, 60 days after quarter end, on Form N–PORT, and the holdings for the last month of each quarter is made publicly available. *See* Investment Company Reporting Modernization, Investment Company Act Rel. No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Reporting Modernization Release''); *see also* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] (''N–PORT Modification Release''). Money market funds must report portfolio information on Form N–MFP. *See Money Market Fund Reform,* Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)]. *See also infra* at 0, discussing information we are proposing to require in regulatory census reporting forms using a structured data language. Mutual fund prospectus risk/return summary data sets are available at *https://www.sec.gov/dera/data/mutual-fund-prospectus-risk-return-summary-data-sets.*

advisers' ESG practices. Advisers registered with the Commission must deliver a brochure and one or more brochure supplements to each of their clients or prospective clients, which advisers may use to help them with their disclosure obligations as fiduciaries.[188] The adviser brochure is designed to provide a narrative, plain English description of the adviser's business, conflicts of interest, disciplinary history, and other important information to help clients make more informed decisions about whether to hire or retain that adviser.[189] We are proposing to require ESG-related disclosures from registered investment advisers that consider ESG factors as part of their advisory businesses.

We designed these proposed requirements to provide clients and prospective clients with useful and comparable information to help them better evaluate the ESG-related services of the growing number of advisers that offer them and the variety of ways advisers currently approach ESG investing. We believe that requiring advisers to disclose with specificity their ESG investing approach would help clients understand the investing approach the adviser uses, as well as compare the variety of emerging approaches, such as employment of an inclusionary or exclusionary screen, focus on a specific impact, or engagement with issuers to achieve ESG goals. While the proposed requirements share several elements with the requirements we are proposing for registered funds that consider ESG factors, they differ in key respects. First, the proposed requirements for advisers reflect that, unlike a fund prospectus, which describes a single portfolio strategy, an adviser's brochure typically reflects the entire business of the adviser, which may encompass multiple advisory services, investment strategies, and methods of analysis.[190] Additionally, the proposed requirements reflect that the brochure discloses key aspects of the advisory relationship, including certain relationships with related persons.[191] We believe our proposed additions to the brochure would help clients and prospective clients better understand how these advisers consider ESG factors when formulating investment advice and providing investment recommendations, and any corresponding risks or conflicts of interest. A client may use this disclosure to select an adviser and evaluate the adviser's business practices and conflicts on an ongoing basis. As a result, the disclosure that clients and prospective clients receive is critical to their ability to make an informed decision about whether to engage an adviser and, having engaged the adviser, to manage that relationship. We believe these amendments would overall improve the ability of clients and prospective clients to evaluate firms offering advisory services that consider ESG factors, help clients make more informed choices regarding ESG investing, and better compare advisers and investment strategies.

(a) Item 8: Methods of Analysis, Investment Strategies and Risk of Loss

Item 8 of the brochure requires advisers to describe the methods of analysis and investment strategies used when formulating investment advice or managing assets, and to provide a detailed explanation of any material, significant, or unusual risks presented by each of the adviser's significant investment strategies or methods of analysis.[192] Further, if an adviser primarily recommends a particular type of security, the adviser must explain any material, significant, or unusual risks of investing in that security. We are proposing to add a new sub-Item 8.D, which would require an adviser to provide a description of the ESG factor or factors it considers for each significant investment strategy or method of analysis for which the adviser considers any ESG factors. Similar to our proposal for registered funds, we are not proposing to define ''ESG'' or similar terms.[193] Instead, we are proposing to require advisers to provide a description of the ESG factor or factors they consider, and disclose to clients how they incorporate these factors when providing investment advice, including when recommending or selecting other investment advisers. However, we are proposing definitions for ESG integration, focused, and impact strategies, which are similar to the way we propose to define them for registered funds.[194] We believe that proposed sub-Item 8.D, which would include the additional disclosures described below, would help clients and prospective clients, as well as other market participants, better understand how advisers consider ESG factors when implementing their significant investment strategies. More specifically, these disclosures would allow clients and prospective clients to compare the ways different advisers consider ESG factors in their significant investment strategies.[195] We believe that as a result, clients and prospective clients would be better able to select an investment adviser that matches their expectations regarding ESG investing.

As with our proposal for registered funds and for the reasons described above, we believe that for a client or prospective client to evaluate effectively the relevant ESG strategies offered by an adviser, an adviser must explain what it means when it states that it incorporates ESG factors in its investment recommendations, including describing the ESG factors. This proposed sub-item would require an explanation of whether and how the adviser incorporates a particular ESG factor (E, S, or G) and/or a combination of factors. In addition, similar to funds, the proposed disclosure would include an explanation of whether and how the adviser employs integration and/or ESG-focused strategies, and if ESG-focused, whether and how the adviser also employs ESG impact strategies. An adviser that considers different ESG factors for different strategies should include the proposed disclosures for each strategy.[196]

For example, an adviser pursuing an integration strategy may consider the carbon emissions of its investments

[188] *See* 17 CFR 275.204–3 (''Advisers Act rule 204–3'') and Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49233 (Aug. 12, 2010)], available at *https://www.sec.gov/rules/final/2010/ia-3060.pdf* (''Brochure Adopting Release''). *See also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248, at 6–8 (June 5, 2019) [84 FR 33669 (July 12, 2019)], available at *https://www.sec.gov/rules/interp/2019/ia-5248.pdf* (''Fiduciary Interpretation'').

[189] *See* Brochure Adopting Release, *supra* footnote 188, at text accompanying nn.8 and 9.

[190] However, if an adviser offers substantially different types of advisory services, the adviser may opt to prepare separate brochures so long as each client receives all applicable information about services and fees. *See* Instructions for Part 2A of Form ADV: Preparing Your Firm Brochure, Instruction 9.

[191] *See, e.g.,* Form ADV Part 2A Item 10.C.

[192] For purposes of this release, we refer to significant investment strategies or methods of analysis as ''significant strategies.''

[193] *See supra* Section II.A.1 (''Proposed Prospectus ESG Disclosure Enhancements'').

[194] *See* Proposed Form ADV Part 2A sub-Item 8.D. The differences between the proposed terms for funds and advisers reflect the structural differences between funds and advisers (*e.g.,* that advisers to clients that are not registered investment companies provide investment advice that may or may not be discretionary). In addition, for example, the proposed definition of ''ESG-Focused'' for advisers would differ from the proposed definition for funds because the adviser definition would not specifically incorporate advisers with certain ESG-related names or advertising materials.

[195] We believe that clients seeking advisory services tailored to their ESG investing goals would refer to advisers' disclosures under the brochure's current Item 4, to assess whether and how an adviser tailors its advisory services to the individual needs of clients, and whether clients may impose restrictions on investing in certain securities or types of securities.

[196] See *infra* footnote 223 and accompanying text.

alongside other, non-ESG factors when making investment recommendations. In such a case, when explaining its integration strategy, our proposal would require the adviser to explain how it incorporates carbon emissions when making investment recommendations. This explanation would include that the adviser considers other, non-ESG factors alongside its consideration of carbon emissions, but that carbon emissions are generally no more significant than the other factors when providing investment advice, such that carbon emissions may not be determinative in deciding whether to recommend any particular investment. If an adviser employs an ESG-focused strategy because it focuses on one or more ESG factors by using them as a significant or main consideration in providing investment advice or in its engagement strategy with the companies in which its clients invest, it would describe those ESG factors. It would also describe how the adviser incorporates those factors when providing investment advice. To the extent an adviser employs an ESG-focused approach that is also considered ESG-impact because the adviser seeks to achieve a specific ESG impact or impacts for the significant strategy, our proposed brochure amendment would require additional disclosures. Such an adviser would provide an overview of the impact(s) the adviser is seeking to achieve, and how the adviser is seeking to achieve the impact(s). This would include how the adviser measures progress toward the stated impact, disclosing the key performance indicators the adviser analyzes, the time horizon the adviser uses to analyze progress, and the relationship between the impact the adviser is seeking to achieve and financial return(s).

We are also proposing that if an adviser uses, for any significant strategy, criteria or a methodology to evaluate, select, or exclude investments based on the consideration of ESG factors, it must describe those criteria and/or methodologies and how it uses them. An adviser that employs different criteria or methodologies for different strategies would include the proposed disclosures for each significant strategy. Similar to our proposed disclosures for funds, proposed sub-Item 8.D would provide a non-exclusive list of criteria and methodologies to address, as applicable. They are an adviser's use of:

(i) An internal methodology, a third-party criterion or methodology such as a scoring provider or framework, or a combination of both, including an explanation of how the adviser evaluates the quality of relevant third-party data;

(ii) An inclusionary or exclusionary screen, including an explanation of the factors the screen applies, such as particular industries or business activities it seeks to include or exclude and if applicable, what exceptions apply to the inclusionary or exclusionary screen; and

(iii) An index, including the name of the index and a description of the index and how the index utilizes ESG factors in determining its constituents.

As described above, this disclosure is designed to help a client or prospective client understand how the adviser implements ESG into its investment process so that a client with ESG investing objectives can evaluate whether the adviser's ESG investment process matches the client's objectives and expectations. Under the proposed requirement, if an adviser applies inclusionary or exclusionary investment screens based on ESG factors, the adviser would describe those screens, including identifying the specific industries or business activities it seeks to include or exclude and any applicable exceptions. If an adviser utilizes other criteria or methodologies to evaluate, select, or exclude investments based on the consideration of ESG factors, for example relying on an internal scoring methodology for investments based on ESG factors, it would describe the internal methodology and how the adviser uses it. If an adviser's criteria or methodologies include following a third-party ESG framework, it would describe, and explain how it uses, the framework and may consider providing a hyperlink to the framework in its brochure to enhance investors' understanding of the framework.

(b) Item 10: Other Financial Industry Activities and Affiliations

Advisers are currently required to disclose information about their other financial industry activities and affiliations in Item 10 of Form ADV Part 2A. We are proposing an amendment to Item 10.C. to require an adviser to describe any relationship or arrangement, that is material to the adviser's advisory business or to its clients, that the adviser or any of its management persons have with any related person that is an ESG consultant or other ESG service provider (for purposes of this release, a ''related person ESG provider'').[197] Related person ESG providers may include, for example, ESG index providers and ESG scoring providers.[198]

In our view, the relationship between an adviser or its management person and a related person ESG provider is the type of relationship the disclosure in this item was designed to address because such a relationship could create conflicts of interest. For example, if an adviser's related person provides ESG ratings or an ESG index, the adviser could be incentivized to employ its related person ESG provider's services rather than purchasing ESG ratings or indices from unrelated ESG providers. The proposed amendments would require the adviser to identify the related person ESG provider, describe its relationship or arrangement with the provider, and if the relationship or arrangement creates a material conflict of interest with clients, describe the nature of the conflict, as well as how the adviser addresses it.

Additionally, while some advisers' related person ESG providers may also be related persons falling into other categories listed in Item 10.C (*e.g.,* other investment advisers or broker-dealers), others may not fall into any of those categories. We believe adding ESG providers to the list of related parties covered under Item 10.C would promote advisory clients and prospective clients receiving full and fair disclosure of the conflicts created by an adviser's relationships or arrangements with related persons. Clients and prospective clients would be able to incorporate related person ESG providers and potential conflicts of interest into their adviser selection processes. In some cases, the client may not be comfortable with the conflicts of interest that those affiliations create, while other clients may value an advisory relationship that allows for broader access to ESG providers and may seek an adviser with ESG provider affiliates.

(c) Item 17 Voting Client Securities

Among other matters, Item 17 of the brochure requires advisers that have, or will accept, the authority to vote client securities to briefly describe their voting policies and procedures. We are proposing to amend Item 17.A to require advisers that have specific voting policies or procedures that include one or more ESG considerations when voting client securities to include in their brochures a description of which ESG factors they consider and how they consider them.[199] If an adviser has

[197] Under our proposal, the term ''management person'' and ''related person'' would be defined as currently defined in the Form ADV glossary of Terms.

[198] For a discussion of ESG providers, *see supra* text accompanying footnote 25.

[199] Proposed Form ADV Part 2A, Item 17.A. As with the other ESG-related information, we are

different voting policies and procedures for strategies that address ESG-related matters, or for different clients or different ESG-related strategies, the adviser generally should describe those differences.[200]

These amendments are designed to provide clients and prospective clients additional information on proxy voting practices at these advisers given some clients' increased focus on ESG-related issues. We believe that clients (and other market participants) could use this information to understand better and to monitor advisers' engagement with portfolio companies on ESG issues. In addition, the Commission would be better able to understand the variety of advisers' ESG-related proxy voting practices that are emerging in the markets.

We request comment on all aspects of these proposed amendments to Items 8, 10, and 17 of Form ADV Part 2A, including the following items.

135. Instead of our proposed narrative ESG disclosures that would be similar in style of presentation to the rest of the brochure, should advisers be required to present ESG-related information in the brochure in a particular format (*e.g.,* a table or chart),? If so, should we require a format similar to the format we are proposing for funds? Should it differ? Should advisers be required to use other formatting and design features to highlight or distinguish ESG-related disclosures from other information provided in any of these Items? For example, should we require advisers to use subheadings or another formatting feature designed to identify ESG-related information? Should we consider moving any of the proposed disclosures to a separate section of the brochure or to a new ESG appendix to the brochure, and/or should we require an ESG-specific brochure?

136. Is there other information about the consideration of ESG factors when providing investment advice that advisers should be required to include in their brochures? If so, please describe.

137. Is it clear from the current brochure Item 4 that an adviser that offers advisory services that may be tailored to the ESG preferences of its clients is required to explain whether (and, if so, how) it tailors its advisory services and whether clients may impose restrictions on investing in certain securities or types of securities? If not, should we also propose to specify that all advisers that tailor their advisory services based on the ESG preferences of clients must describe the tailoring as part of Item 4 (Advisory Business)? How do advisers currently describe and disclose information about their tailored ESG services in their brochures?

138. To what extent do advisers tailor their advisory business to address the ESG preferences of individual clients? What level of tailoring do advisers offer? For example, can clients create their own exclusionary investment screens or do advisers offer a menu of ESG-focused strategies from which clients can choose, but not customize?

139. Similar to our proposal for funds, we are not proposing to define ''ESG'' or similar terms for Form ADV (the brochure and Part 1A). Instead, our proposal for Form ADV would require advisers that consider ESG factors in any significant strategy or that tailor their advisory services to the individual needs of clients based on clients' ESG preferences, to describe the factors they consider and how they implement them. Is this approach appropriate for Form ADV? Should we seek to define ''ESG'' or any of its subparts in Form ADV? Are the terms ''E,'' ''S,'' and ''G,'' and ''ESG'' factors as we refer to them in Form ADV appropriate and clear?

140. We have proposed terms for ESG ''integration'', ESG-''focused'' and ESG ''impact'' under our Form ADV proposal, which are generally similar to the corresponding definitions we are proposing for funds. Is this appropriate? Do those terms capture the types of significant strategies for which advisers consider ESG factors? Are there alternative ways to describe advisers' significant strategies that consider ESG factors? Should we additionally specify, similar to our approach for funds, that the description ESG-focused includes any significant strategy that includes certain terms in the strategy name or advertising practices? Are there other ways in which the terms as applied to advisers should differ from the corresponding definitions we are proposing for funds?

141. Are the distinctions between integration and ESG-focused strategies, as proposed for Form ADV, sufficiently clear? Are there alternative ways to distinguish between integration and ESG-focused strategies?

142. Similar to our proposal for funds, should the brochure require differing levels of disclosure for integration and ESG-focused strategies? Or, as proposed, should we permit advisers to respond to the brochure disclosures as applicable to their significant strategy or strategies?

143. Should we, as proposed and similar to the proposed requirements for funds, specifically require an adviser to disclose additional information regarding impacts for any significant strategy that is an ESG impact strategy? Should we modify the application of this proposed requirement to advisers? For example, should advisers include the key performance indicators used to measure progress given that advisers do not have a disclosure that corresponds to the MDFP, where we are proposing to require specific disclosures by Impact Funds on their progress?

144. Should we create an additional, separate disclosure requirement for an adviser's significant strategy for which the adviser primarily uses shareholder engagement, as opposed to portfolio management, to implement its ESG-focus? Do advisers engage with portfolio companies on ESG issues in other ways that we have not proposed to address, but should specifically address, in the brochure?

145. As proposed, should we require advisers to describe in the brochure each of their significant strategy or strategies for which they consider ESG factors, and to provide the proposed information about how they incorporate those factors? Should we additionally provide a non-exhaustive list of examples of ESG factors in Form ADV, and allow advisers to add factors as applicable? Are there any other approaches that we should take in providing guidance to advisers as to what constitutes ESG?

146. As proposed, should we require advisers to describe in Item 8 their criteria or a methodology for evaluating, selecting, or excluding investments in their significant strategy or strategies based on the consideration of ESG factors? Do commenters agree with the non-exhaustive list of criteria or methodology we included in this Item? Is it clear and appropriate?

147. Should we, as proposed, include the use of third-party frameworks that incorporate ESG factors in the non-exhaustive list? Should we require additional detail about the framework (in addition to, as proposed, a description of the framework or standard and whether (and how) the adviser uses it), and if so, what additional disclosures should we require?

148. Are there other types of disclosure about advisers' significant strategies for which the adviser considers ESG factors that a client would find helpful? If so, what

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proposing in this context—and to the extent not addressed elsewhere in their brochures—that advisers should describe the ESG factors they consider. If an adviser provides such a description earlier, then a cross reference to such description would meet this proposed requirement.

[200] An adviser generally should include whether the adviser allows clients to direct their votes on ESG-related voting matters.

additional disclosures would be helpful for a client? Where should that additional disclosure be located in the brochure?

149. Would an adviser with multiple significant strategies that each consider ESG factors differently be able to explain the proposed required information for each significant strategy? Should we require advisers to include our proposed disclosures for all strategies and methods of analysis that consider ESG factors? For instance, an adviser that tailors its advisory services based on the ESG preferences of individual clients generally would explain such tailoring in response to the current Item 4, but may not be required to describe that tailored strategy in Item 8 if the strategy is not significant. In that case, should an adviser disclose the tailored strategy in one or both Items?

150. Item 8.B currently requires advisers to explain material risks involved for each of its significant strategies, which we believe includes material risks associated with an adviser's ESG investing. Does an adviser's consideration of ESG factors in implementing its significant strategies create any material, significant, or unusual risks related to its consideration of ESG factors? If so, what are some examples and how do advisers describe those risks? Should we amend Item 8.B to state explicitly that advisers must include the material risks involved in each significant strategy for which the adviser considers any ESG factors?

151. Should we additionally require all advisers that consider ESG factors as part of their significant strategies to state that the consideration of ESG factors may lead to the adviser selecting or recommending an investment that may not generate the same level of returns as investments where the adviser does not consider ESG factors? Or, should advisers be required to describe the applicable risks in their own words?

152. As proposed, should we require advisers to disclose whether they or their management persons have any relationships or arrangements with related person ESG providers (*i.e.,* a related person that is an ESG consultants or other ESG service provider) that are material to the adviser's business or to its clients? Is it common for advisers to have agreements or arrangements with related person ESG providers that are material to the adviser's business or to its clients? If so, what is the nature of such arrangements? Do any of those agreements or arrangements create conflicts of interest? If so, what conflicts of interest do they create and how do advisers address those conflicts?

153. Should we define the term ''ESG consultants or other ESG service providers'' in the Form ADV glossary? If so, what definition should we adopt? Given the range of services they provide, would a definition be useful? Alternatively, should we provide additional guidance on the types of entities that would qualify as an ESG consultant or other ESG service provider for purposes of Form ADV reporting? If so, what guidance should we provide? To the extent that there are a variety of these types of providers, should we require or permit advisers to identify particular categories of ESG consultants or other ESG service providers? If so, what categories?

154. As proposed, should advisers that consider ESG factors when voting client securities be required to provide the proposed information in Item 17 about their consideration of ESG factors when voting client securities? Should we require additional disclosures regarding voting client securities? If so, please describe the additional information.

155. Should advisers that do not consider ESG factors when voting client securities be required to expressly disclose this fact in their brochures?

(d) Wrap Fee Brochure (Form ADV Part 2A, Appendix 1)

Advisers that sponsor wrap fee programs are required to prepare a specialized brochure that must be delivered to their wrap fee clients (''wrap fee program brochure'').[201] Because wrap fee programs may incorporate ESG factors in the selection of portfolio managers for the wrap fee clients, we are proposing ESG disclosure requirements for wrap fee program brochures. We believe that wrap fee clients should receive similar ESG-related information as advisory clients that do not participate in such programs. However, we are proposing disclosure requirements tailored to this structure. We believe this information would help current and prospective wrap fee clients understand better how wrap fee programs consider ESG factors and help to facilitate clients' evaluations and comparisons of wrap fee programs that consider ESG factors.

Advisers sponsoring wrap fee programs are required to describe in Item 4 of their wrap fee brochures the services, including the types of portfolio management services, provided under each program. Like the proposed brochure disclosures, we propose to amend this Item to specify that advisers that consider ESG factors in their wrap fee programs must provide a description of what ESG factors they consider, and how they incorporate the factors under each program. Similar to our proposed brochure amendments, we would not define E, S, or G, but our proposed amendments to the wrap fee program brochure would require advisers to discuss any ESG factors they consider.

Advisers sponsoring wrap fee programs are required to describe in Item 6 of their wrap fee brochures how they select and review portfolio managers within their wrap fee programs, the basis for recommending or selecting portfolio managers for particular clients, and the criteria for replacing or recommending the replacement of portfolio managers for the program and for particular clients. Additionally, among other disclosures, Item 6 requires a description of any standards used to calculate portfolio manager performance. The selection, and replacement of portfolio managers within a wrap fee program is an integral part of the adviser's advisory services for clients of the wrap fee program. Therefore, similar to above, we are proposing an amendment to this Item to require advisers that consider ESG factors when selecting, reviewing, or recommending portfolio managers within the wrap fee programs they sponsor, to describe the ESG factors they consider and how they consider them.[202] The description of ESG factors generally should include the types ESG information the adviser considers and must include how the adviser considers the ESG factors. We believe these proposed additions would help wrap fee clients and potential clients with ESG investing objectives to evaluate whether the adviser's selection and evaluation of the program's portfolio manager matches the client's objectives and expectations for the program's portfolio management.

Additionally, we are proposing three disclosure requirements as part of advisers' description of how they consider the relevant ESG factors described above. All three disclosures are designed to facilitate clients' determinations of whether and how a wrap fee program that claims to consider ESG factors, actually considers ESG factors when selecting, reviewing or recommending the programs' portfolio managers. With this

[201] *See* Form ADV Part 2A, Appendix 1; Instructions for Part 2A of Form ADV: Preparing Your Firm Brochure, at Instruction 10. In wrap fee programs, clients generally are charged one fee in exchange for both investment advisory services and the execution of transactions as well as other services.

[202] Proposed Form ADV, Part 2A, Appendix 1, Item 6.A.4.

information, clients and prospective wrap fee clients could compare wrap fee programs' processes for selecting, reviewing or recommending portfolio managers based on ESG factors, and find wrap fee programs with portfolio management that best match their ESG investing goals. We believe our proposed disclosures would also help the Commission better understand the variety of ESG investing approaches that are emerging in wrap fee programs.

The first of the three disclosures would require advisers to describe any criteria or methodology they use to assess portfolio managers' applications of the relevant ESG factors into their portfolio management. This would include any industry or other standards for presenting the achievement of ESG impacts and/or third-party ESG frameworks, and any internal criteria or methodology.[203] For example, if an adviser evaluates a portfolio manager's achievement of ESG impacts by comparing its impacts to an ESG benchmark or ESG index, the adviser generally should describe how that portfolio manager's ESG impacts are calculated, the applicable benchmark or index, and how the portfolio manager's impacts compared to the specified benchmark or index. Similarly, if an adviser evaluates a portfolio manager's application of specific ESG factors by determining whether and how the portfolio manager follows a global ESG framework, the adviser generally should describe the framework and how it assess whether the manager follows the framework.

Second, we are proposing that these advisers provide an explanation of whether they review, or whether a third party reviews, portfolio managers' applications of the relevant ESG factors described above. If so, our proposal would require them to describe the nature of the review and the name of any third party conducting the review. An example of this could be an adviser that engages a third party to review information reported by a portfolio manager about the carbon emissions of its portfolio companies to determine its accuracy. In this case, the adviser would be required to identify the third party completing the review and the nature of the review, which generally should explain how the third party assesses the accuracy of the emissions information provided by the portfolio manager. Another example could be an adviser that employs a third-party ESG service provider to score portfolio managers based on their considerations of specific ESG factors. In this case, the adviser would be required to name the third-party ESG provider and the nature of the review, which generally should describe the relevant ESG factors it uses to score portfolio managers, and how it arrives at the scores.

Third, we are proposing to require that an adviser explain, if applicable, that neither the adviser nor a third party assesses portfolio managers' applications of the relevant ESG factors into their portfolio management, and/or that the portfolio managers' applications of the relevant ESG factors may not be calculated, compiled, assessed, or presented on a uniform and consistent basis. Whether the adviser (or a third party) actually reviews how the portfolio manager applies the relevant ESG factors is important for wrap fee clients to understand. For example, if a portfolio manager's application of the relevant ESG factors is calculable and presentable on a uniform and consistent basis, but the adviser discloses that it does not review the calculation or presentation, a client can assess whether its wrap fee sponsor is committed to evaluating, and/or equipped to evaluate, the portfolio manager's application of ESG factors.

As part of this third disclosure item, the adviser would also be required to state and explain why, if applicable, any ESG factors it considers in evaluating portfolio managers may not be calculated, compiled, assessed, or presented on a uniform and consistent basis. We believe this information would assist an investor in understanding the limitations of any information provided to it about the portfolio manager's applications of relevant ESG factors. In this case, the client can request additional information from the sponsor about how the sponsor reviews the manager's application of ESG factors in its portfolio management.

Finally, we are proposing to amend Item 6.C. to require any adviser that acts (itself or through its supervised persons) as a portfolio manager for a wrap fee program described in its wrap fee program brochure (for purposes of this release, a ''sponsor-manager''), to respond to an additional specified brochure Item; namely, proposed Item 8.D. Item 6.C of the wrap fee program brochure currently requires sponsor-managers to respond to specified brochure Items that describe the investments and investment strategies the adviser (or its supervised persons) will use as portfolio manager.[204] Rather than deliver both a wrap fee program brochure and a brochure to its wrap fee program clients, a sponsor-manager may deliver just a wrap fee program brochure to its wrap fee program clients, provided the clients receive no other advisory services from the adviser.[205]

For a sponsor-manager that considers ESG factors for a significant strategy of its wrap fee program, we believe the information required by proposed Item 8.D of the brochure is an important component of the adviser's description of its investment strategies. Because wrap fee clients of sponsor-managers are generally not required to receive separate brochures from the sponsor-manager, we believe it would be beneficial for these clients to receive these ESG disclosures in the wrap fee brochure. Further, they would complete the sponsor-manager's currently required disclosure in response to brochure Item 8.A.[206]

We request comment on all aspects of the proposed amendments to the wrap fee brochure, including the following items.

156. Do commenters agree that wrap fee program participants should receive similar ESG-related information as advisory clients that do not participate in such programs, tailored to the wrap fee program structure as proposed?

157. Have we tailored the proposed requirements appropriately to the wrap fee program structure? If we should tailor the requirements in a different way, please describe how. For example, should we, as proposed in Item 6 of the wrap fee program brochure, require advisers that consider ESG factors in their portfolio manager selection, review and recommendations to describe those ESG factors and how they consider them? Are there other ways a wrap fee program sponsor could consider ESG factors in its wrap fee program services in addition to in its selection and evaluation of portfolio managers?

158. Do commenters agree with the proposal's specified disclosures for wrap fee program sponsors? For example, should we, as proposed, require an adviser that engages a third party to review portfolio managers' applications of relevant ESG factors, to describe the nature of the review and the name of any third party conducting

[203] Proposed Form ADV, Part 2A, Appendix 1, Item 6.A.4.

[204] *See* Instructions for Part 2A Appendix 1 of Form ADV: Preparing Your Wrap Fee Program Brochure, Instruction 6.

[205] *Id.*

[206] Item 6.C of the wrap fee program brochure also currently requires a sponsor-manager to include a response to Item 17 of the brochure (Voting Client Securities), for which we are proposing an amendment to address ESG.

the review? Are there any sensitivities with requiring disclosure of the name of the reviewer?

159. Should we, as proposed, amend Item 6.C. to include a required response to proposed Item 8.D of the brochure, which would apply only to certain sponsor-managers that deliver wrap fee program brochures? Alternatively, should all wrap fee program sponsors be required to include this information in their wrap fee program brochures? Would this information be necessary in the wrap fee program brochure for wrap fee program clients that receive both a wrap fee program brochure from the sponsor and a brochure from the program's third-party portfolio manager? Under our proposal, are there wrap fee clients that would not receive this information, and if so, who are they? Similarly, we currently require certain sponsor-managers to respond in the wrap fee program brochure to Item 17 (Voting Client Securities) of the brochure, which would include our proposed ESG amendment. Should we alternatively require all wrap fee sponsors to disclose in their wrap fee program brochures whether and how their portfolio managers incorporate ESG factors into proxy voting for clients' securities in the wrap fee program?

160. What, if any, ESG-related information do advisers (or third parties on their behalf) evaluate when they evaluate portfolio managers for wrap fee programs? For example, do they evaluate portfolio managers' quantified information such as GHG metrics for managed portfolios, as applicable?

161. Do advisers engage in any other types of evaluation of portfolio managers' applications of ESG factors that our proposed disclosure requirements would not cover for which we should require disclosure? If so, what are they and how should we include them? Alternatively, should we limit our disclosure requirement to address only an adviser's evaluation of portfolio managers' achievement of stated metrics or other quantifiable information, such as GHG emissions reductions?

C. Regulatory Reporting on Form N–CEN and ADV Part 1A

To complement our proposed investor- and client-facing disclosures, we are also proposing to collect census-type information about funds' and advisers' uses of ESG factors, including their uses of ESG providers. We are proposing to amend Forms N–CEN and ADV Part 1A for registered funds and advisers (both registered investment advisers and exempt reporting advisers), respectively, to collect this information using the structured XML-based data languages in which those Forms are currently submitted, thus providing the Commission and investors with consistent, usable, and comparable data.[207] We believe that our proposed new data on Forms N–CEN and ADV Part 1A would assist both the Commission staff and the public in understanding the trends in this evolving space including, for example, changes in total assets under management for which funds or advisers incorporate E, S, and/or G. We additionally believe clients and investors would use this data, together with the narrative ESG information we are proposing to require in investor- and client-facing disclosures, to make more informed decisions about their selection of funds or advisory services that consider ESG factors.

1. Form N–CEN

As discussed above, the information that is currently available to the Commission and data users, including investors and other market participants, regarding how funds incorporate ESG factors into their investment strategies and portfolio holdings is inconsistent across funds. To enhance the ability of the Commission, investors and other market participants to track trends in ESG funds, we are proposing amendments to Form N–CEN that are designed to collect census-type information regarding these funds and the ESG-related service providers they use in a structured data language.[208] We believe that this standardized and structured disclosure would complement the proposed tailored narrative disclosure included in the fund prospectus and annual report discussed above.[209] For example, the Commission, investors and other market participants could use this information to identify efficiently funds that incorporate ESG factors into their investment strategies and categorize funds based on the type of ESG strategy they employ. This information would also enhance the Commission's ability to carry out its regulatory functions, including assessing trends related to ESG investing in the fund industry and their processes for incorporating ESG into their investment strategies.[210]

Specifically, we are proposing to add proposed Item C.3(j) of Form N–CEN that asks questions tailored to ESG funds' strategies and processes. A fund that indicates that it incorporates ESG factors would then be required to report, among other things: (i) the type of ESG strategy it employs (*i.e.,* integration, focused, or impact) as those strategies are defined in proposed Item 4(a)(2)(i) of Form N–1A and proposed Item 8.2.e of Form N–2, as applicable; (ii) the ESG factor(s) it considers (*i.e.,* E, S, and/or G);and (iii) the method it uses to implement its ESG strategy (*i.e.,* tracking an index, applying an inclusionary and/or exclusionary screen, proxy voting, engaging with issuers, and/or other).[211] In responding to proposed Item C.3(j) of Form N–CEN, an ESG-Impact Fund would be required to report that it is both an ESG-Focused Fund and an ESG-Impact Fund.

The proposed amendments to Form N–CEN would also collect information regarding whether a fund considers ESG-related information or scores provided by ESG providers in implementing its investment strategy.[212] If so, the fund would be required to provide the legal name and legal entity identifier (''LEI''), if any, or provide and describe other identifying number of each such ESG provider.[213] A fund would also be required to report whether the ESG provider is an affiliated person of the Fund.

Requiring a fund to report information regarding its consideration of information from an ESG provider would help the Commission, investors, and other market participants understand any differences in how funds with similar investment strategies rely on ESG providers in implementing those strategies. The information on Form N–CEN also would allow analysis of the extent to which funds rely on information provided by a particular ESG provider, such as the number of funds, or amount of AUM, that may rely on information provided by that provider. Additionally, we believe that requiring funds to disclose whether an ESG provider is an affiliated person of the fund would assist Commission,

[207] Throughout this Release, we refer to advisers exempt from registration under sections 203(l) and 203(m) of the Advisers Act as ''exempt reporting advisers.'' Because BDCs are not required to file Form N–CEN, the proposed amendments to Form N–CEN will not apply to BDCs.

[208] Form N–CEN is currently submitted using a structured, XML-based data language that is specific to that Form.

[209] *See supra* section II.A.1 (discussing proposed prospectus ESG disclosure enhancements); *see also* section II.A.3 (discussing proposed annual report ESG disclosure requirements).

[210] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590 (June 12, 2015)] (''Investment Company Reporting Modernization Release'').

[211] Proposed Item C.3(j)(i) through (iii) of Form N–CEN.

[212] Proposed item C.3(j)(iv) of Form N–CEN.

[213] *See supra* at text preceding footnote 25 (discussing ESG service provides and the role they play in providing ESG information regarding companies).

investors, and other market participants in evaluating conflicts of interest that could exist when an ESG provider is also an affiliated person of the fund.[214]

The proposed amendments to Form N–CEN would also require a fund to report whether the fund follows any third-party ESG frameworks.[215] If so, the fund would be required to provide the full name of such frameworks.[216] This information would help the Commission, investors and other market participants to classify funds based on the ESG frameworks they follow in order to understand and assess trends in the market better.

Form N–CEN currently requires any fund that tracks the performance of an index to identify itself as an index fund and provide certain information about the index, and so this requirement currently applies to ESG funds that track an index. We are proposing amendments to Form N–CEN that would require all index funds to report the name and LEI, if any, or provide and describe other identifying number of the index the funds track.[217] We believe that this information will help the Commission, investors, and other market participants to monitor trends in ESG investing through reference to indexes. Additionally, because we believe that these amendments would be helpful for all index funds to understand better the use of indexes in the industry more generally, we are proposing to require all funds to identify the indexes they track.

We request comment on our proposed amendments to Form N–CEN, including the following issues.

162. Should funds be required to report the proposed census-type information regarding their incorporation of ESG factors into their investment strategy on Form N–CEN? Would this information be helpful to investors and other market participants? How would investors and other market participants use this information?

163. Should we, as proposed, use the definitions of the terms ''Integration Fund'' and ''ESG-Focused Fund'' as they appear in proposed Item 4(a)(2)(i) of Form N–1A? Would this approach make it easier for funds to comply with this reporting requirement? Should we adopt a different definition of these terms?

164. Should we, as proposed, require ESG-Focused Funds to further identify themselves as Impact Funds, if relevant? Should we, as proposed, use the definition of the term ''Impact Fund'' as it appears in Item 4(a)(2)(i)(B) of Form N–1A? Would this approach make it easier for funds to comply with the proposed reporting requirement on Form N–CEN? Should we adopt a different definition for the term ''Impact Fund''?

165. Should we, as proposed, require ESG funds to indicate whether they consider E, S, or G factors? Should we, as proposed, allow them to check all that apply? Alternatively, should we require them to select an ESG factor only if the fund considers it to a material degree? If so, how should we define materiality?

166. Should we, as proposed, require ESG funds to indicate what method the fund uses to implement its ESG strategy, including by tracking an index, applying an inclusionary and/or exclusionary screen, proxy voting, or engaging with issuers? Should we, as proposed, allow funds to check all that apply? Are there any other types of investment strategies that funds may use not reflected in the proposed list? Would investors and other market participants find this information useful? Are there ways we can make this information more useful? For example, for each of the methods of ESG strategy implementation, should we require funds to further indicate which E, S, or G factor, or a factor within E, S, or G, they consider within each method?

167. Should we, as proposed, require funds to report whether they consider ESG information or scores from ESG providers and the full name and LEI, if any, or provide and describe other identifying number of the ESG provider? Are there ways we can enhance the usefulness of this information? For example, as discussed above, funds vary in the level of their reliance on ESG providers. Therefore, should we require funds to disclose the name of their ESG provider only if they rely on information to a material extent? If so, how should we define material?

168. Should we, as proposed, require funds to report whether the ESG provider is an affiliated person of the fund? Are there other types of conflicts of interest that we should require funds to report? For example, should we require funds to report whether an ESG provider provides other, non-ESG related, services?

169. Should we define the term ''ESG consultants or other ESG service providers'' on Form N–CEN? If so, what definition should we adopt?

170. Should we, as proposed, require all index funds to report the name and LEI, if any, or provide and describe other identifying number of their index on Form N–CEN? Would ESG funds that seek to track an index consider themselves to be both ESG funds and index funds on Form N–CEN? Are there funds that consider an ESG index as part of their investment strategy but do not identify themselves as an index funds because they do not track the index? Is there any additional information regarding indexes that we should collect specifically for ESG funds?

171. Should we, as proposed, require funds to report whether they follow any third-party ESG framework(s) and the name(s) of any such entities, as applicable? Should funds be required to report any other information, such as a link to the website of the framework? In light of the proliferation of such frameworks, would this information be useful to investors and other market participants? Are there ways to enhance the information provided? For example, should we allow funds to report this information only if they follow such frameworks to a certain extent? If so, how should we set such threshold for reporting?

2. Form ADV Part 1A Reporting

We are proposing amendments to Form ADV Part 1A designed to collect information about an adviser's uses of ESG factors in its advisory business. These proposed amendments would expand the information collected about the advisory services provided to separately managed account clients and reported private funds. We would apply the proposed additions to separately managed account reporting in Item 5 to only investment advisers registered or required to be registered with the Commission, and would apply the proposed additions to Items 6 and 7 (*e.g.,* other business activities and private fund reporting) to those advisers and exempt reporting advisers. We believe it is appropriate to continue to collect information from both types of advisers for Items that each are currently required to complete.[218] These proposed items are designed to improve the depth and quality of the information we collect on investment advisers and to facilitate our risk monitoring

[214] *See* International Organization of Securities Commissions (''IOSCO''), *Environmental, Social and Governance (ESG) Ratings and Data Products Providers: Consultation Report,* at 35, available at CR02/2021 Environmental, Social and Governance (ESG) Ratings and Data Products Providers (*iosco.org*) (discussing the potential conflicts of interest of ESG providers and the need to appropriately manage such conflicts).

[215] Proposed item C.3(j)(vi) of Form N–CEN.

[216] *See supra* footnote 8 (discussing the various climate and sustainability frameworks that have developed over time).

[217] *See* proposed Item C.3(b)(i) of Form N–CEN.

[218] Exempt reporting advisers must complete the following Items of Part 1A: 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules.

initiatives, which also serves to benefit current and prospective advisory clients. Moreover, because Form ADV is available to the public on our website, these amendments also are intended to provide advisory clients and the public additional information regarding advisers' ESG investing.

(a) ESG Data for Separately Managed Account Clients and Private Funds

We are proposing amendments to Form ADV Part 1A to collect information about advisers' uses of ESG factors for their separately managed account (''SMA'') clients and reported private funds. We are proposing amendments to Item 5.K. (Separately Managed Account Clients) and corresponding sections of Schedule D, which currently require advisers to provide information about their advisory businesses with respect to SMA clients.[219] These amendments would collect aggregated information for an adviser's applicable SMA clients. We are proposing similar amendments to private fund reporting in Section 7.B.(1) of Schedule D to collect information from private fund advisers about their uses of ESG factors in managing each reported private fund. This information would be similar to the information we are proposing to collect on Form N–CEN regarding ESG factors and include, for example, type of strategy (*i.e.,* integration, ESG-focused, and ESG impact).

We are proposing to focus this collection of information from advisers with respect to their SMA clients and private funds, rather than from advisers with respect to their registered investment companies and BDCs, because registered investment companies and BDCs would report similar ESG-related information, including on Forms N–CEN and in the fund prospectus.[220] We believe that collecting this information would provide the Commission and current and prospective advisory clients with important information about advisers' consideration of ESG factors in their advisory businesses, including the specific factors they consider, the types of ESG-related strategies they employ, and potential conflicts of interest with related person ESG providers.[221] As discussed above, there is a current lack of consistent and comparable information among advisers that say they consider one or more ESG factors. This information would provide us with comparability across advisers and advance our regulatory goal of gaining a more complete understanding of advisers' considerations of ESG factors in their separately managed account and private fund management businesses. We believe the proposed new reporting requirements would improve our ability to understand the ESG landscape and assess trends among investment advisers in this emerging and evolving area, and their processes for incorporating ESG into their investment strategies. We believe that this census-style disclosure would complement the proposed tailored narrative disclosure in the brochure and wrap fee program brochure discussed above. For example, the Commission, clients and other market participants could use this information to identify advisers that incorporate ESG factors into their investment strategies and categorize advisers based on the type of ESG strategy they employ.

Type(s) of ESG-related strategy or strategies. We propose to require an adviser to disclose whether it considers ESG factors as part of one or more significant strategies (as defined above) in the advisory services it provides to its separately managed account clients, including in its selection of other investment advisers and/or as part of their advisory services when requested by separately managed account clients (together with significant strategies, for purposes of this release, ''SMA strategies'').[222] If so, our proposal would require the adviser to indicate for its SMA strategies whether it employs an integration or ESG-focused approach, and if ESG-focused, whether it also employs an ESG-impact approach. Under our proposal, an adviser must select all three approaches, if it offers all three.[223] These advisers would also report whether they incorporate one or more of E, S, and/or G factors into their SMA strategies. Similarly, if an adviser considers any ESG factors as part of one or more significant investment strategies or methods of analysis in the advisory services it provides to a reported private fund, the adviser would report whether it employs in its management of that private fund an ESG-integration or ESG-focused approach, and if ESG-focused, whether it also employs an ESG-impact approach. It would also report whether it incorporates one or more of E, S, and/or G factors (and which factor(s)). This information would categorize general approaches to incorporating ESG to help Commission staff understand industry trends, as well as prepare for, conduct, and implement our risk-based examination program.

(b) Third-Party ESG Framework(s)

We also propose to require advisers to report whether they follow any third-party ESG framework(s) in connection with their advisory services.[224] If so, the adviser would be required to report the name of the framework(s).[225] This information would inform the Commission (and current and prospective advisory clients) that the adviser follows certain framework(s), if applicable. We believe that requiring the name of the framework would be useful to the Commission and clients as these frameworks are not uniform and some may apply only to very specific investment types. They can also range in complexity from a set of aspirational principles to, for example, highly prescriptive financial industry benchmarks for assessing and managing environmental and social risk for infrastructure projects. Requiring this information would provide Commission staff with additional data to assess and evaluate trends in this industry. Moreover, current and prospective clients could use this information to find advisers that follow ESG

[219] For purposes of reporting on Form ADV, we consider advisory accounts other than those that are pooled investment vehicles (*i.e.,* registered investment companies, business development companies, and pooled investment vehicles that are not investment companies (*i.e.,* private funds)) to be separately managed accounts. *See* 2016 Adopting Release [81 FR 81870 (Nov. 18, 2016)], at text preceding footnote 8. *See also* Form ADV Part 1A Item 5.K(1) (describing separately managed account *clients*).

[220] Advisers to registered investment companies and BDCs would be required to respond to the proposed new question in Item 5 of Form ADV, reporting whether they seek to follow any third-party ESG framework(s) in connection with their advisory services.

[221] *See* Brochure Adopting Release, *supra* footnote 188, at text accompanying n.74 (describing significant investment strategies or methods of analysis in the context of a Form ADV brochure Item about risk disclosure as providing a threshold for disclosure that ''captures those methods of analysis or strategies that will be relevant to most clients'').

[222] *See* Proposed Form ADV Part 1A Item 5.K. Responses to this question would refer to the adviser's separately managed account clients in the aggregate (other than when the adviser has only one separately managed account client).

[223] For example, if an adviser has some SMA strategies that are ESG integration, and others that are ESG-focused and ESG-impact, the adviser would select all three strategies. An adviser with only one SMA strategy, however, would select *either* ESG-integration *or* ESG-focus (and if it selects ESG-focus, it would also select ESG-impact, if applicable). This is because we believe that ESG-integration and ESG-focused strategies are distinct investment advisory strategies that would not be employed together in one strategy.

[224] *See* Proposed Form ADV Part 1A Item 5.M.

[225] *See supra* footnote 8 (discussing that many financial institutions sign on to climate and other sustainability frameworks in an effort to integrate ESG considerations and reporting into their business practices, offerings, and proxy voting).

frameworks that match their expectations for ESG investing.

We request comment on all aspects of the proposed reporting of an adviser's consideration of ESG factors for SMA clients and reported private funds and reporting their uses of third-party ESG framework(s), including the following items.

172. Should advisers be required to report to the Commission on Form ADV Part 1A the proposed census-type information regarding their incorporation of ESG factors for SMA clients and reported private funds, as proposed? Would this information be helpful to current and prospective clients and other market participants? How would clients and other market participants use this information?

173. Would the information required to answer the proposed questions in Item 5.K, 5.L, and Section 7.B.(1) and corresponding schedules be readily available to advisers? If not, why?

174. Should we, as proposed, use the terms ESG ''integration'', ESG-''focused'', and ESG-''impact'' that are the same as we proposed for the brochure and similar to the terms we proposed to define for funds? Would this approach make it easier for advisers to comply with this reporting requirement? Alternatively, should we describe these terms differently for Part 1A reporting? If so, how and why?

175. Should we, as proposed, require advisers that consider ESG factors for their SMA clients and private funds to indicate whether they consider E, S, or G factors, and permit them to check all that apply? Alternatively, should we require them to select an ESG factor only if the adviser's strategy or method of analysis considers it to a material degree? If so, how should we define materiality?

176. Is there any different or additional information we should require about SMAs and private funds in these Items and corresponding schedules, and is there any proposed information we should not require? For example, should we require advisers to additionally report in Part 1A, as we are proposing to require for funds in Form N–CEN, whether they engage in any of the following to implement their ESG strategies: tracking an index, applying any inclusionary and/or exclusionary screen, or engaging with issuers? Would these activities be applicable to advisers' SMA strategies and private funds, and would this information disclosed in the Part 1A census-style format provide the Commission and clients with valuable information about the adviser? If required, would this information for SMA strategies and/or each reported fund reveal non-public information regarding an adviser's SMA strategy and/or a private fund's trading strategies, analytical or research methodologies, trading data, and/or computer hardware or software containing intellectual property?

177. If we should require disclosure of advisers' uses of ESG indexes, should we require additional information such as the name and LEI, if any, or provide and describe other identifying number of their index? Are there advisers that consider an ESG index as part of their significant strategies but do not wholly track the ESG index? Is there any additional information regarding indexes that we should collect specifically on Part 1A for advisers that consider ESG factors, and if so, what?

178. Should we collect different amounts or types of information from advisers about their uses of ESG factors in SMA strategies and management of their reported private funds depending on whether the adviser uses an integration or ESG-focused approach? Or, as proposed, should we require the same amount and type of information for integration or ESG-focused approaches? If we should require different amounts of information, what should those differences be, and should we further differentiate the information we collect about ESG-impact strategies from the information we collect about ESG-focused strategies?

179. Should we collect different amounts or types of information from advisers about their uses of ESG factors in SMA strategies depending on whether advisers consider ESG factors (i) as part of their significant strategies *versus* (ii) only (or primarily) when requested by clients? Or, as proposed, should our questions cover both, together? Should we require separate reporting about advisers' uses of ESG factors for certain SMA strategies versus others?

180. As proposed, should we require all advisers to report whether the adviser follows any third-party ESG framework(s), and if so, to report the name of each framework? Are there ways to enhance the information provided? For example, should we allow advisers to report this information only if they follow such frameworks to a certain extent? If so, how should we set such threshold for reporting? Should we also require advisers report this information as it relates specifically to their SMA clients and/or reported private funds, or, as proposed, should we require advisers to provide this information as it relates to any part of their advisory business (without specifying which part)?

181. Should we, similar to our proposal for funds, additionally require advisers to report whether they use any ESG providers for their SMA clients and private funds? If so, should we require advisers to report the full name and LEI, if any, or provide and describe other identifying number of the ESG provider, and/or whether the provider is an affiliate of the adviser or its management persons? Would this information provide the Commission with valuable information about the adviser and its use of ESG providers, in addition to the information we are proposing to collect about an adviser's related-person ESG providers and other business activities as an ESG provider (discussed below in Items 6 and 7)? If so, should we require advisers to disclose the name of their ESG provider only if they rely on the ESG provider to a material extent? If so, how should we define material?

182. Should we, similar to our proposal for funds, additionally require advisers to report on Part 1A whether they consider one or more ESG factors as part of the adviser's proxy voting policies and procedures? Should we require advisers to indicate which E, S, or G factor, or a factor within E, S, or G, they consider as part of their proxy voting policies and procedures?

183. Would any of our proposed disclosures reveal non-public information regarding an adviser's SMA strategy and/or a private fund's trading strategies, analytical or research methodologies, trading data, and/or computer hardware or software containing intellectual property? If so, how? Would our proposed disclosures otherwise have the potential to harm clients and investors in private funds or subject them to abusive market practices? If so, should we collect this information another way, such as through Form PF for advisers to private funds? If so, what information should we collect on Form PF versus Form ADV Part 1A?

184. Do commenters agree that both advisers registered or required to be registered with the Commission and exempt reporting advisers should complete the proposed new questions in Section 7.B.(1) of Schedule D about their reported private funds, since both are currently required to report on private funds in Part 1A? If not, why not?

(c) Additional Information About Other Business Activities and Financial Industry Affiliations

We also propose to require advisers to disclose whether they conduct other business activities as ESG providers or

have related persons that are ESG providers by amending Items 6 and 7 of Part 1A (and Sections 6.A. and 7.A. of Schedule D). For each related person ESG provider, the adviser would be required to complete the relevant items in Section 7.A of Schedule D, which requires, for example, the related person's SEC File Number (if any) and additional information about the adviser's control relationship (if any) with the related person. We believe that the disclosures would better allow us to assess the potential conflicts of interest and risks created by relationships between advisers and affiliated ESG providers. We also believe that it would assist the public in better understanding advisers' conflicts of interests when related persons offer ESG provider services, or when the adviser offers its own ESG provider services to others.

We believe that this proposed expansion of Items 6 and 7 would provide us with a more complete picture of the ESG-related activities of an adviser and its related persons. The proposed reported information would enable us to identify affiliated financial service businesses in the evolving ESG advisory marketplace. The additional information on related persons would allow us, clients and other market participants to link disparate pieces of information that we have access to concerning an adviser and its affiliates as well as identifying whether the adviser controls the related person or vice versa. Therefore, it would allow the Commission to understand better advisers' conflicts of interest in the field of emerging ESG providers and give clients and potential clients additional information about potential conflicts of interest to utilize in making their investment decisions.

We request comment on all aspects of the proposed new reporting about any related person ESG provider and an adviser's other business activities as an ESG provider, including the following items.

185. Should we, as proposed, require both advisers registered or required to be registered with the Commission and exempt reporting advisers to report the proposed information in Items 6 and 7 of Form ADV Part 1A (and the corresponding Schedules) about other business activities as an ESG provider or any related person that is an ESG provider, as both are currently required to complete these Items? Or, should we specify that only advisers registered or required to be registered with the Commission should complete this proposed addition to the Items?

186. Should we, instead of our proposed amendments to Items 6 and 7, require advisers to disclose the proposed information only if the adviser actually uses the services of the related person ESG provider (or provides its ESG provider services to its own advisory clients)? If so, should we require this information only if the adviser uses the services in its advisory business to a material extent and/or to a threshold percentage of clients? If so, how should we define material and/or what threshold should we use, or should we impose a different type of reporting threshold for this information (and if so, what)?

187. Are there other types of financial services providers in the ESG marketplace that we should specifically include in the lists contained in Items 6 and 7?

188. Is the information advisers need to complete the proposed additional questions contained in Section 7.A. readily available for related person ESG providers? Are there other questions not currently included in Section 7.A. that we should ask to determine additional conflicts of interest advisers face through ESG related persons or through conducing other business activities as an ESG provider? For example, should we require advisers to report whether a related person ESG provider provides other, non-ESG related, services?

D. Compliance Policies and Procedures and Marketing

Under the Advisers Act and Investment Company Act compliance rules, each adviser registered or required to be registered under the Advisers Act and each registered fund must have, and annually review, policies and procedures reasonably designed to prevent violations of applicable laws.[226] The Advisers Act Compliance Rule requires advisers to consider their fiduciary and regulatory obligations under the Advisers Act and to formalize policies and procedures reasonably designed to address them.[227] Similarly, the Company Act Compliance Rule requires a fund to adopt and implement compliance policies and procedures reasonably designed to prevent violations of the Federal securities laws by the fund, including policies and procedures providing for its oversight of compliance of its service providers, subject to approval by the fund's board of directors.[228] Among other things, the Commission has stated that advisers' and funds' compliance policies and procedures must address the accuracy of disclosures made to clients, investors and regulators, as well as portfolio management processes, including consistency of portfolios with investment objectives and disclosures by the adviser and/or fund.[229] Funds and advisers must annually review the adequacy and effectiveness of such compliance policies and procedures.[230] ESG strategies, including integration, ESG-focused and impact strategies, will necessarily require different levels and types of compliance policies and procedures.

Our staff has observed a range of compliance practices, however, that do not appear to address effectively advisers' incorporation of ESG factors into their advisory services.[231] In light of these observations, as well as the comprehensive nature of our proposed ESG-related amendments to required disclosures, we believe it would be appropriate and beneficial to reaffirm existing obligations under the compliance rules when advisers and funds incorporate ESG factors. Specifically, as with all disclosures, advisers' and funds' compliance policies and procedures should address the accuracy of ESG-disclosures made to clients, investors and regulators. They should also address portfolio management processes to help ensure portfolios are managed consistently with the ESG-related investment objectives disclosed by the adviser and/or fund.

Advisers may wish to consider the following specific examples of effective ESG-related disclosure, policies, procedures and practices. If an adviser discloses to investors that it considers certain ESG factors as part of an integration strategy, the adviser's compliance policies and procedures should be reasonably designed to ensure the adviser manages the portfolios

[226] *See* 17 CFR 275.206(4)–7 (''Advisers Act Compliance Rule'') and 17 CFR 270.38a–1 (''Company Act Compliance Rule'').

[227] *See* Compliance Programs of Investment Companies and Investment Advisers, Release No. IA–2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] at text accompanying n.11.

[228] *Id.* at nn.24–31 and accompanying text.

[229] *Id.* at text accompanying nn.17 through 23 and text accompanying n.37.

[230] *Id.* at nn.70–71 and accompanying text.

[231] *See, e.g.,* Risk Alert, Division of Examinations (Apr. 9, 2021), available at *esg-risk-alert.pdf* (*sec.gov*) (discussing, for example, firms that claimed to have formal processes in place for ESG investing, but have a lack of policies and procedures related to ESG investing, and compliance programs that did not appear to be reasonably designed to guard against inaccurate ESG-related disclosures and marketing materials). This Risk Alert represents the views of the staff of the Division of Examinations. It is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved its content. The Risk Alert, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

consistently with how the strategy was described to investors (*e.g.,* actually considering the ESG factors in the way it says it considers them). If a registered fund discloses to investors that it adheres to a particular global ESG framework, its policies and procedures should include controls that help to ensure client portfolios are managed in accordance with that framework. Similarly, if an adviser uses ESG-related positive and/or negative screens on client portfolios, the adviser should maintain adequate controls to maintain, monitor, implement, and update those screens. Relatedly, if an adviser has agreed to implement a client's ESG-related investing guidelines, mandates, or restrictions, the adviser's compliance policies and procedures should be designed to ensure these investment guidelines, mandates, or restrictions are followed. If an adviser discloses to investors that ESG-related proxy proposals will be independently evaluated on a case-by-case basis, the adviser should adopt and implement policies and procedures for such evaluation.[232] In addition, if an adviser advertises to its clients that they will have the opportunity to vote separately on ESG-related proxy proposals, the adviser must provide such opportunities to its clients to the extent applicable and should maintain internal policies and procedures accordingly.

In addition, current regulations seek to prevent false or misleading advertisements by advisers, including greenwashing, by prohibiting material misstatements and fraud. The provision at 17 CFR 275.206(4)–8 prohibits advisers to pooled investment vehicles from making false or misleading statements to existing or prospective investors in such pooled investment vehicles (*e.g.,* investors in a registered investment company or private fund).[233] The Marketing Rule prohibits an adviser from, directly or indirectly, distributing advertisements that contain any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading.[234] Therefore, it generally would be materially misleading for an adviser materially to overstate in an advertisement the extent to which it utilizes or considers ESG factors in managing client portfolios. For example, if an adviser advertisement asserts that it applies a negative screen to oil and gas stocks in client portfolios, but it fails to apply such a screen in practice it would be materially misleading. Similarly, it generally would be materially misleading if an adviser stated in its marketing materials that it has substantially contributed to the development of specific governance practices, or reduction in carbon emissions, at its portfolio company, if the adviser's actual roles in the development or reduction in emissions were limited or inconsequential.

E. Compliance Dates

We propose to provide a transition period after the effective date of the amendments, if adopted, to give funds and advisers sufficient time to comply with the ESG disclosure requirements for investment company companies and investment advisers. Accordingly, we propose that the compliance date of any adoption of this proposal for the following items would be one year following the effective date, which would be sixty days after the date of publication in the **Federal Register**: (i) the proposed disclosure requirements in prospectuses on Forms N–1A and N–2, (ii) the proposed disclosure requirements for UITs on Form N–8B2; (iii) the proposed regulatory reporting on Form N–CEN, and (iv) the proposed disclosure requirements and regulatory reporting on Form ADV Parts 1 and 2.

We propose that the compliance date of any adoption of the proposed disclosures in the report to shareholders and filed on Form N–CSR would be 18 months following the effective date, which would be sixty days after the date of publication in the **Federal Register**. Extending the compliance date for the proposed annual report further out from the proposed prospectus disclosure would allow funds to determine the right level of detail to provide in the proposed prospectus before implementing the result-oriented disclosure required by the proposed annual reports. It will also provide extra time for affected funds to develop any needed procedures for gathering data necessary to comply with the GHG metrics, proxy voting, and engagement reporting requirements if adopted.

We request comment on the compliance dates outlined above.

189. Should we, as proposed, provide a one-year transition for affected funds to come into compliance with the proposed prospectus and registrations statement requirements if adopted? Should the period be shorter or longer? Should the transition period be the same for open-end funds, closed-end funds, and UITs, as proposed?

190. Should Integration Funds and ESG-Focused Funds have the same compliance period as one another, as proposed?

191. Should we, as proposed, provide an 18-month transition for affected funds to come into compliance with the proposed disclosure requirements in the annual report? Should the proposed annual report requirements have different transition periods from one another? Specifically, do funds need more or less time than proposed to gather data to produce (i) the required disclosures for Impact Fund objectives, (ii) voting and engagement metrics, or (iii) GHG metrics?

192. Is six months, as proposed, the appropriate amount of time between the effective date of the proposed prospectus disclosures and the proposed disclosures in the report to shareholders for affected funds?

193. Should we, as proposed, provide a one-year transition period for affected funds to come into compliance with the proposed N–CEN Reporting requirements? Should the proposed N–CEN requirements have the same transition period as the proposed prospectus requirements, as proposed?

194. Should we, as proposed, provide a one-year transition for affected advisers to come into compliance with the proposed disclosure and reporting requirements in Form ADV Parts 1 and 2? Should the period be shorter or longer? Should the transition period, as proposed be the same for ADV Parts 1 and 2?

III. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the costs and benefits, of the proposed amendments. Section 2(c) of the Investment Company Act provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Similarly,

[232] *Id.*

[233] *See* 17 CFR 275.206(4)–8 (''Advisers Act rule 206(4)–8'').

[234] 17 CFR 275.206(4)–1 (''Marketing Rule''). *See* Final Rule: Investment Adviser Marketing, Release No. IA–5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (''Marketing Rule Adopting Release''). The amended rule became effective on May 4, 2021, and has an eighteen-month transition period between effectiveness and Nov. 4, 2022, when compliance is required for all firms. Prior to effectiveness of the amendments, and in some instances until Nov. 4, 2022, the previous version of the rule prohibited any advertisement which contained any untrue statement of a material fact, or which was otherwise false or misleading.

whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, section 202(c) of the Advisers Act requires the Commission to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated and estimated benefits, costs, and the effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal.

Many of the benefits and costs discussed below are difficult to quantify. For example, it is difficult to quantify the efficiency benefits produced from reducing investors' search costs and the associated welfare gains from better alignments between investors' investment objectives and selected ESG funds or advisers. Also, in some cases, data needed to quantify these economic effects are not currently available and the Commission does not have information or data that would allow such quantification. For example, we anticipate the enhanced transparency and consistency in ESG disclosures would provide more complete and accurate information available to investors and prospective investors about ESG investing. However, we lack data that would allow us to quantify the value of more complete information in ESG disclosures, which varies across investors and also depends on the degree to which any particular investor may derive non-pecuniary benefits from ESG investing. While the Commission has attempted to quantify economic effects where possible, much of the discussion of the economic effects is qualitative in nature. The Commission seeks comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Economic Baseline

The economic baseline against which we measure the economic effects of this proposal, including its potential effects on efficiency, competition, and capital formation, is the state of the world as it currently exists.

1. Current Regulatory Framework

As discussed above, funds and registered advisers are subject to disclosure requirements concerning their investment strategies.[235] Funds must provide disclosures in their prospectus including material information on investment objectives, strategies, risks, and governance, and a discussion of fund performance in their annual reports. Certain of these fund prospectus disclosures are subject to Inline XBRL tagging requirements, while others are not.[236] Fund annual reports are only subject to Inline XBRL tagging requirements to the extent they are filed by seasoned closed-end funds and include tagged prospectus disclosures incorporated into their Form N–2 registration statements by reference.[237] Registered advisers are required to provide information about their advisory services in narrative format on Form ADV Part 2 describing their firm's methods of analysis and investment strategies, fees, conflicts, and personnel; these disclosures are not tagged in Inline XBRL or any other machine-readable data language.[238]

General disclosures about ESG-related investment strategies would fall under these disclosure requirements, but there are no specific requirements about what a fund or adviser following an ESG strategy must include. The names rule requires that a fund adopt a policy to invest at least 80 percent of the value of its assets in the type of investment suggested by its name and, although current fund practices are mixed, many funds adopt such a policy when the fund's name indicates that the fund's investment decisions incorporate one or more ESG factors.[239] Further, funds and advisers (both registered investment advisers and exempt reporting advisers) are currently not required to report to the Commission ESG-specific information on Forms N–CEN and Form ADV Part 1A.[240] Rather, Form N–CEN currently requires any fund, including an ESG fund, that tracks the performance of an index to identify itself as an index fund and provide certain information about the index,[241] but Form N–CEN does not require reporting on funds' ESG-specific strategies and processes. Similarly, registered advisers and exempt reporting advisers are required to report certain information about their advisory business on Form ADV Part 1A, but are currently not required to report uses of ESG factors in their advisory business and investment strategies, including with respect to an adviser's reported private funds and separately managed accounts.

2. Affected Parties

(a) Registered Investment Companies and BDCs

As of the end of December 2020, there were 13,248 open-end funds reporting an aggregate $30,013 billion in average total net assets and 691 closed-end funds reporting an aggregate $305 billion in average total net assets.[242] There also were 94 BDCs reporting an aggregate $66 billion in total net assets and 5,818 UITs with $1,116 billion in total net assets.[243]

The proposed rules would define categories of funds: Integration, ESG-Focused, and Impact Funds (a subset of ESG-Focused funds that seek to achieve a specific ESG impact or impacts), and provide specific requirements for each category. While many funds provide information about how they consider ESG factors in their prospectus documents or shareholder reports, information about ESG factors at the fund level is not consistently disclosed. As a result, it is difficult to determine accurately how many funds would fall into each category.

Determining the number of Integration Funds is particularly difficult, as these funds only consider ESG factors as part of a broader

[235] *See supra* section I.A.3.

[236] With respect to open-end fund registration statements filed on Form N–1A, only those disclosures included in Items 2–4 of Form N–1A (*i.e.,* the prospectus risk/return summary, which includes a discussion of investment objectives, principal investment strategies, and principal risks) are required to be tagged in Inline XBRL. *See* General Instruction C.3.g.i of Form N–1A; 17 CFR 232.405(b)(2)(i); Inline XBRL Adopting Release, *supra* footnote 185. Similarly, for registered closed-end funds and BDCs that file on Form N–2, the discussion of investment strategies and principal risks, as well as other specified prospectus disclosures, will be required to be tagged in Inline XBRL no later than Feb. 2023. *See* General Instruction I.2 of Form N–2; 17 CFR 232.405(b)(3)(iii); Closed-End Fund Offering Reform Adopting Release, *supra* footnote 186. Unit investment trust registration statements filed on Forms N–8B–2 and S–6 are not currently subject to tagging requirements.

[237] *See* General Instruction I.3 of Form N–2.

[238] Registered advisers must file brochures and amendments electronically through the Investment Adviser Registration Depository (''IARD'') system as a text-searchable (non-machine readable) PDF. *See* 17 CFR 275.203(a)(1); General Instruction 5 of Form ADV Part 2.

[239] *See* Investment Company Names, Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)].

[240] *See supra* section II.C. Form N–CEN and Form ADV Part 1A are each submitted using an XML-based structured data language specific to that Form.

[241] *See supra* section II.C.1.

[242] These estimates are based on Form N–CEN filings, Item C.19, as of Dec. 31, 2020.

[243] The estimates for BDCs are based on Forms 10K/10Q filings and Morningstar Direct data as of Dec. 31, 2020. The estimates for UITs are based on Form S–6 as of Dec. 31, 2021. As insurance companies' separate accounts, which are organized as UITs, would not be subject to the proposed rules, the estimate mentioned above would not include them. *See supra* footnote 98 (for more information).

investment strategy. According to one commenter, today virtually all asset managers have incorporated ESG considerations to some degree, or have plans to do so, across their investment strategies.[244]

We do, however, attempt to estimate the number of funds that the proposed rule would consider ESG-Focused Funds (including Impact Funds). We do this by using the fund name as a proxy for the fund's investment strategy. Based on an analysis of fund names, we estimate 21 closed-end funds and 35 UITs had names that imply an ESG strategy.[245] We estimate that there were 208 open-end mutual funds with $114 billion in net assets and 125 ETFs with $250 billion in net assets, and thus a total of 333 open-end funds with $364 billion in net assets, with fund names suggesting an ESG focused strategy as of July 2021.[246] Further, we estimate the share of funds with names suggesting an ESG focused strategy were about 3 percent of the total number of mutual funds and ETFs, and represented approximately 1 percent of total assets at the end of 2020.[247]

ESG-Focused mutual funds and ETFs have recently seen sharp increases in net flows, leading to substantial increases in assets under management. As summarized in table 1, net flows rose by 61 percent in 2018, 252 percent in 2019, and 472 percent in 2020. Flows into ESG-Focused ETFs experienced even more pronounced growth, rising by 52 percent in 2018, 298 percent in 2019, and 680 percent in 2020.[248]

TABLE 1—ANNUAL GROWTH RATE OF NET-FLOWS TO FUNDS WITH ESG-FOCUSED STRATEGIES

Fund type	2018	2019	2020
Mutual Funds	82%	185%	49%
ETFs	52	298	680
Mutual Funds and ETFs	63	252	472

To understand the asset holdings of the funds whose names imply an ESG strategy, we analyzed data from Form N–PORT filings.[249] According to this analysis on Form N–PORT filings, corporate equities represent 83 percent of assets held by these funds, while corporate debt represents the second largest investment type, accounting for 6 percent of assets held by these funds.

Above, we estimated the number of funds that the proposed rules would consider ESG-Focused Funds, using the name as a proxy for the investment strategy. Additionally, we reviewed databases from several ESG providers and how they classify funds that consider ESG factors in their investment strategy or approach. Although it is difficult to precisely map the scope of ''ESG-Focused Funds'' onto various definitions for ESG funds as employed by ESG providers, in general, it appeared that ESG providers use broad definitions to classify ESG funds. This means that not all funds identified by ESG providers as ESG funds would be considered ESG-Focused Funds under the proposal. Some funds following ESG principles as indicated by ESG providers may be considered Integration Funds under the proposal.[250] Furthermore, we found variations in funds classified as ESG funds across ESG providers. As a result, a fund classified as an ESG fund by one ESG provider is not necessarily classified as an ESG fund by another provider.[251] For instance, one ESG provider identified 781 mutual funds and ETFs as ESG funds as of February 2022,[252] while another ESG provider identified 423 mutual funds and ETFs as ESG funds as

[244] *See* Morningstar Comment Letter attachment, Morningstar US Sustainable Fund Landscape 2020. This report, however, noted that those firm-level commitments have yet to make a significant impact at the fund level.

[245] The estimates for closed-end funds are based on an analysis of Form N–PORT filings as of Nov. 30, 2021. The estimates for UITs are based on an analysis of Morningstar Direct data as of Dec. 31, 2020.

[246] The estimated number of funds that have an ESG strategy is based on analysis of mutual funds and ETFs with names containing ''ESG,'' ''Clean,'' ''Environ(ment),'' ''Impact,'' ''Responsible,'' ''Social,'' or ''Sustain(able).'' This analysis is based on Morningstar data as of July 31, 2021. Some mutual funds and ETFs may not have fund names containing these ESG-related terms, although they incorporate ESG factors in their investment strategies. In this respect, this estimate may undercount the number of funds with ESG strategies, however, some funds with names containing ESG terms may consider ESG factors, along with many other factors, in their investment decisions. In this respect, this estimate may then over count the number of funds with ESG strategies. *See also* comment letter from Morningstar to Chair Gensler (June 9, 2021) in response to Acting Chair Allison Lee's Climate RFI attaching Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020, Morningstar Manager Research (Feb. 10, 2021) *available at https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf.* In this report, Morningstar estimated there were 392 sustainable funds in 2020, following its own definition of sustainable funds.

[247] This is somewhat consistent with other analysis that examined the share of global assets under management by sustainable funds relative to the overall market capitalization. Although this share has been generally in an upward trend, the share was approximately 2.3 percent in 2020. *See* International Monetary Fund Global Financial Stability Report: Markets in the time of Covid-19, *Climate Change: Physical Risks and Equity Price* Chapter 5 (Apr. 2020). Another paper estimated about 3 percent of U.S. mutual funds were sustainable funds. In this paper, sustainable funds were classified via pattern search on mutual funds names. *See* Bertrand Candelon, Jean-Baptiste. Hasse, Quentin. Lajaunie, *ESG-Washing in the Mutual Funds Industry? From Information Asymmetry to Regulation*, Risks, 9, 199 (2021) (''Candelon''). These studies estimate the size of funds likely implementing ESG-Focused strategies (in other words, make ESG factors a central feature of their investment strategies). The number and asset size of ESG-integration funds, funds that consider ESG factors along with other factors, would be larger than those of ESG-Focused Funds.

[248] Our analysis of Morningstar data is consistent with a trend observed in a Morningstar report, Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020, Morningstar Manager Research (Feb. 10, 2021) (This report was attached in a comment letter from Morningstar to Chair Gensler (June 9, 2021)), *available at https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf.*

[249] Form N–PORT is filed by a registered management investment company, or an exchange-traded fund organized as a unit investment trust, or series thereof (''Fund''). A money market fund (''money market fund'') under rule 2a–7 under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Act'') (17 CFR 270.2a–7) or a small business investment company (''SBIC'') registered on Form N–5 (17 CFR 239.24, 274.5) are excluded. The analysis included 321 funds with names containing ''Sustainable,'' ''Responsible,'' ''ESG,'' ''Climate,'' ''Carbon,'' or ''Green'' and used data as of Sept. 2021.

[250] Under the proposal, an ''ESG-Focused Fund'' would mean a fund that focuses on one or more ESG factors by using them as a significant or main consideration in: (1) selecting investments, or (2) its engagement strategy with the companies in which it invests. One ESG provider, MSCI, defines funds with an ESG Policy as funds that have adopted investment policies that consider some ESG criteria. It is not clear how significantly ESG criteria are used.

[251] This is consistent with other studies suggesting inconsistencies across ESG providers in general. *See infra* (for more detailed discussion).

[252] MSCI identifies funds with an ESG Policy. The funds with an ESG Policy are defined as funds that have adopted investment policies that consider some ESG criteria, including; environmental, social or governance concerns, religious beliefs, inclusive employee policies, or environmentally friendly investments. The designation is attributed to a fund based on what is stated in the fund's investment strategy in the fund prospectus.

of December 2021.[253] Another ESG provider identified 425 mutual funds and ETFs as funds with certain ESG attributes as of February 2022.[254] A combined total of 1,028 mutual funds and ETFs were classified as ESG funds by at least one of the three ESG providers.

According to one report, fund managers incorporate environmental, social, and governance factors fairly evenly, but within the broad topic of environmental factors the specific issues considered are more concentrated, while for social and governance factors the specific issues incorporated in their investment analysis and decision-making processes are much more diverse.[255] In particular, ''climate change/carbon'' was by a wide margin the most commonly listed specific ESG issue considered by fund managers in asset-weighted terms. $4.18 trillion in assets fell under fund managers who listed this criterion, a growth of 39 percent from 2018 to 2020, and an amount in 2020 that is 71% more than any other specific issue.[256] The particular prevalence of climate change/carbon-related factors being incorporated in investment analysis and decision-making processes by fund managers also aligns with survey-based evidence from institutional investors.[257]

(b) Private Funds

As of the end of December 2020, registered investment advisers reported 41,938 private funds with a combined gross asset value of $17,585 billion.[258] We estimate that 243 of these funds, or fewer than one percent, had names suggesting ESG investments.[259] Exempt reporting advisers (ERAs) reported to advise 23,053 private funds with a combined gross asset value of $5,679 billion.[260] We estimate that 144 of these funds, or fewer than one percent, had names suggesting ESG investments.[261] In 2021, a number of private funds launched a collaboration project to standardize ESG metrics, including GHG emissions, and provide a mechanism for comparative reporting for the funds. This voluntary reporting framework in the private fund industry now represents $8.7 trillion in assets under management and over 1,400 underlying portfolio companies as of January 2022.[262]

(c) Investment Advisers

As of December 2020, 13,812 registered investment advisers (''RIAs'') oversaw over $110 trillion in regulatory assets under management (''RAUM''). As of December 2020, we identified 10,120 RIAs (73 percent) that provided advisory services to SMA clients, managing about $43 trillion in assets.[263] Currently, investment advisers describe their significant investment strategies or analytical methods including information about any incorporation of ESG factors in Form ADV Part 1A and Part 2A (brochures). However, ESG factors are not consistently disclosed across investment advisers, and practices regarding ESG disclosures vary substantially.

As of December 2020, approximately one in three RIAs, or 4,949 RIAs total, provided advisory services to private funds and oversaw nearly $18 trillion in regulatory assets. Of these 4,949 RIAs, 3 percent advised private funds with names containing ESG terms.[264] According to Form ADV Part 1A filings, there existed 4,791 exempt reporting advisers (ERAs). Approximately 2 percent of ERAs provided advisory services to private funds with names containing ESG terms.[265]

3. Investor Interest in ESG Funds

In this section, we discuss various comment letters, reports, and academic articles examining investors' interest in ESG funds and investing behaviors of investors in such funds. The definitions of ESG funds and ESG investing used in these comment letters, reports and articles vary and generally do not line up exactly with the definitions of ESG fund categories under the proposed rules. In the discussion below, however, we use the terminologies as defined in these comment letters, reports, and articles. Therefore, the observations discussed below may not translate precisely to the set of funds subject to the proposed rules.

(a) Evidence From Investor Surveys

A review of several surveys suggest that investor demand for ESG funds and investments has increased for several

[253] Morningstar identifies sustainable investment funds—ESG funds overall. These ESG funds overall are defined as funds that incorporate ESG principles into investment process or through engagement activities.

[254] Bloomberg identifies funds with certain ESG attributes. For purposes of this review, we considered active funds with the following general attribute(s): ESG, Clean Energy, Climate Change, Environmentally Friendly, or Socially Responsible.

[255] According to the US SIF, sustainable investing assets are managed using investment strategies such as ESG incorporation, shareholder advocacy, and overlapping strategies. See US SIF, Sustainable Investing Basics (2020), *available at https://www.ussif.org/sribasics* (''US SIF'') and the executive summary of the Report on US Sustainable and Impact Investing Trends at *https://www.ussif.org/files/US%20SIF%20Trends%20Report%202020%20Executive%20Summary.pdf*.

[256] Other issues include ''anti-corruption'' ($2.44 trillion), ''board issue'' ($2.39 trillion), ''sustainable natural resources/agriculture'' ($2.38 trillion), ''executive pay'' ($2.22 trillion).

[257] *See* Philipp Krueger, Zacharias Sautner, and Laura T. Starks, *The Importance of Climate Risks for Institutional Investors,* 33 (3) Rev. Fin. Stud. 1067–1111 (2020) (''Krueger'').

[258] These estimates are based on an analysis of Form ADV Schedule D filings as of Dec. 31, 2020.

[259] We identified private funds with names containing ''ESG,'' ''Clean,'' ''Environ(ment),'' ''Impact,'' ''Responsible,'' ''Social,'' or ''Sustain(able)'' as having an ESG focus.

[260] These estimates are based on Form ADV Schedule D filings as of Dec. 31, 2020. Some private funds have two different investment advisers, a RIA and an ERA. Those private funds could be double-counted, because the private funds are reported by the RIA and also by the ERA. Feeder funds who report a master fund on Form ADV are removed to avoid double-counting.

[261] We identified private funds with names containing ''ESG,'' ''Clean,'' ''Environ(ment),'' ''Impact,'' ''Responsible,'' ''Social,'' or ''Sustain(able)'' as having an ESG focus. One survey of global investors and their advisors found that 51 percent of general partners (GPs) from North America used an ESG risk factor framework when evaluating potential portfolio companies in 2021. The same survey reported that 45 percent of GPs from North America required portfolio companies to focus on financially material ESG factors. Examining only Venture Capitals (VCs), 49 percent of the global VC GP respondents have implemented the consideration of sustainable practices at the portfolio company level. Some of these GP respondents may be considered implementing Integration strategies, not necessarily Focused strategies. Furthermore, these figures might be biased upward as the individuals interested in ESG related issues are more likely to respond to this survey, as acknowledged in the report. *See* PitchBook, *Sustainable Investment Survey 2021* (Sept. 17, 2021). According to another report, 645 impact funds closed between 2006 and Mar. 2021 in the North America, which is somewhat comparable to our estimated number of private funds with ESG-Focused strategies. *See* PitchBook, *Analyst Note: Impact Funds by Reason and Region* (July 27, 2021).

[262] This private fund collaboration group has aligned on an initial core set of six ESG categories: greenhouse gas emissions, renewable energy, board diversity, work-related injuries, net new hires, and employee engagement. *See Private Equity Industry's First-Ever ESG Data Convergence Project Announces Milestone Commitment of Over 100 LPs and GPs,* Carlyle (Jan. 28, 2022), *available at https://www.carlyle.com/media-room/news-release-archive/private-equity-industrys-first-ever-esg-data-convergence-project-announces-over-100-lps-gps;* see also ESG Data Convergence Project, Institutional Limited Partners Association, *available at https://ilpa.org/ilpa_esg_roadmap/esg_data_convergence_project/*.

[263] These estimates are based on Form ADV filings as of Dec. 31, 2020.

[264] Based on reporting from Form ADV Schedule D it includes private funds ''ESG,'' ''Clean,'' ''Environ(ment),'' ''Impact,'' ''Responsible,'' ''Social,'' or ''Sustain(able)'' in its name. Some private funds may not have fund names containing these ESG-related words, although they focus on ESG factors in their investment strategies. In this regard, the estimate would undercount private funds focusing on ESG factors, however, some private funds with names containing ESG terms may consider ESG factors equally with many other factors in their investment decisions. In this respect, this estimate may overestimate the number of private funds focusing on ESG factors.

[265] The limitations discussed in footnote above are also applied here. Furthermore, some private funds obtain advice both from registered investment advisers and ERAs.

reasons and such investor demand is expected to continue to grow. In one survey, a majority (56 percent) of U.S. investment professionals responded that they consider ESG information in investment decisions because ESG information is material to investment performance.[266] Another survey found that 62 percent of institutional investors cited focusing on long-term investment outcomes as a reason for ESG investing.[267] According to another survey, institutional investors mentioned protecting their own reputations as a reason why they incorporate climate risks in their investment process.[268]

Survey evidence suggests that retail investors are also interested in ESG investing. One survey found 83 percent of U.S. retail investors reported a preference for investing in companies that are leaders in environmentally responsible practices.[269] In another survey, a majority (51 percent) of U.S. retail investors said the ESG-related performance of the company influenced their investment decisions.[270] Moreover, three-quarters of U.S. retail investors reported that they have increased or plan to increase their investment in ESG investments.[271] In addition, U.S. asset managers forecast high demand for such investments in the next two to three years, particularly among younger investors.[272] Should these younger investors retain their interest in ESG investing, this suggests that assets in ESG strategies may grow as assets are gradually transferred from the older to the younger generation.[273]

(b) Evidence From Mutual Fund Flows

In addition to evidence from surveys, investors are displaying a demand for investment strategies focusing on ESG. In particular, compared to 25 years ago, relatively more investment dollars are now directed to sustainable investing assets.[274] Similarly, several commenters suggested that the number of ESG funds has increased over time.[275] For example, one commenter stated that the number of ESG funds have increased by 18 percent for the past 15 months, from December 2019 to March 2021.[276] According to another commenter, the number of sustainable open-end funds and ETFs has increased nearly fourfold over the past ten years.[277] At least 30 new sustainable funds have been launched each year since 2015, with 71 new fund launches in 2020. As a result, a total of 244 new sustainable funds have been launched since 2015.[278] Additionally, 58 existing funds, 25 funds in 2020 alone, have changed their investment strategies to become sustainable funds since 2015.[279]

In addition to a proliferation in the number of ESG-related funds, increased investor demand for ESG-related investments can be seen in the increase in fund flows toward ESG-related mutual funds relative to the fund flows toward other mutual funds. According to a comment letter, in 2020, net flows to sustainable funds reached $51.1 billion ($17.4 billion to sustainable open-end funds and $33.7 billion to sustainable ETFs).[280] Net flows to sustainable funds have steadily increased since 2016, but most notably since 2019. In 2016, 2017, and 2018, net flows to sustainable funds were around $5 billion per year. In 2019, net flows reached $21.4 billion. In 2020, overall open-end funds have suffered net outflows of $289 billion. Even then, sustainable open-end funds have still received net inflows of $17.4 billion.[281]

Investor interest in ESG funds is further consistent with academic studies which show that flows in these funds respond to ESG-related information. For example, one empirical study on mutual fund flows found that both retail and institutional mutual fund investors responded to sustainability reports: mutual funds that received the highest sustainability rating from a third-party ESG provider have experienced significant net inflows, whereas funds that received the lowest sustainability rating from the same ESG provider have experienced substantial net outflows.[282] Another study found that ''socially responsible investment'' (SRI) [283] funds

[266] *See* Amir Amel-Zadeh, and George Serafeim, *Why and How Investors Use ESG Information: Evidence from a Global Survey,* Harvard Business School (Working Paper No. 17–079) (Feb. 2017). This is a survey of senior investment professional at large global financial institutions. In this survey, 33% of U.S. investment professionals responded that they consider ESG information because of growing demands from clients or stakeholders.

[267] *See* Robert G. Eccles, Mirtha D. Kastrapeli, and Stephanie J. Potter, *How to Integrate ESG into Investment Decision-Making: Results of a Global Survey of Institutional Investors,* 29(4) J. Applied Corporate Fin. 125 (2017). Similarly, a GAO report found that most institutional investors interviewed for the report stated that they seek ESG information to better understand risks that could affect companies' long-term financial performances. *See* U.S. Gov't Accountability Office, Report to the Senator Mark Warner, *Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them* (July 2020), *available at https://www.gao.gov/assets/gao-20-530.pdf.*

[268] *See* Krueger, *supra* footnote 257. While this survey was conducted to institutional investors globally, U.S. institutional investors were most represented in the survey. In addition to the protection of investor's own reputation (30%), institutional investors cited ''moral/ethical obligation (27.5%),'' ''legal obligation or fiduciary duty (27%),'' ''beneficial to investment returns (25%),'' and ''reduction of overall portfolio risks (24%),'' as reasons why they incorporate climate risks in their investment process.

[269] *See* Consumer Federation of America Comment Letter; see also Cerulli Associates, *Global Retail Investors and ESG: Responsible Investing Converges with Accelerated Environmental and Social Imperatives* (Apr. 2021), *available at https://info.cerulli.com/rs/960-BBE-213/images/2021_ESG_White_Paper.pdf.*

[270] *See* GlobeScan, *Retail Investors' Views of ESG* (2021), *available at https://3ng5l43rkkzc34ep72kj9as1-wpengine.netdna-ssl.com/wp-content/uploads/2021/12/GlobeScan-Radar-2021-Retail_Investors_Views_of_ESG-Full-Report.pdf.*

[271] *Id.*

[272] *See* Cerulli Associates, *Global Retail Investors and ESG: Responsible Investing Converges with Accelerated Environmental and Social Imperatives* (Apr. 2021), *available at https://info.cerulli.com/rs/960-BBE-213/images/2021_ESG_White_Paper.pdf.* In this white paper, millennials are defined as individuals with ages between 24 and 39 in 2020, while Generation Z refers to individuals with age 23 or younger. Baby boomers refer to individuals with ages between 56 and 74 in 2020. In this survey, 84% (70%) of asset managers anticipated high demands for ESG investing from millennial clients (Generation Z) in the next two to three years. In contrast, only 14% of asset managers anticipated high demands for ESG investing from baby boomers.

[273] *See* Consumer Federation of America Comment letter; see also Cerulli Associates, *Global Retail Investors and ESG: Responsible Investing Converges with Accelerated Environmental and Social Imperatives* (Apr. 2021), *available at https://info.cerulli.com/rs/960-BBE-213/images/2021_ESG_White_Paper.pdf.*

[274] *See* US SIF *Report on US Sustainable and Impact Investing Trends 2020* (2020), *available at https://www.ussif.org/files/US%20SIF%20Trends%20Report%202020%20Executive%20Summary.pdf.*

[275] *See also* section I.A.1.

[276] *See* ICI Comment Letter.

[277] *See* Morningstar Comment Letter (attachment), Morningstar US Sustainable Fund Landscape (2020).

[278] *See* Morningstar Comment Letter (attachment), Morningstar US Sustainable Fund Landscape (2020). *See supra* footnote 283. (For detailed discussion about the definition of ''sustainable funds.'')

[279] Most of these funds also changed their names to accurately reflect changes in investment strategies as well.

[280] *See* Morningstar Comment Letter attachment, Morningstar U.S. Sustainable Fund Landscape (2020). According to this report, while many funds mention ESG factors briefly somewhere in their prospectus, often in a less-prominent ''Additional Information'' section, the sustainable funds make their commitment clear and prominent in their prospectus, often in ''Principal Investment Strategies'' section of the fund's prospectus with enough details.

[281] *See* Morningstar Comment Letter attachment, Morningstar U.S. Sustainable Fund Landscape (2020).

[282] *See* Samuel M. Hartzmark and Abigail B. Sussman, *Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows,* 74 (6) J. Fin. 2789, 2789–2837 (2019). Investors' responses were mostly concentrated in two extreme rating categories, the lowest and the highest, and investors responded more to discrete measures rather than continuous measures. All these are consistent with literature finding the importance of salient information in investment decisions.

[283] This is the terminology used in this and other studies. While there are some differences across

Continued

with a stronger public-facing profile, such as funds listed on a website of a major independent organization committed to sustainable investing, received higher inflows than other SRI funds or other funds.[284] Other studies suggest that a disproportionate share of funds flow into SRI mutual funds when climate risk is particularly salient, for example, after environmental disasters.[285] Additionally, other studies found that SRI funds have more persistent flows, less volatility in flows, and are generally less sensitive to past performance compared to other funds.[286]

Part of this investor demand, as reflected by fund flows, could be because investors may have a particular preference toward ESG investments, as some studies suggest. [287] Consistent with this view, some studies suggest that SRI investors are less sensitive to financial performance compared to other investors and are willing to forgo financial performance to incorporate their social preferences.[288] Another study suggests similar results about SRI investors in venture capital funds, finding that investors who previously invested in Impact Funds are more likely to invest in Impact Funds again, even though Impact Funds, on average, did not outperform.[289] This study further found that SRI investors reinvest in Impact Funds due to their non-pecuniary preferences, not their inaccurate beliefs about financial performance.

4. Institutional Investor Engagement With Companies on ESG-Related Issues

In addition to considering ESG-related issues when selecting portfolio investments, some institutional investment managers also engage directly with portfolio companies on these issues. Most institutional investors, including asset managers, engage with portfolio companies.[290] Fewer than 20 percent of institutional investors responded that they did not engage with portfolio companies.[291] Institutional investors usually engage with portfolio companies through multiple channels. Investors most often use private channels such as discussing with portfolio companies' management teams the financial implications of climate risks (43 percent) or proposing certain actions to portfolio companies on climate risk issues (30 percent) at shareholder meetings. Many institutional investors have engaged with portfolio companies more publicly as well. For example, 30 percent of institutional investors indicated that they voted against a management proposal over climate risk issues at annual meetings, and about the same share (30 percent) of institutional investors submitted shareholder proposals on climate risk issues.[292]

Global hedge fund managers reported that the most common method of shareholder engagement was to engage privately with portfolio companies on ESG issues (74 percent), followed by proxy voting (34 percent).[293] In contrast, only 25 percent of hedge fund managers reported public engagements and 13 percent divestment.[294]

However, one report suggests global asset managers do not comprehensively disclose proxy voting records and shareholder engagement activities.[295] For instance, this report found that 55 percent of the assessed asset managers disclosed a record of proxy votes they cast in annual general meetings of portfolio companies and only 17 percent published reasons for their voting decisions.[296] Further, 36 percent of the assessed asset managers disclosed no information about their ESG-related engagement activities publicly.[297]

5. Current Practices

Some funds and advisers voluntarily provide ESG-related information to their investors, including by adhering to third-party frameworks and as part of voluntary disclosures of financed emissions. To provide this information, funds and advisers rely on various sources, including disclosures by corporate issuers, data from ESG providers, and index providers. This section discusses these practices in detail.

(a) Disclosures by Funds and Investment Advisers on Their Use of ESG Information

Some asset managers make ESG-related information available at the fund level. For instance, some funds already provide information about ESG factors in the prospectus or other documents. However, currently ESG information is not required to be disclosed in a consistent and standardized manner.[298] Different funds may use different terminology to describe ESG investing

studies, socially responsibility investment refers to an investment process that integrates environmental, social and corporate governance considerations in investment decision making.

[284] *See* Jędrzej Białkowski and Laura T. Starks, *SRI Funds: Investor Demand, Exogenous Shocks and ESG Profiles,* University of Canterbury, Department of Economics and Finance (Working Papers in Economics 16/11) (2016). Authors examined SRI funds that are members of US SIF and thus listed on US SIF's website. These SRI funds were found to receive higher inflows than other SRI funds or non-SRI funds.

[285] *See also* Jędrzej Białkowski and Laura T. Starks, *SRI Funds: Investor Demand, Exogenous Shocks and ESG Profiles,* University of Canterbury, Department of Economics and Finance (Working Papers in Economics 16/11) (2016).

[286] *See* Luc Renneboog, Jenke ter Horst, & Chendi Zhang, *Is Ethical Money Financially Smart? Nonfinancial Attributes and Money Flows of Socially Responsible Investment Funds,* 20 J. Fin. Intermediation 562, 562–588 (2011).

[287] *See* Lubos Pastor, Robert F. Stambaugh, and Lucian A. Taylor, *Sustainable Investing in Equilibrium,* 142 J. Fin. Econ. 550, 550–571 (2021). Sadok El Ghoul and Aymen Karoui, *Does Corporate Social responsibility Affect Mutual Fund Performance and Flows?* 77 (C) J. Banking & Fin. 53, 53–63 (2017). *See also* Jędrzej Białkowski and Laura T. Starks, *SRI Funds: Investor Demand, Exogenous Shocks and ESG Profiles, University of Canterbury, Department of Economics and Finance* (Working Papers in Economics 16/11) (2016); Karen L. Benson and Jacquelyn E. Humphrey, *Socially Responsible Investment Funds: Investor Reaction to Current and Past Returns,* 32 (9) J. Banking & Fin. 1850, 1850–1859 (2008); Luc Renneboog, Jenke ter Horst, & Chendi Zhang, *Socially Responsible Investments: Institutional Aspects, Performance, and Investor Behavior,* 32 (9) J. Banking & Fin. 1723, 1723–1742 (2008).

[288] *See* Arno Riedl and Paul Smeets, *Why Do Investors Hold Socially Responsible Mutual Funds?* 72 J. Fin. 2505, 2505–2550 (2017).

[289] *See* Brad M. Barber, Adair Morse and Ayako Yasuda, *Impact Investing,* 139 (1) J. Fin. Economics 162, 162–185 (2021). In this paper, 159 funds were considered Impact Funds by applying a strict a criterion that the fund must state dual objectives—investments made with the intention to generate positive, measurable social and environmental impact alongside a financial return—in its motivation. Even though Impact Funds on average do not beat the market ex post, the impact investors invest in Impact Funds, thus suggesting that main results mostly reflect investors' preferences rather than investors' inaccurate beliefs that Impact Funds would outperform non-Impact Funds.

[290] *See* Krueger, *supra* footnote 257. In this study, institutional investors include asset managers (23%), banks (22%), pension funds (17%), insurance companies (15%), mutual funds (8%), and other institutions (15%).

[291] *Id. See also* Joseph A. McCahery, Zacharias Sautner, and Laura T. Starks, *Behind the Scenes: The Corporate Governance Preferences of Institutional Investors,* 71 J. Fin. 2905, 2905–32 (2016).

[292] *See* Krueger, *supra* footnote 257.

[293] *See* KPMG, *Sustainable Investing: Fast-Forwarding Its Evolution* (Feb. 2020), *available at https://assets.kpmg/content/dam/kpmg/xx/pdf/2020/02/sustainable-investing.pdf.*

[294] *Id.*

[295] *See* Felix Nagrawala and Krystyna Spinger, *Point of No Returns: A Ranking of 75 of the World's Largest Asset Managers' Approaches to Responsible Investment,* ShareAction (Mar. 2020), *available at https://shareaction.org/wp-content/uploads/2020/03/Point-of-no-Returns.pdf* (''ShareAction''). This study includes 75 global asset managers. Asset managers from the U.S. were capped at 20 to represent other regions. Voting data was partially provided by Proxy Insight and sent to asset managers for verification. *See also* IOSCO, *Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management: Consultation Report* (June 2021), *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD679.pdf.*

[296] *See* ShareAction, *supra* footnote 295.

[297] *See* ShareAction, *supra* footnote 295.

[298] *See* Morningstar Comment Letter (for more detailed discussion about the state of corporate issuers' disclosures); see also section III.B.5.d.

strategies, which could be confusing to investors.

In addition, the inconsistency and lack of transparency in current disclosures may make it challenging to discern in which particular ESG strategy funds and advisers are engaged. Another concern with the absence of consistency and transparency in the current disclosures is that it creates a risk that funds and advisers may exaggerate their ESG strategies or the extent to which their investment products or services take into account ESG factors in order to attract business—a practice often referred to as ''greenwashing.'' [299] A review of several academic papers reveals that there is no universally accepted definition of ''greenwashing.'' [300] However, many studies find that greenwashing has negative impacts on consumers, including increased confusion, skepticism, and lost trust.[301]

Funds and advisers may exaggerate or overstate the ESG qualities of their strategies, while labeling and marketing themselves in a manner that makes it difficult for investors to distinguish them from funds and advisers that are truly committed to and engaged in the particular ESG strategies that interest them. Indeed, academic work suggests that fund marketing approaches that take advantage of current popular investment styles lead to abnormal positive inflows, even when their actual strategies go unchanged.[302] Similar findings also have been shown specifically in the context of ESG-related claims.[303] Several empirical studies compare the distribution of ESG scores of ESG funds with those of non-ESG funds. They find the distributions of ESG scores between ESG funds and non-ESG funds overlap substantially. Further, ESG funds do not exhibit, on average, better ESG scores than non-ESG funds. In some cases, ESG funds have lower ESG scores than non-ESG funds.[304] Examining inflows of ESG funds, these studies find ESG funds with low ESG scores attract flows as much as ESG funds with high ESG scores, or ESG funds with low ESG scores attract higher flows than non-ESG funds with similarly low ESG scores, suggesting the limited ability of investors to assess ESG-related claims made by funds accurately.[305]

(b) Third-Party Disclosure Frameworks

Some funds follow third-party ESG frameworks as part of the funds' investment process and for developing ESG-related disclosures to be included in regulatory filings or public reports. Currently, multiple reporting frameworks exist globally including the UN PRI, the Carbon Disclosure Project (''CDP''), the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), the Climate Disclosure Standards Board (CDSB), the International Integrated Reporting Council (IIRC), and the TCFD recommendations.[306] These third-party reporting frameworks have been developed with slightly different underlying objectives.[307] However, in 2020, CDP, CDSB, GRI, IIRC, and SASB announced their commitment to align their reporting frameworks and develop a comprehensive ESG reporting framework.[308] Furthermore, several jurisdictions have announced their

[299] *See, e.g.,* IOSCO, *Sustainable Finance and the Role of Securities Regulators and IOSCO: Final Report* 3 (10) (Apr. 2020) *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf.* While greenwashing is most closely associated with the environmental component of ESG, we will also use the term more broadly for social and governance factors as well.

[300] *See* Lucia Gatti, Peter Seele, and Lars Rademacher, *Grey Zone in—Greenwash Out. A Review of Greenwashing Research and Implications for the Voluntary-Mandatory Transition of CSR,* 4(1) Int'l J. Corporate Soc. Responsibility 1, 1–15 (2019). After reviewing 94 academic papers, authors find no consensus about the definition of ''greenwashing.'' Some studies define greenwashing as false advertisement or misleading claims. Others define greenwashing as claims that are not substantiated by third-party certification or evidence. Another group defines greenwashing as claims that are not typically false but rather selective disclosures of positive information and obscuration of negative information.

[301] *See* Hendy Mustiko Aji and Bayu Sutikno, *The Extended Consequence Of Greenwashing: Perceived Consumer Skepticism,* 10(4) Int'l J. Bus. & Info. 433, 433–468 (2015); Imran Rahman, Jeongdoo Park, and Christina Geng-qing Chi, *Consequences Of ''Greenwashing'': Consumers' Reactions To Hotels' Green Initiatives,* 27(6) Int'l J. Contemporary Hospitality Mgmt. 1054, 1054–1081 (2015); NE Furlow, *Greenwashing In The New Millennium,* 10(6) J. Applied Bus. & Econ. 22, 22–25(2010); Yu-Shan. Chen and Ching-Hsun Chang, *Greenwash And Green Trust: The Mediation Effects Of Green Consumer Confusion And Green Perceived Risk,* 114 J. Bus. Ethics 489, 489–500 (2013).

[302] *See* Michael J. Cooper, Huseyin Gulen, and Panambur Raghavendra Rau, *Changing Names with Style: Mutual Fund—Name Changes and Their Effects on Fund Flows,* 60 J. Fin. 2825, 2825–2858 (2005); Susanne Espenlaub, Imtiaz ul Haq, and Arif Khurshed, *It's All in The Name: Mutual Fund Name Changes After Sec Rule 35d–1,* 84 J. Banking & Fin. 123, 123–34 (2017).

[303] *See* Sadok El Ghoul and Aymen Karoui, *What's in a (Green) Name? The Consequences Of Greening Fund Names On Fund Flows, Turnover, And Performance,* 39 Fin. Research Letters 101620 (2021). Candelon, *supra* footnote 247.

[304] These studies examined hedge funds and mutual funds that are UN PRI signatories or self-designated ESG mutual funds. *See* Candelon, *supra* footnote 247; Hao Liang, Lin Sun, Lin; & Melvin Teo, *Greenwashing: Evidence From Hedge Funds,* Research Collection Lee Kong Chian School Of Business 1–68 (2021); Rajna Gibson Brandon, Simon. Glossner, Phillip Krueger, Pedro Matos, and Tom Steffen, . *Do Responsible Investors Invest Responsibly*? ECGI Finance (Working Paper No. 712/2020) (June 2021). In addition, the UN PRI signatories in the U.S. do not seem to improve their fund-level ESG scores after joining the PRI. *See* Soohun Kim and Aaron Yoon, *Analyzing Active Mutual Fund Managers' Commitment to ESG: Evidence from the United Nations Principles for Responsible Investment* Management Science (Forthcoming) (2021). Another study finds no significant relationship between mutual funds' ESG ratings and ESG information communicated by fund managers. *See* Candelon, *supra* footnote 247.

[305] *See* Markku Kaustia and Wenjia Yu, *Greenwashing in Mutual Funds* (Sept. 30, 2021). Available at SSRN: *https://ssrn.com/abstract=3934004.* Liang, Hao; Sun, Lin; and Teo, Melvyn, *Greenwashing: Evidence From Hedge Funds* 1–68. Research Collection Lee Kong Chian School of Business (2021) Rajna Gibson Brandon, Simon. Glossner, Phillip Krueger, Pedro Matos, and Tom Steffen, *Do Responsible Investors Invest Responsibly*? (Ecgi Finance Working Paper No. 712/2020) (June 2021); Soohun Kim and Yoon, Aaron, *Analyzing Active Mutual Fund Managers' Commitment to ESG: Evidence from the United Nations Principles for Responsible Investment* (Forthcoming), Management Science (2021). *See also* Markku Kaustia and Wenjia Yu (2021) (finding that: Self-designated ESG mutual funds with low ESG ratings no longer attract institutional investors later years, although those funds continue to attract retail investors. Similar disconnections between funds' actual investment styles and funds' classifications are examined in other studies outside of ESG investment space.); Chen Huaizhi, Lauren Cohen, and Umit G. Gurun, *Don't Take Their Word For It: The Misclassification of Bond Mutual Funds,* 76 J. Fin. 1699 (2021).

[306] The TCFD recommended disclosures cover four core elements: Governance, Strategy, Risk Management and Metrics and Targets. Each element has two or three specific disclosures to be made in the organization's mainstream report (*i.e.* annual financial filings). These are meant to generate comparable, consistent and decision-useful information on climate-related risks. The TCFD provides both general, and in some cases, sector-specific guidance for each disclosure, while simultaneously framing the context for disclosure, and offering suggestions on what and how to disclose in the mainstream report.

[307] *See* Int'l Platform on Sustainable Fin., *State and Trends of ESG Disclosure Policy Measures Across IPSF Jurisdictions, Brazil, and the US* (Nov. 2021), *available at https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/211104-ipsf-esg-disclosure-report_en.pdf.* According to this study, some reporting standards such as SASB were developed primarily for satisfying the information needs of capital market participants, while others, such as GRI, are to balance the information needs of diverse stakeholder groups.

[308] *See* Statement of Intent to Work Together Towards Comprehensive Corporate Reporting. Summary of Alignment Discussions Among Leading Sustainability and Integrated Reporting Organizations, CDP, CDSB, GRI, IIRC and SASB.'' Impact Management Project, *World Economic Forum and Deloitte* (Sept. 2020), *available at https://29kjwb3armds2g3gi4lq2sx1-wpengine.netdna-ssl.com/wp-content/uploads/Statement-of-Intent-to-Work-Together-Towards-Comprehensive-Corporate-Reporting.pdf* According to this report, GRI, SASB, CDP, and CDSB, along with the TCFD recommendations guide the overwhelming majority of quantitative and qualitative sustainability disclosures including climate-related reporting. The same report states that the IIRC provides the integrated reporting framework that connects sustainability disclosure to reporting on financial and other capitals. Framework includes 6 capitals: financial, manufactured, intellectual, human, social and relationship, and natural.

official reporting requirements for domestic organizations to be aligned with the TCFD recommendations.[309] TCFD suggested several metrics that funds can use to calculate the GHG emissions of their investments, including, among others, the WACI and carbon footprint metrics.

In 2018, the UN PRI incorporated a set of indicator questions based on TCFD recommendations into its reporting framework.[310] TCFD reported that in 2021, out of a total of 5,058 asset managers and asset owners in the U.S., approximately 10 percent (517) of asset managers and asset owners reported to the UN PRI on climate-related indicators based on its review of climate related disclosures.[311] In 2020, out of 340 U.S. asset managers reporting to the UN PRI, about 83 percent (283 asset managers) privately made climate disclosures, while 17 percent (57 asset managers) made their reports public.[312] Among four TCFD disclosure elements, U.S. asset managers reporting to the UN PRI exhibited low reporting rates in metrics elements [313] and only 12 percent of U.S. asset managers disclosed GHG emissions and the related risks.[314] To measure, monitor, and manage portfolio emissions, U.S. asset managers most commonly used carbon footprint (32 percent) and exposure to carbon-related assets (32 percent), closely followed by portfolio footprint (30 percent) and carbon intensity (30 percent). The least used approach by asset managers was the WACI (21 percent) metric, which the TCFD recommends asset managers and asset owners disclose for one of its four core elements, Metrics and Targets.[315] However, the TCFD reported that in 2021, the WACI was the metric most frequently used by asset owners reported to the UN PRI, although it was still the least used by asset managers.[316] A survey of central banks indicated that most of them calculate several carbon emission metrics in line with the recommendations of the TCFD. Carbon footprint is the metric that central banks most often (33 percent) monitored.[317]

(c) Disclosures Related to Financed Emissions by Certain Financial Institutions

As of October 2021, the PCAF has global members encompassing 163 financial institutions with $51.4 trillion in assets. Among these PCAF members, 4 asset managers representing $9 trillion assets, are headquartered in the United States.[318] Asset managers that are committed to PCAF or other third-party frameworks voluntarily measure and disclose financed emissions.[319] Financed emissions of an asset manager include greenhouse gas emissions aggregated across portfolios.[320] However, an asset manager's disclosed financed emissions may be incomplete and not cover all managed portfolios. In 2020, one international organization conducted a survey of global financial institutions to establish a baseline for the current state of certain climate change considerations in the financial sector.[321] Of the institutions that participated in this survey, 51 percent responded that they analyze their portfolios' impacts on the climate.[322] Approximately 25 percent of respondents, or 84 financial institutions including asset managers, reported their financed emissions. However, among these financial institutions' calculated financed emissions, financial institutions most frequently responded that the financed emissions calculations covered less than 10 percent of a respondent's portfolio assets.[323]

Based on this same survey, inconsistency exists not just in the portfolio coverage, but also in the metrics reported based on the methods of aggregation. While the WACI, the metric recommended by the TCFD, was most commonly disclosed, portfolio carbon footprint, overall carbon intensity, and exposure to carbon-related assets were also commonly reported among asset owners and managers.

(d) Disclosures by Corporate Issuers

Funds and investment advisers may rely on the limited ESG data currently reported by corporate issuers when reporting the extent of their own ESG-related activities.[324] One study estimates that, among S&P 500 companies, 54 percent published some form of ESG data in 2020.[325] This same study reports that the vast majority—97 percent—have some form of assurance or verification.[326] One commenter cited

[309] Eight jurisdictions—Brazil, the European Union, Hong Kong, Japan, New Zealand, Singapore, Switzerland, and the United Kingdom—announced the TCFD-aligned reporting requirements. *See* Task Force on Climate-related Financial Disclosures, *2021 Status Report* (Oct. 14, 2021) *available* at *https://www.fsb.org/wp-content/uploads/P141021-1.pdf.*

[310] *See* Principles for Responsible Inv., *Climate Change Snapshot 2020* (July 17, 2020), *available at https://www.unpri.org/climate-change/climate-change-snapshot-2020/6080.article.*

[311] *See* Task Force on Climate-related Financial Disclosures, 2021 *Status Report* (Oct. 14, 2021) *available at https://www.fsb.org/wp-content/uploads/P141021-1.pdf.*

[312] If at least one climate related indicator is made public, it is considered public disclosure. *See* Principles for Responsible Investment, Climate Change Snapshot 2020 (July 17, 2020), *available at https://www.unpri.org/climate-change/climate-change-snapshot-2020/6080.article.*

[313] TCFD recommendations cover four core elements: Governance, Strategy, Risk Management and Metrics and Targets. *See* Task Force on Climate-Related Financial Disclosures, 2021 Status Report (Oct. 14, 2021) (For more details), *available at https://www.fsb.org/wp-content/uploads/P141021-1.pdf.*

[314] *See* Principles for Responsible Investment, Climate Change Snapshot 2020 (July 17, 2020), *available at https://www.unpri.org/climate-change/climate-change-snapshot-2020/6080.article.*

[315] *Id.* (In this report, ''carbon intensity'' relates to a company's physical carbon performance and describes the extent to which its business activities are based on carbon usage for a defined Scope and fiscal year The WACI is a metric that the TCFD recommended asset managers and asset owners disclose for one of its four core elements, Metrics and Targets.)

[316] This information includes all asset owners including U.S. asset owners that report to PRI in 2021. *See* Task Force on Climate-related Financial Disclosures, *2021 Status Report* (Oct. 14, 2021), *available at https://www.fsb.org/wp-content/uploads/P141021-1.pdf.* (The information specifically about U.S. asset managers in 2021 is not available in this report.)

[317] *See* Network for Greening the Fin. Sys. (''NGFS''), *A Call for Action: Climate Change as a Source of Financial Risk* 11 (Apr. 2019), *available at https://www.ngfs.net/sites/default/files/medias/documents/synthese_ngfs-2019_-_17042019_0.pdf.*

[318] *See* P'ship for Carbon Acct. Fins. (PCAF), *Financial Institutions Taking Action: Overview of Financial Institutions* (see table), *available at https://carbonaccountingfinancials.com/financial-institutions-taking-action#financial-institutions-taking-action* (''PCAF''). The U.S. Financial Institutions represent commercial banks, investment banks, development banks, insurers, and asset owners/managers.

[319] *See* CDP Report, *supra* footnote 119.

[320] Financial institutions indirectly contribute to GHG emissions through their lending, investments and insurance underwriting. Under the GHG Protocol, these emissions are classified as indirect Scope 3 emissions in Category 15, which are often referred to as financed emissions or portfolio emissions.

[321] *See* CDP Report, *supra* footnote 119. According to this report, a total of 332 financial institutions (banks, insurers, asset owners and asset managers) participated in this survey. Of these 332 financial institutions, 74 institutions are from North America. However, this report does not have detailed information about how many of these 74 institutions are asset managers in the U.S.

[322] The report indicated that a total of 332 global financial institutions responded to this questionnaire. Out of those 332 institutions, 133 institutions were in Europe, (85 institutions were in Asia Pacific, and 78 institutions were in North America. 25 institutions were in Middle-East and Africa and 15 institutions were in Latin America. These 332 financial institutions from six continents had combined assets of over $109 trillion. Financial institutions include banks, insurers, asset managers, and asset owners. *Id.*

[323] *See* CDP Report, *supra* footnote 119.

[324] *See* ICI Comment Letter.

[325] *See S&P 500 and ESG Reporting,* Center for Audit Quality (Aug. 9, 2021), *available at https://www.thecaq.org/sp-500-and-esg-reporting.* In 2020, 271 companies published ESG data, which increased from 188 companies in 2019.

[326] Of those 264 companies, 31 companies had assurance from accounting firms, while 235 companies had assurance from other providers such as consulting firms. *Id.* Similarly, 99 out of the 100 largest U.S. companies by market capitalization provided some form of sustainability disclosures, 71 obtained some level of assurance, and 11 obtained this assurance from an audit firm or affiliated firm. *See* International Federation of

disclosure rates of between 60 and 70% among environmental (E), social (S) and governance (G) factors for issuers in the United States and Canada.[327]

Among environmental factors, according to one commenter, more than half of S&P 500 companies report Scope 1 and 2 emissions, with fewer reporting Scope 3 emissions.[328] We also analyzed 6,644 annual reports (10-Ks, 40-Fs, and 20-Fs) submitted from late 2019 until the end of 2020 and found that 33 percent contain some form of disclosure related to climate change, with a greater proportion coming from larger firms and those in high-emission industries.[329] Commenters indicated that the quality of these disclosures and the degree to which these disclosures are standardized vary.[330]

Some companies elect to disclose sustainability or ESG information outside of their SEC filings. A majority (52 percent) of public companies that participated in a survey indicate that they already publish a sustainability, ESG, or similar report, with more companies planning to publish their first reports in the near future.[331] Of those companies already publishing a sustainability report, most (86 percent) publish it as a separate report on their company website.[332]

The share of companies voluntarily publishing sustainability or ESG reports varies significantly by size and by sector. Large-cap companies and companies in high emission sectors such as energy and utility are more likely than others to publish reports. For instance, among the Russell 1000 index companies, 92 percent of large companies (in terms of market capitalization) published sustainability or ESG reports in 2020.[333] In contrast, about half of small-cap companies published such reports.[334] Examining various sectors, nearly all companies in the utility and energy sectors published sustainability or ESG reports in 2020, whereas about half of companies in the communication sector published such reports.[335]

To the extent that ESG-related disclosures by funds rely on the information disclosed by corporate issuers, the reliability and quality of ESG disclosures by corporate issuers influence the reliability and quality of ESG disclosures by funds as well. Some commenters suggested third-party assurance would improve the reliability of ESG disclosures by corporate issuers, and thus indirectly improve the quality and reliability of funds' ESG disclosures.[336] These commenters further suggest that assurance would provide investors with confidence in the disclosed information, and thus increase the utility of disclosures.[337] Examining current practices of corporate issuers obtaining assurance on climate or ESG related disclosures, according to one survey, 28 percent of public companies obtain third-party audits or assurances.[338] Regarding these climate or ESG disclosures, there are some discrepancies by size of companies. Forty-four percent of the larger half of the Russell 1000 index companies sought external assurance for non-financial ESG disclosures in 2020, whereas only 18 percent of the smaller half of the Russell 1000 index companies did so.[339] Even among the companies that obtained external assurance on ESG disclosures, 2 percent for small-cap companies and 3 percent for large-cap companies obtained the assurance on the entire sustainability reports. Approximately half of the companies with external assurance (48 percent for large-cap companies, 56 percent for small-cap companies) obtained assurance on GHG emissions only. In terms of the level of assurance, 90 percent of companies with external assurance obtained limited or moderate assurance, whereas 7 percent of companies obtained reasonable assurance.[340]

There also exist Federal and state-level reporting rules related to GHG emissions. At the Federal level, the EPA's 2010 Mandatory Reporting of Greenhouse Gases Rule requires large emitters and suppliers of fossil fuels that meet certain conditions to disclose their emissions to the GHG Reporting Program,[341] which are then made public through their website.[342] However, the EPA's GHG Reporting Program (EPA GHGRP) does not require disclosures at the corporate issuer level. Further, the EPA GHGRP does not require disclosure of emissions sources outside the United States. One study suggests that EPA GHGRP usually covers between 30 percent and 50 percent of a company's carbon scope 1 emissions, so the aggregated facility level emissions are not strongly correlated with the overall Scope 1 emissions.[343] At least 16 states and Puerto Rico have enacted legislation mandating some form of GHG emissions reporting.[344]

Accountants (''IFAC''), *The State of Play in Sustainability Assurance* (2021), *available at https://www.ifac.org/knowledge-gateway/contributing-global-economy/discussion/state-play-sustainability-assurance.*

[327] Disclosure rates related to environmental factors are 66 percent in the U.S. and Canada, social factors are 67 percent, governance factors are 65 percent. *See* Morningstar, Corporate Sustainability Disclosures (June 7, 2021). (Morningstar comment letter attachment report states that the disclosure rates are measured by the Sustainalytics company database.)

[328] *See* ICI Comment Letter; IEA, *Number of Companies in the S&P 500 Reporting Energy- and Emissions-Related Metrics* (updated May 26, 2020), *available at https://www.iea.org/data-and-statistics/charts/number-of-companies-in-the-s-and-p-500-reporting-energy-and-emissions-related-metrics.*

[329] This is generally consistent with a survey that found 34 percent of public companies disclose information regarding climate related risks, GHG emissions, or energy sourcing in their SEC filings. Of those companies disclosing in their SEC filings, the vast majority (82 percent) disclose it under Item 105 of Regulation S–K, Risk Factor. *See* U.S. Chamber of Commerce Center for Capital Markets Competiveness, *2021 Survey Report: Climate Change & ESG Reporting from the Public Company Perspective* (2021), *available at https://www.centerforcapitalmarkets.com/resource/climate-change-public-company-perspective-esg-reporting-climate-change-public-company-perspective/.* A total of 436 public companies participated in this survey, representing a broad range of industries that covered small to large market capitalization.

[330] *See* Morningstar Comment Letter.

[331] *See* Climate Change & ESG Reporting from the Public Company Perspective (2021).

[332] *See* Climate Change & ESG Reporting from the Public Company Perspective (2021).

[333] Large companies refer to the largest half of the Russell 1000 index companies by market capitalization, which are generally the same companies comprising the S&P 500 index. *See 2021 S&P 500 + Russell 1000 Sustainability Reporting in Focus,* Governance & Accountability Institute, Inc. (2021), *available at https://www.ga-institute.com/2021-sustainability-reporting-in-focus.html.*

[334] *Id.* (small companies refer to the smaller half of the Russell 1000 index companies).

[335] *Id.*

[336] *See* ICI Comment Letter, Securities Industry and Financial Markets Association (SIFMA) Asset Management Group Comment Letter, Morningstar Comment Letter.

[337] *Id.*

[338] *See* Climate Change & ESG Reporting from the Public Company Perspective (2021).

[339] *See* Governance & Accountability Institute, Inc., *supra* footnote 333.

[340] *Id.*

[341] *See* 40 CFR part 98. *See also* EPA Fact Sheet: Greenhouse Gases Reporting Program Implementation. The EPA rule applies to all facilities that directly emit more than 25,000 metric tons of carbon dioxide equivalent (CO_2e) per year (*i.e.,* Scope 1 emissions) and to all suppliers of certain products that would result in over 25,000 metric tons CO_2e if those products were released, combusted, or oxidized (*i.e.,* a component of Scope 3 emissions). The EPA estimates that the required reporting under the EPA rule covers 85–90% of all GHG emissions from over 8,000 facilities in the United States.

[342] The EPA provides emissions data at the facility level and the ultimate parent level, the latter of which represents an aggregation of facility-level data. The data is made public each year through the EPA website.

[343] *See* Timo Busch, Matthew Johnson, and Thomas Pioch, *Corporate Carbon Performance Data: Quo Vadis,* 26 J. Indus. Ecology 350 (2020) (''Busch''). *See also* Network for Greening the Fin. Sys. (''NGFS''), *Progress Report on Bridging Data Gap* (May 2021), *available at https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf.*

[344] *See* Greenhouse Gas Emissions Reduction Targets and Market-based Policies, National

Continued

(e) Use of ESG Providers and ESG Indices by Asset Managers

The market for ESG ratings and data has grown considerably over the past few years due in part to a lack of consistent disclosure at the corporate issuer level, and the increasing interest of investors in ESG funds and investing.[345] One report estimates there are over 150 ESG providers globally.[346] Each of these providers has its own definitions and data sources.[347] Some studies estimate there are 10 to 15 major ESG rating and data providers worldwide.[348]

Among E, S, and G factors, some assess environmental data to be better aligned across ESG providers than social and governance data.[349] For instance, data on scope 1 and 2 carbon emissions are relatively consistent across ESG providers, although data on scope 3 emissions are somewhat inconsistent. Some attribute this discrepancy to the fact that a larger number of companies report scope 1 and 2 emissions compared to scope 3 emissions.[350] ESG providers generate large datasets based on data from corporate reports. When companies do not report emissions data, ESG providers use their own estimation methods and fill in these missing data.[351] Compared to company reported data, estimations across ESG providers are relatively less consistent.[352] Some suggest that different estimation methodologies used across ESG providers contribute to the inconsistency across ESG providers.[353]

Investment advisers and fund managers often collect, digest, and evaluate information on ESG factors other than that disclosed by corporate issuers to incorporate in their investment decisions. Therefore, many advisers and fund managers currently rely on information from ESG providers pertaining to issuers in their analysis.[354] Even if managers and advisers decide to conduct the analyses in-house, due to the lack of existing ESG data and inconsistency in existing ESG disclosures from corporate issuers, properly incorporating ESG factors in portfolios and investment strategies may require significant resources.[355] Many asset managers use ESG ratings and ESG data by contracting with multiple ESG providers because the scope, coverage, specialization, and expertise of ESG providers differ.[356] Asset managers also use ESG providers for different purposes to varying degrees.[357] Some asset managers use ESG ratings to incorporate ESG factors in their investment decisions, while others use ESG data and build their own internal rating methodologies. In addition, some asset managers use ESG ratings to guide their engagement with portfolio companies. Institutional investors use ESG ratings to assess their exposure to ESG risks and monitor their external asset managers.

Among asset managers that rely on quantitative data with respect to their ESG analyses, a majority use market indexes tracking ESG factors in some way.[358] Asset managers in the United States use ESG indexes most frequently for investment strategies, followed by benchmarking and measurement purposes.[359] In 2020, there were 2.96 million indexes globally.[360] Objectives, scope and strategies vary across ESG indices, ranging from low-carbon solutions to ESG tilting.[361] In addition, one third of U.S. asset managers in a survey strongly agreed that the indexes improved their ability to compare ESG performances.[362]

C. Benefits, Costs and Effects on Efficiency, Competition, and Capital Formation of the Proposed Rule and Form Amendments

The proposed rules' ESG disclosure framework requires several different types of ESG disclosures from funds and advisers that are tailored to a given fund's or adviser's ESG features. In this section, we first discuss the general economic benefits associated with more precise and comparable ESG disclosures by funds and advisers. We then discuss the economic effects associated with each of the specific disclosure requirements of this proposal, including benefits, costs, and effects on efficiency, competition, and capital formation.

1. General Economic Benefits of ESG Disclosure

As discussed in previous sections, there has been substantial demand from investors for ESG-related strategies. Also as discussed, investors' ability to obtain

Conference of State Legislatures (''NCSL'') (Sept. 22, 2021). The same report indicates that other states, such as New Mexico, North Carolina, and Pennsylvania, have recently committed to statewide GHG reduction goals through executive action, but do not currently have binding statutory targets.

[345] IOSCO, *IOSCO Consults on ESG Ratings and Data Providers* (Media Release) (July 26, 2021), *available at https://www.iosco.org/news/pdf/IOSCONEWS613.pdf.*

[346] *See* KPMG, *supra* footnote 293.

[347] *Id.*

[348] *See* European Comm'n, Directorate-Gen. for Fin. Stability, Fin. Servs. & Capital Mkts. Union, *Study on Sustainability-Related Ratings, Data and Research,* (Jan. 6, 2021) (Report prepared by SustainAbility) *available at https://data.europa.eu/doi/10.2874/14850.* In this study, major ESG rating and data providers include Bloomberg, CDP, FTSE Russell, ISS–ESG, MSCI, Refinitiv, RepRisk, RobecoSAM, Sustainalytics, and Vigeo Eiris.

[349] *Id.*

[350] *Id. See also* Patrick Bolton and Marcin Kacperczyk, *Do Investors Care About Carbon Risk?* National Bureau of Economic Research (2020). Authors suggest that Scope 3 emissions are estimated using an input-output matrix, while the data on scope 1 and scope 2 emissions are widely reported.

[351] *See* Busch, *supra* footnote 343.

[352] *Id. See also* NGFS, *Progress Report on Bridging Data Gap* (May 2021), *available at https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf, supra* footnote 343. It is worth noting that company-reported data on scope 3 emissions are relatively inconsistent across ESG providers, compared to company-reported data on scope 1 and 2.

[353] *See* NGFS, *Progress Report on Bridging Data Gap* (May 2021), *available at https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf, supra* footnote 343.

[354] *See* Investment Adviser Association Comment Letter; OECD Business and Finance Outlook 2020 Chapter 4.

[355] *See* OECD Business and Finance Outlook 2020, Chapter 4.

[356] *See* IOSCO, *IOSCO Consults on ESG Ratings and Data Providers* (Media Release) (July 26, 2021), *available at https://www.iosco.org/news/pdf/IOSCONEWS613.pdf, supra* footnote 345. Not only asset managers rely on services from ESG providers. A majority (58 percent) of central banks currently use or consider to use the data provided by external ESG providers. Of those central banks that use services from ESG providers, two thirds (67 percent) use more than one ESG provider. *See* Network for Greening the Financial System, Progress report on the implementation of sustainable and responsible investment practices in central bank's portfolio management, Dec. 2020.

[357] *See* IOSCO, *IOSCO Consults on ESG Ratings and Data Providers* (Media Release) (July 26, 2021), *available at https://www.iosco.org/news/pdf/IOSCONEWS613.pdf, supra* footnote 345.

[358] Index Indus. Ass'n (''IIA''), *Measurable Impact: Asset Mangers on the Challenges and Opportunities of ESG Investment* (2021) (IIA 2021 International Survey of Asset Managers), *available at http://www.indexindustry.org/wp-content/uploads/2021/07/IIA-ESG-Executive-Summary-2021-vFINAL.pdf.*

[359] *See* IIA, *Measurable Impact: Asset Mangers on the Challenges and Opportunities of ESG Investment* (2021) (IIA 2021 International Survey of Asset Managers), *available at http://www.indexindustry.org/wp-content/uploads/2021/07/IIA-ESG-Executive-Summary-2021-vFINAL.pdf, supra* footnote 358; Figure 21; NGFS, *Progress report on the implementation of sustainable and responsible investment practices in central banks' portfolio* (Dec. 2020) (for the use of ESG indexes in general), *available at https://www.ngfs.net/sites/default/files/medias/documents/sri_progress_report_2020.pdf.*

[360] *See* IIA, *Index Industry Association's Third Annual Survey Finds 2.96 Million Indexes Globally, available at http://www.indexindustry.org/2019/10/15/index-industry-associations-third-annual-survey-finds-2-96-million-indexes-globally/.*

[361] ESG tilting is also referred to as index-adjusted weighting in that companies are selected or reweighted by comparing the ESG characteristics of a firm to those of its peers. *See* NGFS, *Progress Report on Bridging Data Gap* (May 2021), *available at https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf, supra* footnote 343.

[362] *See* IIA, *Measurable Impact: Asset Mangers on the Challenges and Opportunities of ESG Investment* (2021) (IIA 2021 International Survey of Asset Managers), *available at http://www.indexindustry.org/wp-content/uploads/2021/07/IIA-ESG-Executive-Summary-2021-vFINAL.pdf, supra* footnote 358.

information may be impeded by the inconsistent and at times favorably-biased nature of reporting on ESG strategies by funds and advisers. Opaque ESG-related statements in the current environment make it difficult for some investors to discern funds' and advisers' degree of commitment to such strategies.[363] Even when funds provide quantitative disclosures, such as financed emissions, there currently is substantial inconsistency among funds as to when metrics are reported, the proportion of the portfolio covered, and the method of aggregation.[364] Investor and client interest in ESG strategies necessitates comparable and reliable ESG-related information. This interest has not been met as a result of key market failures that appear to have led to deficiencies in current ESG-reporting practices. Below we describe examples of frictions that may lead to these market failures in more detail and how a mandatory reporting regime may thus produce benefits for investors and clients.[365]

(1) Funds and Advisers May Be Able and Willing To Present Information Inconsistently

Funds or advisers may have incentives to make a strategy look as good as possible (for example, as a result of selective choice of metrics or methods of computation, exaggeration, obfuscation, or ''greenwashing''). But such decisions might impose a negative externality on other funds' and advisers' investors and clients. For example, if a fund or adviser includes favorably-biased claims in its disclosures, these disclosures could increase flows into and value of investments of investor or client funds, but also prevent investors and clients overall from understanding which funds are actually engaging in the strategies they would prefer to undertake. In a setting where investors or clients are unable to distinguish exaggerated claims at all, this results in what is referred to as a cheap talk equilibrium, where no useful information is discernable.[366] In this scenario, a mandatory reporting regime would be beneficial to investors and clients to the extent that disclosures in the current environment are either unverifiable, difficult to verify, or exaggerated.[367]

The benefits of mandatory disclosure become even more pronounced if funds or advisers not only have discretion in disclosure (both in disclosing or not and the method of disclosure), but also have incentives that are misaligned with their clients' or investors' interests—*i.e.,* in the presence of agency problems.[368] For example, agency problems may arise if funds are rewarded more for good performance than they are punished for bad performance. The empirical mutual fund literature provides some evidence that this is the case, where funds with superior performance are rewarded with large inflows, while poor performing funds see limited outflows.[369] In this case, funds may have a greater incentive to avoid disclosing negative information, instead focusing on the most positive aspects of their fund.[370] This can further incentivize embellished disclosures and therefore reduce useful information available to investors and clients.

When funds or advisers use inconsistent methods in reporting disclosures, the resulting lack of standardization can be costly for investors and clients, who may be unable to accurately compare across funds or advisers as a result. While agency problems, as noted above, can exacerbate these inconsistencies, such irregular reporting can arise any time there are multiple reasonable, but distinct and not easily comparable, approaches in presenting information chosen by different sets of funds or advisers—as appears to be the case in the current environment for ESG-related disclosures. Standardization limits such inconsistencies, allowing investors to identify funds and clients that are closely aligned with their investment objectives and therefore facilitating more efficient capital allocation. Standardization that enhances transparency and comparability of such disclosures is also likely to promote competition among investment advisers and funds.

(2) Investors/Clients May Have Varying Preferences for and Expectations About Such Disclosures

Finally, voluntary disclosures may not provide all relevant information if funds and advisers are uncertain of investor or client responses to such disclosures. If, for example, investors have varied preferences, such that funds are uncertain about whether investors will consider a given disclosure to be good or bad news, then not all funds will choose to disclose, resulting in potentially beneficial private information that is not revealed.[371] Even in a setting where preferences of potential clients might be similar, as may be the case for ESG-focused funds, responses to disclosures may still be uncertain, because investors may interpret the same information differently. This may be the case when there are varying levels of sophistication among investors in their ability to understand disclosures and/or different prior expectations.[372]

As discussed above, fund managers and investment advisers currently expend significant resources to search, collect, and process ESG-related data under the existing voluntary disclosure regime. The following sections discuss the benefits and costs of the proposed rules against this baseline.[373]

2. Investor and Client Facing Disclosures

We are proposing several amendments to disclosures furnished to

[363] *See* section III.B.5.a.

[364] *See* section III.B.5.d.

[365] *See* Beyer, Cohen, Lys, and Walther, *The Financial Reporting Environment: Review of The recent Literature,* J. ACCT. ECON. 296–343 (2010) for a more technical and detailed discussion of these and other additional assumptions.

[366] *See* Vincent Crawford and Joel Sobel, *Strategic Information Transformation,* 50 Econometrica 1431, 1431–1451 (1982).

[367] Even if investors or clients are somewhat able to discern potentially misleading statements as they become larger, but imperfectly so or only after incurring time or monetary costs, theoretical work still suggests that in equilibrium funds and advisers might be incentivized to still apply a positive bias to their disclosures, so that mandatory disclosures and standards would improve the information conveyed to investors and clients. *See* E. Einhorn, and A. Ziv, *Biased Voluntary Disclosure,* Review of Accounting Studies 420–442 (2012).

[368] Agency problems are conflicts of interest between investors or clients (*i.e.,* the principals) and funds or advisers (*i.e.,* the agents), respectively.

[369] *See* Erik R. Sirri and Peter Tufano, *Costly Search and Mutual Fund Flows,* 53(5) Journal of Finance 1589–1622 (1998).

[370] *See* Nikolai Roussanov, Hungxun Ruan, and Yanhao M. Wei, *Marketing Mutual Funds,* Jacobs Levy Equity Management Center for Quantitative Financial Research Paper (2020).

[371] *See* Jeroen Suijs, *Voluntary Disclosure of Information When Firms Are Uncertain of Investor Response,* 43 J. Acct. & Econ. 291, 391–410 (2007); Bond, Philip, and Yao Zeng, *Silence is Safest: Information Disclosure When the Audience's Preferences are Uncertain,* forthcoming Journal of Financial Economics (2022).

[372] *See* Ronald A. Dye, *Investor Sophistication and Voluntary Disclosures,* 3 Rev. Acct. Stud. 261, 261–287 (1998).

[373] As specified in section III.B, the economic baseline against which we measure the economic effects of this proposal, including its potential effects on efficiency, competition, and capital formation, is the state of the world as it currently exists. Accordingly, we do not include the recently proposed Climate Disclosure Rule in our baseline. To the extent the recently proposed Climate Disclosure Rule is adopted as currently proposed, we provide additional analysis below that discusses how the Climate Disclosure Rule may affect the incremental costs and benefits of certain provisions under this proposal. *See* Proposed Rule on the Enhancement and Standardization of Climate-Related Disclosures for Investors, (Apr. 11, 2022) [87 FR 21334 (April 11, 2022)], *available at https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.*

investors or clients, including fund prospectuses, annual reports, and Form ADV Brochures (Form ADV Part 2A, including Appendix 1, the Wrap Fee Program Brochure), with the aim of providing investors and clients with more meaningful information concerning ESG factors. This section analyzes the anticipated benefits and costs associated with these amendments in detail.

By providing a comprehensive framework on key features of ESG funds and investment advisers, the proposed requirements would increase the amount of information related to how funds and advisers consider ESG factors available to investors and make ESG disclosures easily comparable across funds and advisers. As a result, investors would be able to more easily identify funds and advisers that most closely align with their investment objectives.

(a) Enhanced ESG Disclosure for Fund Prospectus

(1) Benefits

The proposed amendments would require additional disclosure by open-end funds (including ETFs) and closed-end funds (including BDCs) that consider one or more ESG factors. The level of detail required by the proposed enhanced disclosure would depend on the extent to which a fund considers ESG factors in its investment process. This disclosure structure tailors the amount of the disclosure to the specific needs of the investors in a particular fund; investors in funds that more extensively incorporate ESG factors may need more detailed ESG-related information to assess the fund performance compared to funds that consider ESG factors along with many other factors.

The proposed rule's disclosure framework achieves this by requiring different degrees and types of disclosure across two main types of ESG funds: Integration Funds and ESG-Focused Funds (including Impact Funds). Within ESG-Focused Funds, the framework tailors its requirements depending on how funds implement ESG strategies such as tracking a specific ESG index, applying an inclusionary or exclusionary screen, seeking to achieve a specific impact, voting proxies, and engaging with issuers on ESG matters.

Generally speaking, Integration Funds are funds that consider one or more ESG factors as part of a broader investment process that also incorporates non-ESG factors. Under the proposed rule, funds that meet the proposed definition of ''Integration Fund'' would provide more limited disclosures relative to ESG-Focused Funds. Specifically, Integration Funds would be required to summarize in a few sentences how the fund incorporates ESG factors into its investment selection process, including what ESG factors the fund considers. Open-end funds would provide this information in the summary section of the fund's prospectus, while closed-end funds, which do not use summary prospectuses, would disclose the information as part of the prospectus's general description of the fund. The proposal would further require a more detailed description of how an Integration Fund incorporates ESG factors into its investment selection process in an open-end fund's statutory prospectus or later in a closed-end fund's prospectus. We believe these disclosures would improve investors' ability to process information and assist them in comparing across Integration Funds.

The proposal would include specific additional disclosures regarding the role of GHG emissions for Integration Funds in the fund's statutory prospectus or later in a closed-end fund's prospectus. Certain investors have expressed particular demand for information on the role of GHG emissions in ESG investment selection processes,[374] which can create an incentive for funds to overstate the extent to which portfolio company emissions play a role in the fund's strategy. We believe these disclosures would further assist investors in comparing across Integration Funds and make better informed choices of Integration Funds for their investments, given that Integration Funds might vary substantially in how they utilize GHG emissions metrics data or otherwise consider portfolio company GHG emissions.

The requirements for Integration Funds to disclose information regarding ESG factors and GHG emissions are more limited than the requirements for ESG-Focused funds. We believe that these more limited requirements for Integration Funds would improve investors' ability to process information and assist them in comparing across Integration Funds while avoiding impeding informed investment decisions with overemphasized statements on the role of ESG factors in Integration Funds.

ESG-Focused Funds, which include funds that employ several different ESG investment strategies as a significant or main consideration in selecting investments or in their engagement strategy with the companies in which they invest, would be required to provide more detailed information than Integration Funds. This information would be presented in a tabular format, in a standard order and consistent manner, across ESG-Focused Funds. By providing information prominently in the same location in each fund's prospectus, the proposed amendments could improve investors' understanding of an ESG-Focused Funds' investment strategy and assist them in comparing different ESG-Focused Funds. Because each of the common ESG strategies applicable to the fund would be presented in a ''check the box'' style, investors could immediately identify the ESG strategies employed by each fund, which would further enhance the comparability across ESG-Focused Funds.

To facilitate investors' informed investment decision making, the proposed amendments would also require an ESG-Focused Fund to provide a more detailed and lengthier disclosure later in the prospectus. Under the proposal's layered disclosure approach in an electronic version of the prospectus, the fund would also be required to provide hyperlinks in the table to related, more detailed disclosure. This proposed approach would make full and detailed ESG-related information available to investors, allowing them to make more informed investment decisions.

At the same time, the layered requirements would avoid overwhelming investors with information that any particular investor may not be interested in. If an investor wants more in-depth information about certain topics, the proposed layered approach would allow investors to selectively gather the information they need, thus enhancing the overall effectiveness and the utility of the disclosures.

The proposed rules would require ESG-Focused Funds that apply inclusionary or exclusionary screens to explain briefly the factors the screen applies as well as to state the percentage of the portfolio, in terms of net asset value, to which the screen is applied and explain briefly why the screen applies to less than 100% of the fund's portfolio (excluding cash and cash equivalents held for cash management) if applicable. These proposed requirements would enhance investors' understanding about how ESG factors guide the fund's investment decisions and what kinds of investments a fund focuses on or avoids. This would facilitate investors' searches to identify funds closely aligned with the investors'

[374] *See* CDP Report, *supra* footnote 119.

preferences on ESG investing, a potentially difficult task in the current environment of inconsistent disclosures. Furthermore, by providing the share of the portfolio selected with regards to a particular screen, investors would verify whether and to what extent that ESG factors are incorporated into the fund. Therefore, the proposed rules would reduce ambiguous or overstated claims and increase transparent and comparable information about ESG investing, which, in turn, would enable investors to easily verify ESG-related claims, compare across ESG-Focused Funds, and make better informed decisions.

If an ESG-Focused Fund commits to any third-party frameworks, its prospectus would disclose what third-party frameworks the fund follows in its investments and how the framework applies to funds. This would enable investors to better understand how the fund's commitment to such ESG frameworks is reflected in its portfolios, and gauge how closely the fund is aligned with those ESG frameworks, which would guide investors in their searches to identify funds that better reflect investors' ESG investment objectives.

If an ESG-Focused Fund tracks an index, its prospectus would describe the index and how the index utilizes ESG factors in determining its constituents. The proposed disclosures about the index that the fund tracks would likely benefit investors by providing insights into how the fund allocates capital and by providing an ESG-specific benchmark against which similar funds can be compared. These disclosures could increase competition among ESG-Focused Funds that track an ESG-related index, facilitate efficient capital allocation, and further promote capital formation.

In addition, under the proposed rules, if an ESG-Focused Fund uses an internal methodology or an ESG provider in evaluating, selecting, or excluding investments, it must provide an overview of how it incorporates ESG factors into its process for evaluating, selecting, or excluding investments. This requirement would benefit investors by allowing them to evaluate and monitor how funds use ESG criteria to construct their portfolios, which may be an important factor in some investors' investment decisions and may promote competition among ESG-Focused Funds. Additionally, the proposed rules would enhance the efficiency of capital allocation by enabling investors to identify funds that are better aligned with investors' preferences.

The proposed rules also require an ESG-Focused Fund that engages with issuers to provide qualitatively an overview of how it engages or expects to engage with its portfolio companies on ESG issues, including through the fund's voting of proxies and meetings with management. Shareholder engagement strategies have gained traction lately and many investors now view shareholder engagements as a crucial element in ESG investing.[375] Specific information about funds' voting policies and voting records would likely assist investors in selecting funds and advisers, and enable an investor to effectively monitor funds and advisers in connection with whether they exercise voting rights in a manner aligned with the investor's objectives. This could increase competition among ESG-Focused Funds and further facilitate capital formation in ESG-Focused Funds that engage with issuers.

With respect to Impact Funds, a type of ESG-Focused Fund, the proposed rules would require the fund to describe what impact(s) it seeks to achieve, how it will achieve the impact(s), how the fund measures progress, what key performance indicators are analyzed, what time horizon is used to analyze progress, and the relationship between the impact and financial returns. Investors seeking to achieve specific impacts would find this additional information particularly important because it would allow them to more easily identify and compare funds seeking the same impacts. This would lower investor search costs, which could promote competition among Impact Funds and increase capital formation.

In aggregate, the proposed rule's tailored requirements would allow investors to differentiate between funds for which ESG is a major focus (under the proposed rule, ESG-Focused Funds), other funds for which ESG is one factor among many (under the proposed rule, Integration Funds), and funds that do not consider ESG as part of their investing strategies (non-ESG). This would allow investors to more efficiently select funds that are better aligned with their investment objectives. In addition, by structuring the proposed disclosure to clearly discriminate between funds that incorporate ESG factors to varying degrees, the proposal would reduce the risk that a fund overstates the extent to which it considers ESG factors in its investment process and would provide a more accurate description of the fund's investment processes to investors.

(2) Costs

Integration Funds and ESG-Focused Funds would incur costs to comply with the proposed ESG-disclosures for fund prospectuses. In general, we anticipate that the compliance burden would be relatively lower for Integration Funds and higher for ESG-Focused and Impact Funds, as the latter funds would be subject to more detailed disclosure requirements.[376] Compliance costs would be mitigated to the extent that some funds incorporating ESG factors may already disclose some form of ESG-related information. Further, these costs are ultimately borne by investors as funds are pass-through vehicles.

The proposed rules would require ESG-Focused Funds to disclose more detailed ESG-related information than Integration Funds. In preparing disclosures, attorneys and compliance professionals would review and familiarize themselves with requirements as specified in the proposed rules. Fund managers would review their current investment strategies and practices to gather any information needed for the proposed disclosures. Attorneys would review funds' disclosures to ensure that the disclosures satisfy all requirements of the proposed rules.[377]

Any increase in compliance costs are passed on to investors as funds are pass-through vehicles. Larger funds and funds that are part of larger fund complexes would experience economies of scale in complying with the proposed requirements compared to smaller funds and funds that are part of smaller fund complexes. Therefore, smaller funds and funds that are part of a smaller fund complex may potentially experience a competitive disadvantage relative to larger funds and fund families.

[375] Jonathan B. Berk and Jules H. van Binsbergen, *The Impact of Impact Investing,* Stanford University Graduate School of Business Research Paper, George Mason Law & Economics (Research Paper No. 21–26) (Aug. 21, 2021), *available at https://ssrn.com/abstract=3909166* or *https://dx.doi.org/10.2139/ssrn.3909166.*

[376] For example, we estimate the annual direct costs attributable to information collection requirements in the proposed amendments to the open-end fund prospectus would be $1,319.50 per Integration Fund, while we estimate higher costs for ESG-Focused Funds, $9,084 per ESG-Focused Fund.

[377] Based on the results of the Paperwork Reduction Act (''PRA'') analysis provided for N–1A, it is estimated that the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to the open-end fund prospectus would be approximately $1,319.50 per Integration Fund, and $9,084 per ESG-Focused Fund. We estimate that the proposed amendments to the closed-end fund prospectus in Form N–2 filings would incur the same compliance costs per fund as the proposed amendments to Form N–1A.

Among funds incorporating ESG factors, some funds may already disclose ESG-related information, while other funds may not. Funds that already disclose some form of ESG-related information would incur lower compliance costs compared to the funds that currently do not disclose any ESG-related information. Similarly, among funds that already disclose some form of ESG information, funds whose disclosure elements are similar to the proposed requirements would incur relatively lower compliance costs compared to the funds whose current disclosures are not aligned with the proposal. In this regard, funds that already disclose some form of ESG-related information, and in particular funds whose current disclosures are closely aligned with the proposal, may be at a competitive advantage, relative to funds that currently do not disclose any ESG-related information.

There may be costs associated with emphasizing ESG factors beyond other factors. This could distract investors, and could lead to an overemphasis on ESG investing, detracting from capital formation. Some funds may incur costs in determining which category a fund belongs to, as some may perceive an ambiguity in the proposed definitions or if the fund's current practices or investment strategies do not fit neatly with the proposed types of funds.

The proposed rules may prompt some funds to change their current investment strategies and investment implementation practices. For instance, a fund may determine the disclosure requirements associated with operating as an ESG-Focused Fund under the proposal may be too costly given its current investment practices and strategies. Therefore, it may decide to not have ESG factors as the primary focus of its investment strategy. In this case, such a fund would incur costs in changing its current investment strategy, including adjusting its disclosure and marketing practices to reflect such a change. Due to lack of data, we cannot precisely estimate the magnitude of such potential adjustments. Nonetheless, a fund making these adjustments may incur substantial costs, as the fund would need to carefully review its current investment strategies and processes against the provisions in the proposed rules, identify areas requiring adjustment, and implement those adjustments.

Some ESG funds may currently disclose ESG-related information that would not be required by the proposed rules and amendments. In response to the proposal, some of these funds may decide to disclose only the required information and discontinue their current practices of disclosing any additional information. This may be the case if there are ongoing costs to existing voluntary disclosures that the fund decides to shift toward covering the costs of mandatory disclosures under the proposed rule. If that happens, some investors may be negatively affected to the extent that they are familiar with, relying on, or otherwise prefer any discontinued information. However, even if so, this negative impact would be mitigated by the enhanced consistency and transparency in ESG disclosures and the potential reduction in overstated or exaggerated claims with regard to ESG funds.

(b) ESG Disclosures for Unit Investment Trusts

The proposed rules also contain an amendment to the registration statement requirement for UITs to provide investors with clear information about how portfolios are selected based on ESG factors. The proposed amendment would require any UIT that provides exposures to portfolios that were selected based on one or more ESG factors to explain how those factors were used to select the portfolio securities.[378] In contrast to the amendments that we are proposing for other types of funds, the level of detail required by the proposed amendment for UITs reflects their unmanaged nature.[379] For example, we are not proposing to differentiate disclosure based on whether a UIT's selection process follows an integration model or an ''ESG-Focused'' model as the portfolio is fixed, and these models will not be used for investment selection after the UIT shares are sold.

(1) Benefits

Since investors can review the UIT's portfolio before investing, the proposed amendments would particularly benefit UIT investors by providing ESG-related information at the critical moment of portfolio selection. Given these features of UITs, the proposed amendments would benefit investors by lowering search costs and enabling investors to more effectively and efficiently identify UITs that align with their objectives, thus promoting competition among UITs, efficient allocation of capital, and capital formation by furthering investments in UITs.

(2) Costs

UITs would incur one-time direct compliance costs at inception. These costs would primarily derive from gathering information, and preparing and subjecting to legal review the proposed disclosures. After establishment, there would be no recurring costs during the life of the UIT.[380] Similar to our discussion of compliance costs for other funds in section III.C.2.a, we anticipate that larger UITs or those that are part of a larger fund family would experience economies of scale and that smaller UITs or those that are part of a smaller fund family may experience a competitive disadvantage.

(c) ESG Disclosure for Fund Annual Reports

In addition to the proposed amendments to fund prospectuses, we are proposing several amendments to fund annual reports to provide additional ESG-related information for Impact and ESG-Focused Funds in the MDFP or MD&A section of the annual report as applicable. Specifically, the proposed amendments would require Impact Funds to discuss the fund's progress on achieving its ESG-related impacts in both qualitative and quantitative terms during the reporting period, and the key factors that materially affected the fund's ability to achieve the desired impact.[381] Additionally, funds for which proxy voting is a significant means of implementing their ESG strategy would be required to disclose certain information regarding how the fund voted proxies relating to portfolio securities on ESG issues during the reporting period.[382] Funds for which engagement with issuers on ESG issues

[378] *See* proposed instruction to Item 11 of Form N–8B–2 under the Investment Company Act of 1940 (17 CFR 274.12).

[379] *See supra* footnotes 97–98 and accompanying text (stating that a UIT, by statute, is an unmanaged investment company that invests the money that it raises from investors in a generally fixed portfolio of stocks, bonds, or other securities. Unlike a management company, a UIT does not trade its investment portfolio, and does not have a board of directors, officers, or an investment adviser to render advice during the life of the UIT).

[380] Based on the results of the PRA analysis, the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to the Form N–8B–2 would be approximately $871.50 per UIT. We estimate the proposed amendments to the Form S–6 would incur the same compliance cost of $871.50 per UIT. Note that UITs would bear different costs related to the proposed Inline XBRL requirement than the other funds that would be subject to the requirement, because unlike those other funds, UITs are not currently filing any forms in Inline XBRL. *See infra* section IV.B.

[381] Proposed Item 27(b)(7)(i)(B) of Form N–1A; Proposed Instruction.4.(g)(1)(B) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[382] Proposed Item 27(b)(7)(i)(C) of Form N–1A; Proposed Instruction 4.(g)(1)(C) to Item 24 of Form N–2 [17 CFR 274.11a–1].

through means other than proxy voting is a significant means of implementing their ESG strategy would also be required to disclose certain information about their engagement practices.[383] Finally, the proposal would also require environmentally focused funds to disclose the aggregated GHG emissions of the portfolio.[384]

(1) Disclosure Concerning Impacts, Proxy Voting, and Engagement

(a) Benefits

In addition to the proposed amendments to fund prospectuses, the proposed amendments to fund annual reports provide additional ESG-related information in the MDFP or MD&A section for Impact Funds and ESG-Focused Funds that engage with issuers through proxy voting or other means. We anticipate that these proposed amendments would generate benefits for prospective and current investors. Investors usually review and compare different fund prospectuses before selecting where to invest, meaning that prospectus disclosures particularly benefit investors actively involved in their search processes. In comparison, disclosures in fund annual reports would benefit both current and prospective investors by helping them monitor the ESG-related progress and performance of funds over the reporting year.

In this regard, the proposed amendments would benefit investors in Impact Funds by providing investors quantitative and qualitative information to contextualize and evaluate the fund's progress on achieving its intended impact, in addition to any risk-adjusted financial return. Such information would benefit investors by enhancing their understanding of the fund's actual progress in achieving its impact, as well as increasing transparency into the key factors that materially affected the fund's ability to achieve its impact. To the extent different Impact Funds use the same or similar key performance indicators to measure their progress in achieving a given impact, investors could more easily compare which funds have been more effective at achieving their ESG impact.

In addition, the proposed amendments would require an ESG-Focused Fund for which proxy voting is a significant means of implementing ESG strategy to disclose information about how the fund used proxy voting to accomplish its ESG voting strategy. Specifically, the fund would be required to disclose the percentage of ESG-related voting matters during the reporting period for which the fund voted in furtherance of the initiative. The fund would be permitted to limit the disclosure to voting matters involving ESG factors that the fund incorporates into its investment decisions. Further, the fund would be required to provide a cross reference or hyperlink to the fund's full voting record filed on Form N–PX for investors who are interested in more granular information beyond the top-line percentage disclosed in the fund's annual shareholder report.[385] By providing the information about ESG-related voting matters in annual reports, investors would easily confirm whether the expectations they formed based on the prospectus are met, and assess how funds use proxy voting as a tool to achieve their stated ESG-related objectives. The proposed disclosure concerning proxy voting records could be particularly useful for investors because it would, as a quantitative measure, enhance the comparability across ESG-Focused Funds.

Under the proposed amendments, funds for which engagement with issuers through means other than proxy voting is a significant means of implementing their ESG strategy would be required to disclose the progress on any objectives of such engagement described in their prospectus. Further, such funds would be required to disclose the number or percentage of issuers with whom they held ESG engagement meetings related to one or more ESG issues and the total number of ESG engagement meetings. This type of information is, for the most part, not widely available, even though many investors view shareholder engagement as a crucial element in ESG investing as discussed in section III.C.2.a. Given this circumstance, the proposed disclosure requirements would fill this information gap, and enable investors to evaluate more comprehensively how funds would implement ESG strategies and accomplish their objectives, especially when the most common engagement method is private meetings with issuers, which are often not transparent to investors. Moreover, some regard effective engagements as a driver to enhance operational and financial performance.[386] In this regard, increased transparency about engagement activities and proxy voting would enhance efficiency, promote competition and facilitate capital formation by equipping investors with necessary information to select funds that effectively engage with the issuers.

The proposed fund report disclosure requirements would allow investors to monitor the fund's progress toward stated ESG-related objectives over time easily as well as across competing funds by enhancing transparency and comparability. In this regard, the proposed amendments would promote competition among ESG-Focused Funds. In addition, the proposed disclosures would provide investors information to more efficiently identify funds better aligned with their ESG-related preferences (*e.g.,* funds pursuing the same ESG impacts), which would facilitate capital to be allocated in accordance with investors' ESG-related preference, thus, enhance the efficiency in capital allocation. Furthermore, the increased transparency about how funds achieve their stated ESG-related objectives would bolster capital formation by improving investor confidence in this space, and promote competition among ESG-Focused Funds.

(b) Costs

The proposed amendments to fund annual reports would impose compliance costs on the subjected funds, although those costs will vary depending on the types and features of the particular fund. For example, Impact Funds would incur costs to disclose their progress toward their specific impact goals in both qualitative and quantitative terms. Similarly, funds that engage with issuers through proxy voting or other means would disclose detailed information such as how the fund voted on ESG issues and total number of engagement meetings on particular ESG-related matters. To meet these requirements, funds would need to gather their records on these issues, review and evaluate them in accordance with their stated goals or key performance indicators, and prepare disclosures in the report.[387] Through these processes, a fund may more closely track and monitor its progress

[383] Proposed Item 27(b)(7)(i)(E) of Form N–1A; Proposed Instruction 4.(g)(1)(D) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[384] Proposed Item 27(b)(7)(i)(E) of Form N–1A; Proposed Instruction.4.(g)(1)(E) to Item 24 of Form N–2 [17 CFR 274.11a–1].

[385] The requirement to refer investors to the fund's full voting record filed on Form N–PX would not apply to BDCs because they do not file reports on Form N–PX.

[386] *See* ShareAction, *supra* footnote 295.

[387] Based on the results of the PRA analysis, the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to the fund shareholder reports would be approximately $5,724 per fund for disclosure requirements related to Impact Funds. This is the same amount required for disclosure related to ESG voting matters and engagements.

over time. Some or all of the associated compliance costs may ultimately be passed on to investors through potentially higher expenses or fees.

Under the proposal, certain ESG-Focused Funds would disclose their progress toward their stated impact goals and their records about proxy voting and engagements with issuers. These proposed requirements may incentivize funds to select impact goals that could easily produce more measurable progress in the near future or focus more on frequent meetings with portfolio companies instead of producing successful outcomes from the engagements. Furthermore, the proposed requirements for engagements may be more challenging for small funds if they do not have the right expertise and resources and if they do not usually gain traction with portfolio companies on their own, as suggested by one study.[388] If so, those funds may be competitively disadvantaged compared to their peers with more resources or expertise.

(2) GHG Metrics Disclosures

(a) Benefits

The proposed rules would also require environmentally focused funds to disclose GHG metrics—specifically, their carbon footprint and the WACI of their portfolio in the MDFP or MD&A section of the fund's annual report as applicable—unless the fund affirmatively states that it does not consider issuers' GHG emissions as part of its investment strategy.[389]

As mentioned previously, one report notes that ''climate change/carbon'' was by a wide margin the largest asset-weighted ESG criterion among fund managers, with $4.18 trillion in assets as of 2020.[390] However, in the current voluntary regulatory environment, financed GHG emissions disclosures by funds are inconsistently reported. For example, as discussed above, surveys of financed emission disclosures commonly report only a portion of a fund's portfolio.[391]

Given this baseline, reporting transparent and consistent quantitative metrics would provide more meaningful information to investors interested in environmentally focused funds that consider issuers' GHG emissions as part of their investment strategy.[392] In particular, the proposed GHG metrics would help investors interested in identifying and investing in environmentally focused funds to compare such funds based on quantitative information about the fund's portfolio emissions where the fund considers GHG emissions as part of its investment strategy. In addition, the proposed GHG metrics would address greenwashing concerns by providing a quantitative measure for comparing such funds, limiting the ability for some funds to exaggerate their practices for evaluating GHG metrics or the extent to which they take into account GHG emissions.

The proposed rules would require environmentally focused funds to disclose two GHG metrics, both of which are measured at the portfolio level, and thus make it easier for investors to compare and rank different funds. By requiring two GHG metrics instead of one, the needs of different investors would be better met as each metric is developed for slightly different purposes. Specifically, the portfolio carbon footprint metric would provide more critical information when investors determine where to invest in order to make impacts on emissions as it provides the information about the number of tons of CO_2e per million dollars invested in the fund. This metric would also be useful for investors who are more interested in the total size of a fund's financed emissions, as it can be easily converted to absolute total carbon emissions by multiplying by the total size of the fund. Conversely, the WACI could be more useful for investors who are interested in a portfolio's exposure to carbon-intensive companies, so investors could easily identify funds that invest in more carbon efficient companies.

We propose to cover a wide range of asset classes including derivatives in calculating GHG metrics. By including various types of assets including derivatives in GHG metrics, the proposal would reduce the incentive to invest in one asset class over another depending on the inclusion or exclusion of a particular asset class in GHG metrics. Otherwise, it may incentivize funds to hold equity exposure as derivative positions for high emission issuers to avoid disclosing the associated emissions, and thus affect capital allocations. Moreover, investors attempting to understand the climate-related risks and opportunities of their portfolio would need information on GHG emissions for derivatives too, since derivatives can inherit the risk profile of the underlying security. Moreover, as described in Section III.C.1, some investors may incur a non-pecuniary cost to holding non-ESG investments. As such, information about derivatives positions would allow them to better ascertain where their portfolio concurs with their values.

In addition to the above metrics, an environmentally focused fund would also be required to disclose the financed Scope 3 emissions of its portfolio companies, to the extent that Scope 3 emissions data are reported by the fund's portfolio companies.[393] Scope 3 emissions would be disclosed separately for each industry sector in which the fund invests, and would be calculated using the carbon footprint methodology discussed above.[394] Scope 3 emissions represent the largest portion of companies' emissions, in some cases, up to 99 percent of total emissions of the company.[395] In addition, portfolio

[388] *See* KPMG, *supra* footnote 293. Some fund managers express their concern that adopting best practices especially around shareholder engagements could be expensive. Some fund managers, however, may also suggest that small or mid-sized fund managers could address this challenge by collaborating with other asset managers through organizations and initiatives such as Climate Action 100+.

[389] *See* Proposed Item 27(b)(7)(i)(E) of Form N–1A (and related instructions); see also Proposed Instruction.4.(g)(1)(E) to Item 24 of Form N–2. This proposed requirement would apply to ESG-Focused Funds that indicate that they consider environmental factors in response to Item C.3(j)(ii) on Form N–CEN (or, for BDCs, that would indicate that they consider environmental factors in response to that item if they were required to file Form N–CEN). *See supra* footnote 123 (with accompanying text) (discussing the proposed GHG emissions reporting requirements for environmentally focused funds). Carbon footprint is the total carbon emissions associated with the fund's portfolio, divided by the fund's market net asset value and expressed in tons of CO_2e per million dollars invested in the fund, while WACI is the fund's exposure to carbon-intensive companies, expressed in tons of CO_2e per million dollars of the portfolio company's total revenue.

[390] *See* US SIF, *supra* footnote 256.

[391] *See* CDP Report, *supra* footnote 119. *See also* PCAF, *supra* footnote 318.

[392] As discussed in section II.A.3.d, among environmentally focused funds, only certain funds would be required to disclose GHG metrics of their portfolio in the MDFP section of the fund's annual report to shareholders. If a fund affirmatively states that it does not consider issuers' GHG emissions as part of its investment strategy, the fund would not be required to disclose GHG metrics. Hereafter, the funds subject to the proposed rules are referred to as certain environmentally focused funds.

[393] *See* proposed Instruction 1(d)(x) of Item 27(b)(7)(i)(E) of Form N–1A; proposed Instruction 1(d)(x) of Item 24.4.g.(2)(B) of Form N–2.

[394] Funds would not be required to disclose their financed Scope 3 emissions using the WACI methodology.

[395] *See* Stanford Sustainable Finance Initiative Precourt Institute for Energy, Scope 3 Emissions: Measurement and Management, Apr. 2021. *See also* Science Based Targets, Value change in the Value Chain: Best Practices in Scope 3 Greenhouse Gas Management (Nov. 2018). On average the Scope 3 emissions are 5.5 times the amount of combined Scope 1 and Scope 2 emissions. *See* BSR, *Climate Action in the Value Chain: Reducing Scope 3 Emissions and Achieving Science-Based Targets* (2020), *available at https://www.bsr.org/en/our-insights/report-view/scope-3-emissions-science-based-targets-climate-action-value-chain.* On average, more than 75% of an industry sector's carbon footprint is attributed to Scope 3 sources. *See* Carlo Funk, *Carbon Footprinting: An Investor*

companies can organize their business activities in such a way that reduces Scope 1 and 2 emissions without reducing total emissions by increasing Scope 3 emissions instead.[396] Therefore, the information about Scope 3 emissions could provide investors with a more complete picture of total emissions associated with the portfolio. However, Scope 3 emissions data are not widely available and are less consistent.[397] The methodologies to capture Scope 3 emissions accurately are still evolving.[398] Moreover, Scope 3 metrics would overcount the emissions due to the fund. Therefore, disclosing Scope 3 emissions separately from Scope 1 and 2 emissions would provide investors with more reliable information without compromising its quality, while providing investors with the flexibility to factor in Scope 3 emissions, if relevant, in their investment decisions. Furthermore, by separately disclosing Scope 3 emissions, other measurements are free from the concern of over-counting. Because the comparability, coverage, and reliability of Scope 3 data varies greatly per sector,[399] disclosing Scope 3 emissions by industry sector would allow investors to put Scope 3 data into proper context, and thus better understand the meaning of the data.

The benefits discussed above are based on the current climate disclosure regime as compared to the proposed disclosure framework. To the extent that more corporate issuers disclose emissions in their regulatory filings with the Commission, the benefits to investors would be enhanced as funds would be able to base their disclosures on comprehensive and reliable data provided by corporate issuers.[400] As discussed in section III.B.2, currently, almost 90% of the holdings of environmentally focused funds are in public equity or debt. Yet, the information about carbon emissions of public issuers is not evenly available across industries and size of issuers.[401]

(b) Costs

As discussed above, the subset of environmentally focused funds that consider emissions or climate-related factors would be subject to the proposed GHG metric requirements. Due to this limited scope, the aggregate compliance costs associated with the proposed GHG metrics requirements would not be substantial. However, at the fund level, funds that are subject to the proposed requirements would incur non-negligible compliance costs. Some compliance costs would be one-time costs, while others would be on-going costs. For funds subject to the proposed GHG metrics requirements, attorneys and compliance professionals would conduct legal reviews of the proposed requirements and their current practices to identify areas for changes, which would be largely one-time costs.

Funds subject to the proposed GHG metrics requirements may invest in companies that publicly disclose GHG emissions as well as companies that do not publicly disclose emissions. As discussed in section III.B.5, currently, some companies publicly disclose GHG emissions but the availability of this information varies by industry and the size of the company.[402] For instance, the share of larger companies that publicly disclose GHG emissions is, on average, higher than the share of smaller companies disclosing emissions. For those companies that publicly disclose GHG emissions under the current regulatory regime, some disclose the information through regulatory filings with the Commission, while many others publish it in sustainability reports or on the company's website. Thus, funds would be required to review various sources to gather GHG emissions of portfolio companies.[403] For those companies that do not publicly provide the information about GHG emissions, funds would be required to make a good-faith estimation of Scope 1 and Scope 2 emissions. Obtaining, gathering, and estimating emissions data of portfolio companies would be an essential component of costs that funds subject to this proposal would incur.[404] Some fund managers would internally conduct these activities to obtain or estimate input emissions data, while others would base their estimates on inputs from ESG providers. Some would employ both, depending on existing resources and capabilities.

Some financial institutions including asset managers may already rely on ESG providers for external support. For instance, a multinational financial institution reported that it relies on third-parties for data acquisition and expert analysis to produce its climate-related disclosures that are aligned with various voluntary frameworks, such as the TCFD.[405] Among financial institutions that already disclose financed emissions, approximately two thirds (67 percent) reported that they spent less than $20,000 per year as external costs to measure financed emissions.[406] If an institution already

Toolkit, State Street Global Advisors (Sept. 2020). For example, for Lego and Walmart, Scope 3 emissions constitute 75% and 90%, respectively, of total emissions. Herbie Huang, Shrikanth Narayanan, and Jayashankar M. Swaminathan, *See also Carrot or Stick? Supplier Diversity and Its Impact on Carbon Emission Reduction Strategies* (Working Paper) (2020), *available at https://papers.ssrn.com/sol3/papers.cfm?abstractid=3559770*). For another company, Scope 3 emissions account for 97% of total emissions in 2017. *See* BHP, *Addressing Greenhouse Gas Emissions Beyond Our Operations: Understanding the 'Scope 3' Footprint of Our Value Chain* (Aug. 2018).

[396] Business entities can push their carbon emissions to other parts of supply chain. *See* Scope 3 Emissions: Measurement and Management, Stanford Sustainable Finance Initiative Precourt Institute for Energy, (Apr. 2021). *See* also *see* Science Based Target, *Value Change in the Value Chain: Best Practices in Scope 3 Greenhouse Gas Management* (Nov. 2018). In its example, a company that outsources much of its manufacturing has a lot higher Scope 3 emissions than its competing peer that less relies on outsourcing. Another study suggests a negative correlation between Scope 1 (or 2) emissions and Scope 3 emissions. *See* Xi Chen, Saif Benjaafar, and Adel Elomri, *On the Effectiveness of Emission Penalties in Decentralized Supply Chains,* 274 (3) European Journal of Operational Research 1155–1167 (2019).

[397] *See* section III.B.5 (for more details). *See also supra* footnotes 145 and 146.

[398] *See* Stanford Sustainable Finance Initiative Precourt Institute for Energy, Scope 3 Emissions: Measurement and Management (Apr. 2021). *See also* Science Based Targets, *Value Change in the Value Chain: Best practices in Scope 3 Greenhouse Gas Management* (Nov. 2018).

[399] *See* Partnership for Carbon Accounting Financials, *The Global GHG Accounting & Reporting Standard for the Financial Industry* (Nov. 18, 2020).

[400] For example, if the proposed Climate Disclosure Rule were to be adopted as proposed, corporate issuers would be required to disclose certain GHG emissions metrics in their regulatory filings with the Commission. Such information could then be used by environmentally focused funds to calculate their GHG emission metrics under this proposal, if the proposal is adopted as proposed.

[401] *See* section III.B.5.

[402] *See also* ICI comment letter and Morningstar comment letter.

[403] Another regulator also identified that obtaining and gathering input data would be a key incremental cost in its cost benefit analysis of a proposed rule concerning climate-related disclosures by asset managers. *See* FCA Consultation Paper, *supra* footnote 134.

[404] *Id.* This is consistent with another regulator's (the FCA) assessment in analyzing costs and benefits of its regulations concerning climate-related disclosure by asset managers.

[405] As described in a case study, this unidentified financial institution is a multinational large cap financial institution based in Europe. Although it relies on services from third parties, it does not provide the information about costs associated with obtaining services from third-parties. This financial institution reports climate-related information in its Universal Registration Documents (URD), Integrated Report, and TCFD Report. *See* Lee Reiners and Karen E. Torrent, *The Costs of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosures, A Report of the Climate Risk Disclosure Lab at Duke Law's Global Financial Markets Center* (Dec. 2021), *available at https://climatedisclosurelab.duke.edu/wp-content/uploads/2021/12/The-Cost-of-Climate-Disclosure.pdf.*

[406] Other responses include $20,000 to $50,000 (6 percent), $50,000 to $100,000 (11 percent), $100,000 to $200,000 (6 percent), more than $200,000 (11 percent). *See* PCAF Costs and Efforts of GHG Accounting for Financial Institutions (Dec.

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utilizes external services to disclose GHG metrics, the incremental costs associated with obtaining additional external services to comply with the proposed requirements would be lower. Furthermore, since the above costs for external data providers are reported at the institution level, corresponding costs borne by a fund would be a fraction of these reported costs. Because emissions data are currently not located in one place, some institutions may elect to subscribe to data services, instead of expending internal resources, to gather portfolio companies' public emissions data.[407] In addition, some may elect to hire external experts to complement their internal expertise or while they develop certain capabilities.[408]

Instead of or in combination with obtaining services from external ESG providers, some funds may reallocate internal staff resources or hire new staff in response to the proposed GHG metrics requirements. According to a survey of financial institutions that already disclose financed emissions, a majority (56 percent) of financial institutions reported that their employees spent 50 to 100 days to measure financed emissions.[409] These staff hours were reported at the institution level, thus the burden at the fund level would be lower. The increased staff hours could be devoted to various activities such as sourcing emission data, conducting analyses, and preparing disclosures. Many of these activities would occur on an ongoing basis, not just one-time, to comply with the proposal. However, once appropriate compliance systems and structures are established in the first year, many of these activities could be accomplished with fewer resources in the following years, and thus, funds would incur slightly lower compliance costs for the following years. In sum, funds subject to the proposal would incur higher compliance costs to calculate and disclose required GHG metrics. To the extent that funds would incur costs to comply with this proposal, larger fund families would likely experience economies of scale in complying with the proposed requirements compared to smaller fund families. The increased costs could ultimately be passed on to investors, to some degree, in certain environmentally focused funds in the form of higher expenses or fees.

To the extent that some funds already calculate GHG metrics at the portfolio level and disclose them, high compliance costs could be mitigated. As discussed above, some funds voluntarily adhere to third-party frameworks and are currently publicly disclosing GHG metrics. Such funds may be familiar with the two proposed GHG metrics as they are generally consistent with the standards developed by the PCAF (a measure similar to portfolio carbon footprint) and the TCFD (WACI). In addition, some multinational asset managers may disclose GHG metrics of funds they offer to clients in pursuant to other regulator's requirements.[410] Accordingly, to the extent the GHG metric disclosures overlap, such funds would likely incur lower compliance costs attributable to the proposed GHG metrics requirement than other funds. For instance, a large multinational financial institution indicated that the costs to produce its first TCFD climate-related disclosure report did not exceed $100,000 at the institution level.[411] The same financial institution reported that as a large institution that adheres to multiple frameworks, the costs to produce climate-related disclosures range between $250,000 and $500,000.[412] However, for this particular financial institution, the annual cost, as a percentage of revenue, to produce voluntary climate disclosures is less than one tenth of one percent.[413] The costs referenced above are not directly applicable in assessing the compliance costs associated with these proposed GHG metrics requirements because this proposal's scope and requirements are more narrowly tailored to certain funds with a climate related focus and also because the proposed requirements are applied at the fund level, not at the institution level. Similar to this financial institution, some U.S. asset managers adhere to third-party frameworks and issue voluntary climate reports including GHG metrics of portfolios that they manage.[414] These asset managers, and the funds managed by these asset managers, would incur lower incremental costs to comply with this proposal. In this regard, asset managers currently disclosing GHG metrics in accordance with a third-party framework may have a competitive advantage over other asset managers.

Separate from the increased compliance costs, if many environmentally focused funds rely on estimations due to the lack of publicly available emissions data, some investors may consider GHG metrics of such funds less reliable and may potentially invest less in environmentally focused funds.[415] As discussed above, some asset managers rely on information provided by ESG providers. However, one report suggests that ESG providers often focus on large-cap companies, thus providing a limited coverage for

21, 2021). The PCAF Secretariat has conducted a brief survey among financial institutions that had already completed at least one full disclosure cycle. A total of 18 PCAF signatories responded to this survey. A majority of respondents were banks (72 percent) with a small representation (11 percent) from asset managers. *See* Partnership for Carbon Accounting Financials comment letter.

[407] Another regulator, FCA, estimated that a large asset manager would appoint 4 full-time employees, while a medium asset manager would appoint 2.5 full-time employees for various activities (including sourcing relevant data). This estimate, however, would not be directly comparable in this analysis, because the UK's regulations about climate-related disclosures by assets managers are generally broader than this proposal. Additionally, the estimated burden hours are measured at the institutional level, meaning the estimated burden hours at the fund level would be smaller. *See* FCA Consultation Paper, *supra* footnote 134.

[408] Another regulator, FCA, estimated that an asset manager would incur an average subscription to third-party climate related data service of £217,000 on an annual basis. Since the UK's regulations on asset managers would be different in various aspects, this estimate would not be directly applicable in this analysis.

[409] Other responses include less than 50 days (17 percent), 100 to 200 days (6 percent), 200 to 400 days (17 percent), more than 400 days (11 percent). *See PCAF Costs and Efforts of GHG Accounting for Financial Institutions* (Dec. 21, 2021).

[410] For instance, in Dec. 2021, the FCA introduced new rules and guidance for asset managers and certain FCA-regulated asset owners to make mandatory disclosures consistent with the TCFD's recommendations on an annual basis at the entity level and at the portfolio level. In particular, mandatory disclosures at the portfolio level include a core set of climate-related metrics. *See* FCA, *PS21/24: Enhancing Climate-Related Disclosures by Asset Managers, Life Insurers and FCA-regulated Pension Providers* (updated Dec. 17, 2021), *available at https://www.fca.org.uk/publications/policy-statements/ps-21-24-climate-related-disclosures-asset-managers-life-insurers-regulated-pensions.*

[411] *See The Costs of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosures,* Duke Law School: Global Financial Markets Center (Dec. 2021).

[412] This financial institution reports climate-related information in its Universal Registration Documents (URD), Integrated Report, and TCFD Report. It adheres to SASB standards as well as TCFD recommendations.

[413] *See* The Costs of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosures, *Duke Law School: Global Financial Markets Center* (Dec. 2021).

[414] *See* section III.B.5 (for detailed discussion).

[415] There are some research about the relationship between assurance on disclosed information and investment decisions. Professional investors attribute increased credibility to assured sustainability disclosures, which eventually lead to favorable investment decisions such as investing themselves in the company or recommending the purchase of shares to their clients. *See* Reiner Quick and Petra Inwinkl, *Assurance on CSR Reports: Impact on the Credibility Perceptions of Non-Financial Information by Bank Directors,* 28(5) Meditari Accountancy Research 833–862 (2020); see also Daniel Reimsbach, Rudiger Hahn, Anil Gürtürk, *Integrated Reporting and Assurance of Sustainability Information: An Experimental Study on Professional Investors' Information Processing,* 27(3) European Accounting Review 559–581 (2017).

the carbon footprint.[416] In particular, the absolute availability of Scope 1 emissions (percent of firms) in the U.S. was 10.8 percent.[417] This limitation in the data may inadvertently limit the investment options in constructing portfolios and lead to overrepresentation of certain types of companies in portfolios. Thus, this could result in less reliable and less representative emission metrics. Therefore, fund managers may need to take extra steps to ensure that GHG metrics are reliable and consistent with good-faith estimations.[418] To do so, fund managers may need to ensure that they rely on information from data services with adequate coverage per asset class, sound methodologies to estimate missing values, and quality assurance.[419] Otherwise, this may direct capital to certain types of companies, which may lead to less efficient capital allocations.

Under the proposal, a wide range of asset classes including derivatives would be included in calculating GHG metrics. We understand funds may incur some costs to calculate the values of the derivatives to comply with this proposed requirement. However, we also understand ESG funds currently hold relatively small derivatives positions.[420] Therefore, we anticipate costs associated with incorporating derivatives in GHG metrics would not be substantial.

An environmentally focused fund would also be required to disclose the financed Scope 3 emissions of its portfolio companies, to the extent that Scope 3 emissions data is reported by the fund's portfolio companies.[421] The proposal would also require funds to use Scope 3 emissions that are reported by a portfolio company in the company's most recently filed regulatory report, if available. In the absence of reported Scope 3 emissions data from a portfolio company in a regulatory report, the fund would be required to use Scope 3 emissions information that is otherwise publicly provided by the portfolio company, such as a publicly available sustainability report published by the company. By requiring funds to disclose Scope 3 emissions only to the extent that Scope 3 emissions data are publicly available, funds would not have to estimate Scope 3 emissions of portfolio companies. Therefore, the compliance burden associated with this requirement would be somewhat alleviated. Otherwise, the compliance costs could be higher because most Scope 3 emissions data would be estimated and also funds may need to take extra steps to ensure the quality of Scope 3 estimates. In addition, funds would be required to disclose Scope 3 emissions using a portfolio carbon footprint metric alone, not the WACI, thus the compliance costs would be relatively contained while still providing useful information to investors.

While certain environmentally focused funds would be required to calculate and disclose GHG metrics, funds promoting social or governance related goals would not be required to provide these quantified metrics. As a result, compliance costs for S- or G-focused funds would be substantially lower than E-focused funds. To the extent that investors view S- and G-focused funds as substitutes for E-focused funds, the proposal may create a competitive disadvantage for the latter and comparatively disfavor growth in those funds. Similarly, the proposed rules may lead to the growth of the private funds over registered funds, as the proposed rules do not require environmentally focused private funds to calculate and disclose GHG metrics. In this regard, the proposed rules may affect capital allocations among E-, S- and G-focused funds and also capital allocation between registered funds and private funds within E-focused funds. However, some private funds have committed to voluntarily reporting GHG emissions of underlying portfolio companies.[422] Therefore, to the extent that private funds report GHG emissions and other ESG-related data, concerns that the proposed requirements on registered funds may potentially direct more capital toward private funds and thus favor more growth in private funds, would be mitigated.

By requiring certain metrics over other ones available in the market, the proposed rules may influence current voluntary industry practices and dissuade the industry from using or developing alternative metrics, and thus may discourage innovations in this area. While according to an international survey,[423] the WACI was the most commonly disclosed metric, there are other metrics voluntarily disclosed by some financial institutions.[424] However, we understand that the proposed GHG metrics have been gaining a wide acceptance in many market participants and third-party ESG frameworks have been coalescing around them.[425] In this regard, we do not anticipate this choice of metrics to disrupt current market trends. Instead, it may solidify the existing trend toward reporting the two required metrics. Further, many common alternative metrics (*e.g.* carbon intensity) are simple variations of the two required metrics (*e.g.* portfolio carbon footprint) that would involve little additional data collection or effort to report. Nonetheless, under the proposal, funds currently providing the required metrics may have a slight competitive advantage over funds currently providing alternative metrics.

If more corporate issuers publicly disclose their emissions, it would reduce the compliance costs of this

[416] *See* Int'l Platform on Sustainable Fin., *supra* footnote 307.

[417] *Id.*

[418] Companies report their global GHG emissions to the CDP. Companies are further encouraged to report their global GHG emissions broken down into five sub-categories, (i) Activities, (ii) Business Units, (iii) Facilities, (iv) GHG types and (v) Regions. One study examined these voluntary disclosures to the CDP. According to this study, if companies follow the Precautionary Principle ('If in doubt, err on the side of the planet not on the side of the company') thus act ''in good faith,'' global GHG emissions would be larger than the sum of breakdowns. This study estimated the percentage of companies that violate a ''good-faith'' estimation principle (*i.e.* global GHG emissions are smaller than the sum of breakdowns). In 2019, 16.7 percent of companies failed to meet this test (*i.e.* reported global emissions are smaller than the sum of breakdowns), suggesting that companies did not act in good faith. It is worth noting that this study examined the corporate issuers' disclosures. Therefore, the findings of this study may not be applicable to funds' disclosures. *See* Sergio Garcia Vega, Andreas G. F. Hoepner, Joeri Rogelj, and Frank Schiemann, *Carbon Disclosure Quality: Oil & Gas,* UCD Michael Smurfit Graduate Business School (Nov. 2021).

[419] *See* NGFS, *Progress Report on Bridging Data Gap* (May 2021), *available at https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf, supra* footnote 343.

[420] We analyzed data from form N–PORT to better understand asset holdings of funds with names containing ''Sustainable,'' ''Responsible,'' ''ESG,'' ''Climate,'' ''Carbon,'' or ''Green'' as of Sept. 2021. According to this analysis, less than 1% of holdings are in derivative securities. Note that the data used in this analysis may undercount or over-count funds incorporating ESG factors in their investment strategies. For instance, some mutual funds and ETFs may not have fund names containing these ESG-related terms, although they incorporate on ESG factors in their investment strategies. In this respect, this estimate may undercount the number of funds with ESG strategies. Some funds with names containing ESG terms, however, may consider ESG factors along with many other factors in their investment decisions. In this respect, this estimate may then over-count the number of funds with ESG strategies.

[421] *See* proposed Instruction 1(d)(x) of Item 27(b)(7)(i)(E) of Form N–1A; proposed Instruction 1(d)(x) of Item 24.4.g.(2)(B) of Form N–2.

[422] *See* section III.B.2 (for more detailed discussion).

[423] *See* CDP Report, *supra* footnote 119.

[424] In an international survey of financial institutions, the metric most commonly disclosed by asset managers was the WACI (12%), followed by exposure to carbon-related assets, carbon intensity, other, and (Portfolio) carbon footprint, in descending order. *Id.*

[425] *See* discussion in section III.B.5.

proposal.[426] Moreover, the data disclosed by corporate issuers through regulatory filings would be higher quality and more reliable. In addition, fund managers would be able to obtain most of the emissions data from one location through regulatory filings, thus reducing the time and resources used for collecting such data. As a result, if more corporate issuers disclose their emissions through regulatory filings with the SEC, fund managers would incur lower costs to obtain, process, and analyze the emissions data underlying such investments. In this regard, the costs for funds (and to their investors and clients, to the extent that such costs are passed down) to produce the proposed GHG metrics would be reduced to the extent that underlying emissions data would be more comprehensive, easier to obtain, better prepared for use, and easily verifiable.

Under the current regulatory regime, funds need to collect and compile underlying data themselves or rely on services from ESG providers.[427] Therefore, smaller funds with fewer resources may be at a competitive disadvantage to larger funds with more resources. However, if more corporate issuers disclose their emissions through regulatory filings, it may enhance the competitiveness of smaller funds relatively more than larger funds.[428]

(d) Inline XBRL

(1) Benefits

The additional provision requiring Inline XBRL tagging of the new ESG disclosures in fund registration statements (filed on Forms N–1A, N–2, N–8B–2, and S–6) and in fund annual reports (filed on Form N–CSR or Form 10–K) would benefit investors by making the disclosures more readily available for aggregation, comparison, filtering, and other analysis, thus increasing transparency. XBRL requirements for public operating company financial statement disclosures have been observed to reduce information processing and agency costs, thus increasing transparency by infusing more company-specific information into the investment markets.[429] Investors with access to XBRL analysis software may directly benefit from the availability of the fund ESG disclosures in Inline XBRL, whereas other investors may indirectly benefit from the processing of Inline XBRL disclosures by information intermediaries such as financial analysts.[430] In that regard, XBRL requirements for public operating company financial statement disclosures have been observed to increase the number of companies followed by analysts, decrease analyst forecast dispersion, and, in some cases, improve analyst forecast accuracy.[431] Should similar impacts on the informational environment of analysts arise from fund ESG disclosure tagging requirements, this would likely enhance the informational environment of fund investors (both retail and institutional) as well, because there is evidence that fund investors are influenced by analysts' assessments of funds, including their sustainability ratings.[432]

While the observations related to Inline XBRL tagging cited above are specific to operating company financial statement disclosures (including both quantitative and qualitative disclosures in face financial statements and footnotes), and not to non-financial statement disclosures from investment companies such as the proposed fund ESG disclosures, they indicate that the proposed Inline XBRL requirements could directly or indirectly provide investors with increased insight into ESG-related information (such as strategies, proxy voting policies, GHG metrics, et al.) at specific funds and across funds, asset managers, and time periods.

(2) Costs

With respect to the Inline XBRL tagging requirements under the proposed amendments, these

[426] For example, if the Climate Disclosure Proposing Release were to be adopted as proposed, corporate issuers would be required to disclose certain GHG emissions metrics in their regulatory filings with the Commission. Such information could then be used by environmentally focused funds to calculate their GHG emission metrics under this proposal, if the proposal is adopted as proposed.

[427] *See supra* section III.B.5.e (for more detailed discussion).

[428] *See supra* section III.B.5.b.

[429] *See, e.g.,* Yu Cong, Jia Hao, and Lin Zou, *The Impact of XBRL Reporting on Market Efficiency,* 28 J. Info. Sys. 181 (2014) (finding support for the hypothesis that ''XBRL reporting facilitates the generation and infusion of idiosyncratic information into the market and thus improves market efficiency''); Yuyun Huang, Jerry T. Parwada, Yuan G. Shan, and Joey Yang, *Insider Profitability and Public Information: Evidence From the XBRL Mandate* (Working Paper) (2019) (finding XBRL adoption levels the informational playing field between insiders and non-insiders); Patrick A. Griffin, Hyun A. Hong, Joo-Baek Kim, and Jee-Hae Lim, The SEC's XBRL Mandate and Credit Risk: Evidence on a Link between Credit Default Swap Pricing and XBRL Disclosure, 2014 American Accounting Association Annual Meeting (2014) (finding XBRL reporting enables better outside monitoring of firms by creditors, thus leading to a reduction in firm default risk), Jeff Zeyun Chen, Hyun A. Hong, Jeong-Bon, and Kim Ji Woo Ryou, *Information Processing Costs and Corporate Tax Avoidance: Evidence from the SEC's XBRL Mandate* 40 J. Account. Pub. Pol. 2 (2021); (finding XBRL reporting decreases likelihood of firm tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''); Jap Efendi, Jin Dong Park, and Chandra Subramaniam, *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program,* 52 Abacus 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings); Jacqueline L. Birt, Kala Muthusamy, Poonam Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 Account. Res. J. 107 (2017) (finding ''financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors''); Steven F. Cahan, Seokjoo Chang, Wei Z. Siqueira, Kinsun Tam, *The Roles of XBRL and Processed XBRL in 10–K Readability,* J. Bus. Fin. Account (2021) (finding 10–K file size reduces readability before XBRL's adoption since 2012, but increases readability after XBRL adoption, indicating ''more XBRL data improves users' understanding of the financial statements'').

[430] Other information intermediaries that have used XBRL disclosures may include financial media, data aggregators and academic researchers. *See, e.g.,* N. Trentmann, *Companies Adjust Earnings for Covid–19 Costs, But Are They Still a One-Time Expense?,* The Wall Street Journal (2020) (citing XBRL research software provider Calcbench as research source); *Bloomberg Lists BSE XBRL Data, XBRL.org* (2018); Rani Hoitash and Udi Hoitash, *Measuring Accounting Reporting Complexity with XBRL,* 93 Account. Rev. 259–287 (2018).

[431] *See, e.g.,* Andrew J. Felo, Joung W. Kim, and Jeehae Lim, *Can XBRL Detailed Tagging of Footnotes Improve Financial Analysts' Information Environment?* 28 Int'l J. Account. Info. Sys. 45 (2018); Yuyun Huang, Yuan G. Shan, and Joey W. Yang, *Information Processing Costs and Stock Price Informativeness: Evidence from the XBRL Mandate,* 46 Aust. J. Mgmt. 110–131 (2020) (finding ''a significant increase of analyst forecast accuracy post-XBRL''); Marcus Kirk, James Vincent, and Devin Williams, *From Print to Practice: XBRL Extension Use and Analyst Forecast Properties* (Working Paper) (2016) (finding ''the general trend in forecast accuracy post-XBRL adoption is positive''); Chunhui Liu, Tawei Wang, and Lee J. Yao, *XBRL's Impact on Analyst Forecast Behavior: An Empirical Study,* 33 J. Account. Pub. Pol. 69–82 (2014) (finding ''mandatory XBRL adoption has led to a significant improvement in both the quantity and quality of information, as measured by analyst following and forecast accuracy''). *But see* Sherwood L. Lambert, Kevin Krieger, and Nathan Mauck, *Analysts' Forecasts timeliness and Accuracy Post-XBRL,* 27 Int'l. J. Account. Info. Mgmt. 151–188 (2019) (finding significant increases in frequency and speed of analyst forecast announcements, but no significant increase in analyst forecast accuracy post-XBRL).

[432] *See supra* footnote 282 (and accompanying text). Similarly, retail investors in operating companies have generally been observed to rely on analysts' interpretation of company disclosures rather than reading the disclosures themselves. *See, e.g.,* Alastair Lawrence, James P. Ryans, and Estelle Y. Sun, *Investor Demand for Sell-Side Research,* 92 Account. Rev. 123–149 (2017) (finding the ''average retail investor appears to rely on analysts to interpret financial reporting information rather than read the actual filing''); Daniel Bradley, Jonathan Clarke, Suzanne Lee, and Chayawat Ornthanalai, *Are Analysts' Recommendations Informative? Intraday Evidence on the Impact of Time Stamp Delays,* 69 J. Fin. 645–673 (2014) (concluding ''analyst recommendation revisions are the most important and influential information disclosure channel examined'').

requirements would result in additional compliance costs for funds that hold themselves out as implementing ESG strategies and marketing themselves to investors or clients as such, because such funds will be required to tag and review the newly required ESG disclosures in registration statements and annual reports before filing them with the Commission.[433] Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and investment companies to fulfill their structuring requirements, and some evidence suggests that, for smaller operating companies, XBRL compliance costs have decreased over time.[434]

In addition, all registered open- and closed-end funds and BDCs are currently subject to Inline XBRL structured data requirements.[435] As such, to the extent these funds comply with Inline XBRL compliance requirements internally rather outsourcing to an external service provider, they may already be familiar with Inline XBRL compliance software and may be able to leverage existing Inline XBRL preparation processes and/or expertise in complying with the proposed fund ESG disclosure requirements. This would limit the compliance costs arising from the proposed tagging requirements to only those costs related to selecting additional Inline XBRL tags for the new fund ESG disclosures and reviewing the tags selected. By contrast, unit investment trusts are not be subject to current or forthcoming Inline XBRL requirements in their Commission filings, so they would incur comparatively higher compliance costs as a result of the Inline XBRL tagging requirements under the proposed amendments.[436] We anticipate that such compliance costs would be borne by the funds, and that the costs may ultimately be passed on to investors by way of higher expenses or fees.[437]

(e) Adviser Brochure (Form ADV Part 2A)

(1) Benefits

The proposed amendments to the adviser brochure would benefit clients and prospective clients in a similar way that proposed disclosures by funds would benefit investors. The proposed amendments to adviser brochure (Form ADV Part 2A) are designed to provide clients with information that covers the same topics as the proposed requirements for funds considering ESG-related factors. Specifically, the additional information from the proposed amendments would allow clients and prospective clients to better evaluate the ESG-related services that advisers offer and thus increase comparability across advisers. Because adviser brochures usually encompass the entirety of an adviser's lines of businesses, the proposal would benefit clients and prospective clients by enhancing their understanding of how the advisers consider ESG factors when providing investment recommendations or making investment decisions. As a result, the proposed disclosures would help clients in selecting advisers that are aligned with their investment objectives.

Additionally, the brochure discloses key aspects of the advisory relationship, including relationships with affiliates and third party ESG providers that may present conflicts of interest and affect the adviser-client relationship. This information would be particularly beneficial to prospective clients by allowing them to make an informed decision when they select advisers. Furthermore, disclosing conflicts of interest could itself lessen the severity of the agency problem in relationships between advisers and clients.[438] The requirement to disclose potential conflicts of interests could enhance allocative efficiency by allowing investors to better match with advisers based on their preferences, and furthermore, increase competition among advisers. Additionally, it could promote competition among ESG providers in the dimensions of the quality and the reliability of the ratings and data that they provide to advisers and clients.

(2) Costs

Because the proposed amendments to the adviser brochure (Form ADV Part 2A) share many similarities with the proposed fund disclosures, many of the same cost elements associated with fund prospectuses and annual reports would be applicable for adviser brochures as well.[439] If advisers provide multiple lines of ESG-related business services, those advisers would incur higher costs as they would be required to provide detailed disclosures encompassing their entire business. In this regard, the effects of size on compliance costs would be less clear for advisers, because advisers with complicated business structures may not achieve economies of scale in complying with the proposed rules. If larger advisers tend to provide multiple lines of ESG related services to various types of clients including SMA clients and private funds, the advantages of large size may be less applicable. Conversely, for smaller advisers providing more specialized

[433] *See infra* section IV.E (summarizing the initial and ongoing burden estimates associated with the proposed tagging requirements for Forms N–1, N–2, N–8B–2, S–6, N–CSR, and 10–K. For current XBRL filers (*i.e.,* funds other than unit investment trusts), we estimate the tagging requirements would impose an initial internal cost of $854 per fund (2.4 hours * $356 hourly wage rate = $854), an annual internal cost of $356 per fund (1 hour * $356 hourly wage rate = $356), and an annual external cost of $50 per fund. For new XBRL filers (*i.e.,* unit investment trusts), we estimate the tagging requirements would impose an initial internal cost of $4,272 per fund (12 hours * $356 hourly wage rate = $4,272), an annual internal cost of $1,780 per fund (5 hours * $356 hourly wage rate = $1,780), and an annual external cost of $1,000 per fund).

[434] An American Institute of Certified Public Accountants (''AICPA'') survey of 1,032 public operating companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small Companies,* Accounting Today (Aug. 15, 2018) *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies.* Note that this survey was limited to small operating companies; investment companies have substantively different tagging requirements, and may have different tagging processes as well. For example, compared to smaller operating companies, smaller investment companies are more likely to outsource their tagging infrastructure to large third-party service providers. As a result, it may be less likely that economies of scale arise with respect to Inline XBRL compliance costs for investment companies than for operating companies. Additionally, a NASDAQ survey of 151 listed issuers in 2018 found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter. *See* letter from Nasdaq, Inc. (Mar. 21, 2019), Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)]. Like the aforementioned AICPA survey, this survey was limited to operating companies.

[435] *See supra* footnotes 184–186.

[436] *See infra* section IV.E. To the extent unit investment trusts are part of the same fund family as other types of funds that are subject to Inline XBRL requirements, they may be able to leverage those other funds' existing Inline XBRL tagging experience and software, which would likely mitigate the initial Inline XBRL implementation costs that unit investment trusts would incur under the proposal.

[437] *See supra* section III.C.2.a.

[438] *See* Sunita Sah and George Loewenstein, *Nothing to Declare: Mandatory and Voluntary Disclosure Leads Advisors to Avoid Conflicts of Interest,* 25.2 Psychological Science 575–584 (2014). This experimental study suggests that when an adviser needs to disclose conflicts of interest, the adviser eliminates conflicts of interest, thus the adviser could disclose only the absence of conflicts of interest.

[439] Based on the results of the PRA analysis, the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to both Form ADV Part 2A and Part 1A would be approximately $912.75 per RIA, $83.85 per ERA, and $55.90 per private fund advised.

services to a certain clientele alone, the compliance cost increase would be accordingly low. Generally, compliance costs would be mitigated to the extent that some advisers incorporating ESG factors already disclose ESG-related information in their adviser brochure.

In addition, the proposed requirements may lead advisers to conduct reviews of their policies and procedures governing ESG-related investment strategies and services, and refine their policies and procedures accordingly. For instance, an adviser may review its current policies and procedures concerning the procurement of the third-party ESG providers. As a result of such a review, an adviser may decide to modify its policies and procedures, and/or change its current practices concerning the procurement of ESG providers. Implementing these changes could increase compliance costs, which could ultimately, at least to some degree, be passed on to clients in the form of higher fees.

3. Regulatory Reporting

As discussed above, we are proposing to amend Forms N–CEN and ADV Part 1A for funds and advisers, respectively, to collect census-type information about funds' and advisers' use of ESG factors and ESG providers. Because each of Form N–CEN and Form ADV Part 1A is submitted in a structured, XML-based data language specific to that Form, the proposed census-type information would be structured (*i.e.,* machine-readable).

(a) Form N–CEN

We propose to amend Form N–CEN to add proposed Item C.3(j) that would ask questions tailored to an ESG fund's strategies and processes, including ESG factors it considers, ESG strategies employed, and, if applicable, whether it engages in proxy voting or engagement with issuers to implements its ESG strategy.[440] The proposed amendments to Form N–CEN would also collect information regarding whether a fund considers ESG-related information or scores provided by ESG providers in implementing its investment strategy.[441] If so, the fund would be required to provide the legal name and LEI, if any, or provide and describe any other identifying number of each such ESG provider. A fund would also be required to report whether the ESG provider is an affiliated person of the fund. Further, the proposed amendments to Form N–CEN would require a fund to report whether the fund follows any third-party ESG frameworks.[442] Also, index funds would be required to report the name and legal identifier (if applicable) of the index the funds track.[443]

(1) Benefits

The proposed amendments to Form N–CEN would complement the proposed narrative forms of investor facing disclosures by collecting structured ESG-specific information designed to provide the Commission, investors, and other users of the data, such as ESG providers, with consistent and comparable data. The structured (*i.e.,* machine-readable) nature of the information would enhance the ability of the Commission, investors, and other market participants to more effectively analyze data reported through Form N–CEN. For example, although ESG strategies and processes employed by the fund are disclosed in narrative forms in the fund's prospectus and annual report, the additional information collected through Form N–CEN would allow the Commission, investors and other market participants to easily identify and compare funds by the ESG factors the funds incorporate, the ESG strategies the funds employ, and whether ESG factors are considered as part of the funds' proxy voting policies and procedures. Investors and clients would benefit specifically as they could use this data from N–CEN, together with the narrative ESG information we are proposing in investor-and client-facing disclosures, to make more informed decisions about their selection of funds or advisory services that consider ESG factors.

The information collected on whether the ESG provider is an affiliated person of the fund would assist the Commission to more efficiently assess and monitor potential conflicts of interest and risks created by fund's relationship with an affiliated ESG provider, which would allow the Commission to respond more effectively if needed, or inform the Commission in regulatory policies, examinations, or enforcement actions. Such collection of information could also benefit investors and other market participants in monitoring conflicts of interest that could exist when an ESG provider is also an affiliated person of the fund.

The information collected on use of ESG providers would benefit investors, other market participants, and the Commission in helping to better compare and analyze how ESG strategies differ across ESG providers. For instance, the proposed amendments to Form N–CEN would allow investors to more easily compare ESG providers and assess the effectiveness of strategies employed by funds using such providers. As a result, investors would be able to better select funds based on providers used, which could lead to increased competition among ESG providers. Moreover, such increased competition among ESG providers could encourage the development of new methodologies in ESG ratings and in indexes tracking ESG factors, which could stimulate more innovation in this area. Enhanced transparency and comparability among ESG providers and indexes would improve investors' confidence in these instruments, thus facilitate capital formation.

Similarly, as in investor facing disclosures, an ESG-Focused Fund would be required to name any third-party ESG frameworks it follows under the proposed amendments to Form N–CEN. As part of an ESG strategy, this information would help the Commission, investors and other market participants to better understand and assess trends in the market based on the frameworks.

In addition, we propose to amend Form N–CEN to require all funds tracking an index, including ESG-Focused Funds tracking a certain index, to report the name and LEI, if any, or provide and describe any other identifying number of the index the funds track. This proposed amendment would benefit the Commission, investors and other market participants because it would allow them to more efficiently identify the use of particular indexes across the fund industry.[444]

We additionally believe investors would benefit as they could use this data from Form N–CEN, together with the narrative ESG information we are proposing in investor-facing disclosures, to make more efficient and informed decisions about their selection of funds

[440] As discussed in section II.B.X., a fund would be required to indicate whether or not it incorporates ESG factors. A fund that does incorporate ESG factors would then be required to report, among other things: (i) the type of ESG strategy it employs (*i.e.,* Integration, Focused, or Impact), (ii) the ESG factor(s) it considers (*i.e.,* E, S, and/or G); (iii) the method it uses to implement its ESG strategy (*i.e.,* tracking an index, applying an exclusionary and/or inclusionary screen, and/or engaging with issuers) and (v) if applicable, whether it considers ESG factors as part of its proxy voting policies and procedures. *See* Proposed Item C.3(j)(i) through (v) of Form N–CEN. The proposed amendments to Form N–CEN does not apply to BDCs because they do not file Form N–CEN. *See supra* footnote 166.

[441] Proposed item C.3(j)(iv) of Form N–CEN.

[442] Proposed item C.3(j)(vi) of Form N–CEN.

[443] *See* proposed Item C.3(b)(i) of Form N–CEN.

[444] A LEI would provide more accurate identification of an index than using the name of the index alone, because different sources may use different variations on an index's name (*e.g.,* different abbreviations or punctuation), whereas an index's LEI is unique and unchanging.

or advisory services that consider ESG factors, which would also promote competition and capital formation.

(2) Costs

Funds that incorporate ESG factors into their investment strategies would incur costs associated with the proposed amendments to Form N–CEN. The incremental cost associated with these requirements would not be substantial, however, because most of the information required to be reported on Forms N–CEN would be already collected, reviewed and prepared to comply with the proposed requirements of investor facing narrative disclosures. However, to the extent that the proposed amendments to Form N–CEN would require additional data elements not required in investor facing disclosures, the compliance costs of the proposed Form N–CEN amendments would increase, which could ultimately be passed on to investors to some degree in the forms of higher expenses or fees. For instance, all index funds would incur costs to provide the information about what index it tracks. Any ESG-Focused Funds relying on services from ESG providers would provide detailed information about ESG providers, such as legal name and LEI (if any), or provide and describe other identifying numbers of each such ESG provider. It would also show whether an ESG provider is an affiliated person of the fund. Thus, funds relying on multiple ESG providers would incur higher costs than funds that have no relationship with any ESG providers. In addition, larger fund families would likely experience economies of scale, which may create a competitive advantage for larger fund families compared to smaller fund families.[445]

(b) Form ADV Part 1A Reporting

As discussed above, we are proposing amendments to Form ADV Part 1A designed to collect information about an adviser's uses of ESG factors in its advisory business.[446] Specifically, these proposed amendments would expand the information collected about the advisory services provided to SMA clients and private funds.

(1) Benefits

The information in Form ADV Part 1A would be generally the same as information we are proposing to collect on Form N–CEN regarding ESG factors, such as type of strategy (*i.e.,* integration, focused, and impact). Also, like Form N–CEN, Form ADV Part 1A is submitted using a structured data language (specifically, an XML-based data language specific to Form ADV), so the new information would be structured (*i.e.,* machine-readable). We believe collecting this information would provide the Commission and investors with important information about advisers' considerations of ESG factors in their advisory businesses, including the specific factors they consider, the types of ESG-related strategies they employ, the use of voluntary third-party frameworks, and whether they conduct other business activities as ESG providers or have related persons that are ESG providers that could indicate potential conflicts of interest.[447]

This information would increase comparability across advisers and advance our regulatory goal of gaining a more complete understanding of advisers' consideration of ESG factors in their SMA and private fund management businesses. We believe the proposed new reporting requirements would improve our ability to understand the ESG landscape and monitor trends among investment advisers in this emerging and evolving area. We also believe that the additional information would benefit current and prospective clients of SMAs and investors in private funds. In particular, SMA clients and investors in private funds would benefit from the proposed amendments to Form ADV Part 1A because they would be able to more efficiently select an adviser who meets their needs based on the additional information reported. This enhanced efficiency could in turn promote competition among advisers providing ESG-related services. Further, we believe the proposed reporting requirements would better allow the Commission to assess the potential conflicts of interest and risks created by relationships between advisers and affiliated ESG providers. We also believe that the proposed reporting requirements may assist the public in better understanding advisers' conflicts of interests when using the services of affiliated ESG providers, or when the adviser offers ESG provider services to others. This better understanding could increase public confidence in advisers' ESG-related service and further facilitate capital formation.

Costs

Investment advisers that incorporate ESG factors into their investment strategies would incur costs associated with the proposed amendments to Form ADV Part 1A. To the extent that advisers incur higher costs, the increased costs would be, at least in part, passed on to clients of SMAs and private funds, thus investors. The incremental cost associated with these requirements would not be substantial, however, because most of the information required to be reported on Form and ADV Part 1A would be already collected, reviewed and prepared to comply with the proposed amendments to adviser brochures (Form ADV Part 2A). The proposed amendments to Form ADV Part 1A would require additional information that would not be disclosed in adviser brochures, such as the adviser's use of ESG strategies for SMA clients and private funds. These additional requirements would result in additional compliance costs. Therefore, advisers whose business models contain many SMA clients and private funds would experience higher increases in compliance costs associated with Form ADV Part 1A proposed amendments relative to advisers without any SMA clients and private funds.[448]

D. Reasonable Alternatives

1. Uniform Narrative Disclosure Requirements for ESG-Integration and Focused Funds

The proposed amendments for registered funds are designed to require more or less detail about a fund's ESG investing depending on the extent to which a fund considers ESG factors in its investment process. Specifically, Integration Funds would provide more limited disclosures, whereas ESG-Focused Funds would be required to provide more detailed information.

As an alternative, we could require Integration Funds to disclose the same level of detail about their ESG investing as ESG-Focused Funds. This option would, however, increase information processing costs for some investors as the distinction between Integration Funds and ESG-Focused Funds would be less salient. Thus, investors would sift through disclosures to determine whether a fund is an Integration or Focused Fund. Although some additional details about ESG investing

[445] Based on the results of the PRA analysis, the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to Form N–CEN would be approximately $351 per fund for ESG related disclosure requirements and $157.50 per fund for index fund related requirements.

[446] *See supra* section II.C.2.

[447] *See supra* section II.C.3.b.

[448] Based on the results of the PRA analysis, the annual direct paperwork cost burdens attributable to information collection requirements in the proposed amendments to both Form ADV Part 2A and Part 1A would be approximately $912.75 per RIA, $83.85 per ERA, and $55.90 per private fund advised.

provided by Integration Funds could be useful for some investors, the option also could require Integration Funds to provide lengthy disclosures about ESG investing and lead to Integration Funds overemphasizing their ESG credentials. Under this option, an investor may assume the fund considers ESG factors similarly to an ESG-Focused Fund with disclosures of similar length and detail, making it more difficult for the investor to select a fund investment that meets the investor's expectations. We also considered requiring ESG-Focused Funds to provide the more detailed disclosures required by Impact Funds, but had similar concerns regarding such additional disclosures for investors.

2. More Standardized Disclosures

The proposed disclosures for registered funds and advisers are designed to provide ESG-related information in narrative formats as well as standardized formats. For instance, all ESG-Focused Funds would provide—in an ESG Strategy Overview table in the fund's prospectus—concise ESG-related disclosure, in the same format and same location in a tabular format. Part of the ESG Strategy Overview table would be further standardized by utilizing a ''check-box'' format, while the rest would rely on brief descriptions provided by funds. Facilitating a layered disclosure approach, lengthier disclosure or other information would be provided later in the prospectus. Similarly, advisers would provide census-type information on Form ADV Part 1A about their uses of ESG factors. Proposed amendments to the Form ADV brochure (Part 2A brochure and Appendix 1, the Wrap Fee Program Brochure) would include information in a narrative form about ESG practices from advisers that incorporate ESG factors as part of their advisory business.

As an alternative, we could require more standardized disclosures (without any narrative descriptions) for funds and advisers, for instance, by utilizing one standardized tabular format in a ''check the box'' style. By having all information available in one location and in the same format, this alternative could further enhance the comparability across funds and advisers, respectively. However, this alternative approach may risk oversimplifying ESG-related information to fit in a pre-determined standardized format. For instance, funds and advisers would not be able to explain nuanced approaches or complex strategies if the information does not fit neatly within the standardized form. Under this approach, investors may lose details and nuances that could be valuable to their investment decisions. Further, ESG investing is still evolving in the market. As a result, if the pre-determined standardized disclosure format becomes stale or outdated, the utility of the standardized disclosure could be further reduced. Considering these potential effects, we propose an approach that combines standardized disclosures with narrative disclosures, which could better assist investors by providing information consistently and concisely through standardized disclosures, while reserving the flexibility to contextualize ESG investing strategies and practices in descriptive, non-standardized disclosures.

3. Alternative Approach to Layered Disclosure for Funds

We are proposing certain specified disclosures to go in the summary section of the prospectus or, for closed-end funds, information that would precede other disclosures in the same item, and then specifying that more detailed information be placed later in the prospectus. As an alternative, we considered placing all requirements in the statutory prospectus, *e.g.,* Item 9 of Form N–1A, and not specifying the minimum information required in the summary section, including not requiring the use of the Strategy Overview Table. This alternative would leave the determination of what information should be included under the existing sections of the summary prospectus to the funds. However, we believe that such an approach could impede investors' ability to compare different ESG funds, as fund managers would make different choices about the placement of disclosures. Some funds might include less information than we are proposing in the summary section of the prospectus, while others might include more detailed disclosures than we are proposing, which might overwhelm some investors seeking a short, comparable overview.

4. More Granular Reporting for Advisers

We are proposing to require advisers that consider ESG factors as part of their advisory business to provide enhanced ESG-related disclosures to current and prospective advisory clients in the adviser brochure, while also collecting information on advisers' use of ESG factors in their advisory business in Form ADV Part 1A. For example, we propose to require an adviser to provide a narrative description of the ESG factors it considers for each significant investment strategy or method of analysis for which it considers any ESG factors, including whether it utilizes internal or external methodologies, inclusionary or exclusionary screens, or relies on an index, in the adviser brochure.

As an alternative, we considered requiring more detailed information from advisers who consider ESG factors or pursue ESG-focused, or impact strategies. For example, we considered requiring these advisers to report aggregated ESG client holdings statistics and GHG metrics. However, unlike registered funds that generally pursue a single strategy across their portfolio, advisers may implement a variety of strategies for clients. Because ESG metrics under this option would be aggregated across various clients pursuing potentially disparate strategies, it would be difficult for advisers to provide detailed quantitative ESG reporting at the adviser level. The aggregation also would likely impede the utility of this type of information for both investors and the Commission because any aggregated ESG information reported by the adviser would reflect the combined holdings of all its clients, each of whom may have different investment objectives, time horizons, and approaches to ESG investing. Accordingly, we believe it is appropriate to propose the narrative disclosures in the adviser brochure while collecting more limited census data on advisers' ESG practices in ADV Part 1A. This approach would provide investors with clear, consistent, and decision-useful information about adviser ESG practices while still providing the Commission with enhanced census information on ESG developments in this evolving area.

5. GHG Metrics Reporting Requirements

We considered alternatives for several aspects of the proposed GHG reporting requirements including the covered scope of funds, covered asset classes, and required metrics.

(a) Covered Scope of Funds

The proposal would require only environmentally focused funds to disclose GHG metrics, which are funds that consider environmental factors in response to Item C.3(j)(ii) on Form N–CEN, but do not affirmatively state that they do not consider issuers' GHG emissions as part of their investment strategy in the ''ESG Strategy Overview'' table in the fund's prospectus.[449] As an alternative, we could require all funds that consider environmental factors in response to Item C.3(j)(ii) on Form N–CEN to disclose GHG metrics, including

[449] *See supra* footnote 123 and accompanying text.

those that affirmatively state that they do not consider issuers' GHG emissions as part of their investment strategy in the fund's prospectus. As another alternative, we could further require all ESG-Focused Funds to disclose GHG metrics.

The benefits of these alternatives would likely be limited, while they would increase compliance costs across ESG-Focused Funds. Investors who most value GHG disclosures may already invest in ESG-Focused Funds that consider GHG emissions as part of their strategy.

Accordingly, these alternatives would likely target investors who place a lower value on GHG disclosures. For example, some investors may only consider governance-related factors of portfolio companies within ESG-Focused Funds. Also, GHG metrics produced by funds pursuing non-climate related goals could potentially confuse investors, as investors may interpret GHG metrics as an indication that the fund considers climate-related factors. Therefore, we believe it is appropriate to narrow the scope of covered funds, as proposed, by excluding funds from GHG metrics reporting requirements if they affirmatively state that they do not consider portfolio company GHG emissions as part of their ESG strategy. This tailored approach would provide GHG metrics information to investors who seek it without increasing burdens on funds with a different focus.

As another alternative, we could expand the proposed requirement to disclose GHG emissions information to Integration Funds by requiring disclosure of GHG metrics from all Integration Funds that indicate that they consider environmental factors on Form N–CEN unless they affirmatively state in their principal investment strategies that they do not consider GHG emissions as part of their integration process, or alternatively requiring such disclosures from Integration Funds that specifically consider the GHG emissions associated with the portfolio companies in which they invest. These alternatives could help investors who consider environmental factors with their investment decisions. Because these alternatives would make GHG metrics information more widely available across all funds that consider environmental factors to any degree, or across all funds that specifically consider GHG emissions, and help investors in these funds make comparisons across Integration Funds or between Integration Funds and ESG-Focused Funds. However, investors in Integration Funds may assign less utility to GHG metrics disclosed by those funds than GHG metrics disclosed by ESG-Focused or ESG-Impact funds since, by definition, environmental factors are but one of multiple factors these funds consider. Some investors may also misunderstand the GHG metrics disclosure as a signal that the Integration Fund considers climate-related factors more significantly than other factors, which may lead investors to misdirect their investments, affecting capital allocations among Integration Funds and ESG-Focused Funds.

Additionally, these alternatives would impose higher compliance costs on Integration Funds that consider environmental factors or specifically consider GHG emissions. Although it is difficult to precisely estimate the number and scope of Integration Funds, some commenters suggested that a substantial number of funds would be potentially considered Integration Funds as defined in this release.[450] Therefore, the potential impacts of alternatives that apply to all Integration Funds may be significant, although alternatives that apply only to Integration Funds that specifically consider portfolio company GHG emissions would be more limited, as we believe there are a limited number of such funds based on funds' current disclosures. In addition, many Integration Funds may not currently devote resources to calculate GHG metrics, let alone disclose them, as GHG emissions may only be one of many factors that Integration Funds consider in their investment selection process. As a result, Integration Funds would likely incur significantly higher costs to comply with GHG metrics requirements. Facing high compliance costs associated with GHG metrics, these options may incentivize a new fund or even an existing fund to operate without considering environmental factors or portfolio company GHG emissions specifically. These alternatives may inadvertently reduce the number of choices available for investors who seek to invest in environmental funds.

The additional compliance costs of these alternatives, relative to the rule as proposed, would be reduced to the extent that more corporate issuers were to publicly disclose their emissions.[451]

(b) Covered Asset Classes

We propose GHG metrics that include a wide range of asset classes. We understand that, in current practices, sometimes, portfolio carbon footprint metric uses the market capitalization of a company, which counts only equity, not debt, of a company, as a denominator.[452] As an alternative, therefore, we could have included only equities as the denominator in calculating the portfolio carbon footprint metric. However, we believe it is important to take into account both equity and debt because both equity and debt finance the company's operations, thus both contribute indirectly to its emissions. Otherwise, two companies with the same GHG emissions could result in different metric numbers depending on particular combinations of debt and equity (*i.e.,* capital structures) that two companies use to finance their operations. This could be confusing to investors, moreover, it may affect capital allocations between equity and debt. In general, if certain asset classes are not covered in GHG metrics, it may incentivize some funds to invest more in one asset class over another, so that GHG metrics would look improved even though underlying exposures to climate risks remain the same, which could confuse investors. Therefore, climate risks would not be accurately reflected in asset prices, and may lead to inefficient capital allocations through distorted metrics. To mitigate these concerns, under the proposal a fund would be required to include in GHG metrics the emissions attributable to the fund's investment in any ''portfolio company.'' A ''portfolio company'' would include an issuer engaged in or operating a business or activity that generates GHG emissions, as well as an investment in a registered or private fund.[453] Under the proposal, a fund's GHG emissions would include direct investments in portfolio companies as well as when a fund invests through a derivative. Under the proposal, we understand funds may incur some costs to assign value to the derivatives. As another alternative, we could exclude holdings in derivative securities from GHG metrics. This alternative would be less costly than the proposal. However, we believe potential cost savings from excluding derivatives in GHG metrics would not be substantial, because currently, holdings in derivative

[450] *See* section III.B.2. Also see Morningstar Comment letter.

[451] *Cf. supra* footnote 426 and accompanying text.

[452] We understand, however, that leading practices in the financial sector are more in line with our proposed approach that includes both equity and debt. *See* PCAF, *The Global GHG Accounting & Reporting Standard for the Financial Industry,* First Edition (Nov. 18, 2020). (for detailed discussion).

[453] We recognize that it is conceptually difficult to attribute emissions to certain types of derivative securities or certain asset classes such as interest swaps, foreign currencies or cash management vehicles. These kinds of investments would not be included in the proposed definition of a ''portfolio company.''

securities are minuscule among ESG funds.[454] Furthermore, this alternative may incentivize funds to try and circumvent disclosure by holding equity exposure as derivative positions, potentially affecting capital allocations and obfuscating their true underlying financing of GHG emissions.

(c) Required Metrics

In the proposal, we require two GHG metrics, portfolio carbon footprint and weighted average carbon intensity. Alternatively, we could permit funds to report a GHG metric of their choice. In this option, funds would have a flexibility to select a metric that they believe most suitable for their investment strategies or investment goals. This flexibility could facilitate the development of new metrics that better reflect the advancement in methodologies measuring emissions or better capture the changes in environmentally focused investment landscapes. On the other hand, in this option, GHG metrics disclosures would be less useful for investors as investors could not easily compare funds based on objective and comparable emission measures of portfolios. Another alternative would be requiring either of the carbon footprint or weighted average carbon intensity metrics, rather than requiring both. This would be a less costly option. However, it would be more difficult to satisfy varying needs and investment goals of investors with only one metric. Furthermore, the incremental cost associated with producing two metrics, instead of one metric, in the proposal would be minimal as the two proposed GHG metrics require almost identical data elements that are publicly available in most cases.[455]

(d) Scope 3 Emissions in Required Metrics

In the proposal, an ESG-Focused Fund that considers environmental factors would be required to disclose the Scope 3 emissions of its portfolio companies, to the extent that Scope 3 emissions data are reported by the fund's portfolio companies. Alternatively, we could require funds to disclose Scope 3 emissions for all portfolio companies regardless of the reporting status of the company, as Scope 1 and 2 emissions of all portfolio companies would be disclosed. However, under this alternative, fund managers would be required to estimate Scope 3 emissions of non-reporting companies, which could be substantially costlier than the proposed rule. Moreover, the utility of fund managers' aggregated estimates of Scope 3 emissions would be somewhat limited at present, as estimated scope 3 emissions tend to be less consistent and reliable due to the current limited data availability and opaque estimation methodologies discussed in section III.B.5. Thus, this alternative would likely generate less benefits to investors in making informed investment decisions.

In calculating the required GHG metrics under the proposal, Scope 3 emissions of the portfolio would be disclosed separately from Scope 1 and 2 emissions. Further, Scope 3 emissions would be disclosed by sector. Alternatively we could include Scope 3 emissions with Scope 1 and 2 emissions in calculating GHG metrics. However, this alternative approach could exacerbate potential double counting issues in measuring emissions at the portfolio level. To the extent that Scope 1 and 2 emissions overlap among companies that the fund invests in, GHG metrics would overstate its financed emissions, thus, may confuse and misguide investors in their decisions. For instance, GHG metrics overstating emissions financed by the fund may inadvertently discourage certain investors from investing in the fund and instead encourage them to directly invest in portfolio companies.[456] In addition, because Scope 3 emissions are less consistent and reliable, GHG metrics including Scope 3 would be less consistent and reliable than GHG metrics with Scope 1 and 2 emissions only. As a result, these metrics would be less useful for investors. With regards to costs, this alternative could be costlier than the proposal, because a larger number of companies do not disclose Scope 3 emissions, and it would be more difficult to estimate due to the complexity of measuring Scope 3 emissions.[457] Another alternative would be to exclude Scope 3 emissions from disclosure requirements altogether. However, Scope 3 emissions account for most of total carbon emissions in some companies.[458] In this regard, this alternative would provide incomplete information about total carbon emissions financed by the fund, and thus may be less useful for investors. This is particularly important because portfolio companies with the same amount of total carbon emissions could have very different Scope 3 emissions depending on how companies arrange their business structures (*e.g.,* reliance on supply chains). In this regard, if Scope 3 emissions are excluded altogether, investors may not fully appreciate nuanced details in GHG metrics of two companies that emit the same total amount of carbon yet have different business arrangements, and may inadvertently misdirect investments. With regards to costs, this alternative would not save significant costs compared to the proposal because the proposal would require funds to disclose Scope 3 emissions to the extent that portfolio companies disclose them.

(e) Non-Reporting Companies

The current proposal requires the inclusion of good faith estimates for GHG emissions, when portfolio companies do not publicly disclose GHG emissions either by regulatory filings or by public publications, in computing GHG metrics of portfolios. Alternatively, the proposal could require the exclusion of these estimates in the computation of GHG metrics. This alternative could be potentially

[454] We analyzed data from form N–PORT to better understand asset holdings of funds with names containing ''Sustainable,'' ''Responsible,'' ''ESG,'' ''Climate,'' ''Carbon,'' or ''Green'' as of Sept. 2021. According to this analysis, less than 1 percent of holdings are in derivative securities. Note that the data used in this analysis may undercount or over-count funds incorporating ESG factors in their investment strategies. For example, even though some mutual funds and EFTs incorporate ESG factors in their investment strategies, some mutual funds and ETFs may not have fund names containing these ESG-related terms. In this respect, this estimate may undercount the number of funds with ESG strategies. Additionally, some funds with names containing ESG terms may consider ESG factors along with many other factors in their investment decisions. In this respect, this estimate may then over-count the number of funds with ESG strategies.

[455] The differences convey that the portfolio carbon footprint uses enterprise value, while the weighted average carbon intensity uses revenue instead. Both revenue and enterprise value of a public company are publicly available.

[456] Investors who want to have more control over portfolio companies may choose to directly invest in such companies. Additionally, direct investments allow investors to more easily implement their investment strategies according to their values/objectives. For example, investors may decide to divest from certain companies that are not aligned with their values. Investors may elect to indirectly invest in portfolio companies through investment vehicles like mutual funds or ETFs for several reasons. These indirect investment vehicles allow investors to diversify their investment risks, and thus achieve more stable returns. Similarly, these indirect investment vehicles allow some investors, especially small investors, to access certain types of assets that they cannot afford to buy otherwise. Investors who indirectly invest in portfolio companies through these vehicles, however, often do not have direct control over portfolio companies.

[457] *See supra* sections III.B.5.a and III.B.5.b (for more detailed discussion regarding scope 3 emissions).

[458] *See supra* sections III.B.5.a and III.B.5.b. Scope 3 emissions represent the largest portion of companies' emissions, in some cases, up to 99 percent of total emissions of the company. *See supra* footnote 395.

less costly than the proposal since the fund would not have to expend its resources to estimate emissions of non-reporting companies. However, because a substantial number of companies do not publicly disclose their emissions as discussed in section III.B.5, resulting GHG metrics would be less representative of actual emissions financed by the fund. As such, this could provide limited benefits to investors, and potentially misguide investors seeking to make informed decisions. Moreover, GHG metrics could be susceptible to manipulation because metrics could appear improved by shifting the composition (reporting status and emissions) of portfolio companies. Further, it may inadvertently disincentivize non-reporting companies from publicly disclosing GHG emissions. As another alternative, we could require environmentally focused funds to only invest a limited percentage in non-reporting companies. However, this alternative could limit investors' investment options. This restriction could disproportionally affect small-cap companies or companies in certain sectors such as communication or technology sectors, as such companies are less likely to publicly disclose emissions.[459] In addition, to the extent that the fund invests in non-reporting companies without any estimations of emissions associated with those non-reporting companies, resulting GHG metrics would be less representative of the emissions financed by the fund, and thus less informative to investors. Similar to the alternative discussed above, to the extent that the fund would not estimate emissions of non-reporting companies, this alternative could be less costly than the proposal.

6. Modified Inline XBRL Requirements

Under the proposed amendments, the new investor-facing disclosures filed by funds on Forms N–1A, N–2, N–8B–2, S–6, N–CSR, and 10–K would be tagged in Inline XBRL. Alternatively, we could have changed the scope of the proposed tagging requirement for the new investor-facing disclosures, such as by limiting this requirement to a subset of funds.

For example, the tagging requirements could have excluded unit investment trusts, which are not currently required to tag any filings in Inline XBRL. Under such an alternative, unit investment trusts would submit the new disclosures in unstructured HTML or ASCII, and thereby avoid the initial Inline XBRL implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors) and ongoing Inline XBRL compliance burdens that would result from the proposed tagging requirement.[460] However, narrowing the scope of tagging requirements, whether based on fund structure, fund size, or other criteria, would diminish the extent of informational benefits that would accrue as a result of the proposed disclosure requirements by making the excluded funds' disclosures comparatively costlier to process and analyze. As such, we are not proposing to exclude any funds or otherwise narrow the scope of Inline XBRL tagging requirements.

E. General Request for Comment

The Commission requests comment on all aspects of this economic analysis, including whether the analysis has: (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed regulations. We request and encourage any interested person to submit comments regarding the proposed regulations, our analysis of the potential effects of the proposed regulations, and other matters that may have an effect on the proposed regulations. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed regulations. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may not have discussed.

In addition to our general request for comment on the economic analysis associated with the proposed amendments, we request specific comment on certain aspects of the proposal:

195. Have we correctly identified the benefits and costs of the proposed rule amendments? Are there additional benefits and costs that we should include in our analysis?

196. We encourage commenters to identify, discuss, analyze, and supply relevant data, information, or statistics related to the benefits and costs associated the proposed rule amendments. We also encourage commenters to supply relevant data, information, or statistics related to Integration, ESG-Focused, and Impact Funds as defined in this release. In particular, we solicit any additional data, information or statistics in connection with our estimated number of funds with ESG-focused strategies as discussed in section III.B of this release.

197. Are there costs to, or effects on, parties other than those we have identified? What are the costs and/or effects?

198. How costly would the proposed GHG metrics disclosure requirements be for environmentally focused funds that consider GHG emissions in their investment strategies?

IV. Paperwork Reduction Act Analysis

A. Introduction

Our proposed rule amendments would have an impact on the current collections of information burdens under the Paperwork Reduction Act of 1995 (''PRA'') of the following Forms and Rules: Form 10–K, Form ADV, Form N–1A, Form N–2, Form N–8B–2, Form S–6, Form N–CSR, Form N–CEN, Investment Company Interactive Data, and 17 CFR 270.30e-1 (''rule 30e-1''). The titles for the existing collections of information that we are amending are: (i) ''Exchange Act Form 10–K'' (OMB Control No. 3235–0063); (ii) ''Form ADV'' (OMB Control No. 3235–0049); (iii) ''Form N–1A, Registration Statement under the Securities Act and under the Investment Company Act for Open-End Management Investment Companies'' (OMB Control No. 3235–0307); (iv) ''Form N–2 under the Investment Company Act of 1940 and Securities Act of 1933'' (OMB Control No. 3235–0026); (v) ''Form N–8B–2, Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities'' (OMB Control No. 3235–0186); (vi) ''Form S–6 [17 CFR 239.19], for registration under the Securities Act of 1933 of Unit Investment Trusts registered on Form N–8B–2'' (OMB Control No. 3235–0184); ; (vii) ''Form N–CSR, Certified Shareholder Report under the Exchange Act and under the Investment Company Act for Registered Management Investment Companies'' (OMB Control No. 3235–0570); (viii) ''Form N–CEN'' (OMB Control No. 3235–0730); (ix) ''Investment Company Interactive Data'' (OMB Control No. 3235–062); and (x) ''Rule 30e-1 under the Investment Company Act, Reports to Stockholders of Management Companies'' (OMB

[459] *See supra* section III.B.5 (for more detailed discussion).

[460] *See supra* section III.C.2. *See also infra* section IV.E.

Control No. 3235–0025).[461] The Commission is submitting these collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We discuss below the proposed revised existing collection of information burdens associated with the amendments to Form 10–K, Form ADV, Form N–1A, Form N–2, Form N–8B–2, Form N–CSR, Form N–CEN, Form S–6, Investment Company Interactive Data, and rule 30e-1. Responses to the disclosure requirements of the amendments to Form 10–K, Form ADV, Form N–1A, Form N–2, Form N–8B–2, Form N–CSR, Form N–CEN, Form S–6, and rule 30e-1, which are filed with the Commission, are not kept confidential.

A description of the proposed amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the final amendments can be found in Section III above.

B. Form N–1A

Form N–1A is used by registered management investment companies (except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration), to register under the Investment Company Act and to offer their shares under the Securities Act. In our most recent Paperwork Reduction Act submission for Form N–1A, we estimated for Form N–1A a total annual aggregate ongoing hour burden of 1,672,077 hours, and the total annual aggregate external cost burden is $132,940,008.[462] Compliance with the disclosure requirements of Form N–1A is mandatory, and the responses to the disclosure requirements will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A.

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[461] The paperwork burdens associated with 17 CFR 275.203–1, 275.204–1, and 204–4 (''rules 203–1, 204–1, and 204–4'') are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. Rule 203–1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission (''exempt reporting advisers'') to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204–1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through IARD.

[462] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2021. *See* Information Collection Request (''ICR'') Reference No. 202106–3235–001, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202106-3235-001.*

TABLE 2: FORM N-1A PRA ESTIMATES

	Initial internal burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM N-1A					
Integration Fund Disclosure					
Proposed fund prospectus	3 hours	2 hours[3]	$356 (blended rate for compliance attorney and senior programmer)[4]	$712	$617.50[5]
Total new annual burden per fund		2 hours		$712	$617.50
Number of funds		× 10,598 funds[6]		× 10,598 funds[6]	× 10,598 funds[6]
Total new annual burden		21,196 hours		$7,545,776	$6,544,265
ESG Focused And Impact Fund Disclosure					
Proposed fund prospectus	18 hours	12 hours[7]	$356 (blended rate for compliance attorney and senior programmer)[4]	$4,272	$4,872[8]
Total new annual burden per fund		12 hours		$4,272	$4,872
Number of funds		× 755 funds[9]		× 755 funds[9]	× 755 funds[9]
Total new annual burden		9,060 hours		$3,225,360	$3,678,360
Total estimated burdens for proposed amendments					
		30,256 hours			$10,222,625
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current burden estimates		+1,672,077 hours			+$132,940,008
Revised burden estimates		**1,702,333 hours**			**$143,162,633**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (as adjusted to account for inflation, the "SIFMA Wage Report").
3. Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burden hours. The estimate of 2 hours is based on the following calculation: ((3 initial hours /3) + 1 hour of additional ongoing burden hours) = 2 hours.
4. The $356 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($373) and a senior programmer ($339). $356 is based on the following calculation: ($373+$339)/ 2 = $356.
5. $617.5 includes an estimated $248 for 0.5 hours of outside legal services and an estimated $369.50 for 0.5 hours of management consultant services.
6. For PRA purposes, we estimate that 80% of all funds filing on Form N-1A as of 2021 will incur the burdens associated with the proposed Integration Fund disclosure. We believe this estimate is appropriate because a majority of funds may be required to incur some burdens to determine whether the proposed disclosure requirements would apply to their investment strategies. Furthermore, we have observed that an increasing number of investment advisers have pledged to consider ESG factors to some extent across all their investment products. However, the actual number of funds that meet the definition of Integration Fund may be lower or higher.
7. Includes initial burden estimates annualized over a three-year period, plus 6 hours of ongoing annual burden hours. The estimate of 12 hours is based on the following calculation: ((18 initial hours /3) + 6 hours of additional ongoing burden hours) = 12 hours.
8. $4,872 includes an estimated $1,956 for 4 hours of outside legal services and an estimated $2,916 for 4 hours of management consultant services.
9. The estimated 755 funds includes the staff's estimate of 700 ESG-Focused Funds and 55 ESG Impact Funds registered on Form N-1A as of 2021.

C. Form N–2

Form N–2 is used by closed-end management investment companies (except small business investment companies licensed as such by the United States Small Business Administration) to register under the Investment Company Act and to offer their shares under the Securities Act. In our most recent Paperwork Reduction Act submission for Form N–2, we estimated for Form N–2 a total hour burden of 94,627 hours, and the total annual external cost burden is $6,260,392.[463] Compliance with the disclosure requirements of Form N–2 is mandatory, and the responses to the

[463] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2021. *See* ICR Reference No. 202107–3235–015, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202107-3235-015.*

disclosure requirements will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–2.

TABLE 3: FORM N-2 PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM N-2					
Integration Fund Disclosure					
Proposed fund prospectus	3 hours	2 hours [3]	$356(blended rate for compliance attorney and senior programmer)[4]	$712	$617.50[5]
Total new annual burden per fund		2 hours		$712	$617.50
Number of funds		x 598 funds[6]		x 598 funds[6]	x 598 funds[6]
Total new annual burden		1,196 hours		$425,776	$369,265
ESG Focused Fund Disclosure					
Proposed fund prospectus	18 hours	12 hours[7]	$356 (blended rate for compliance attorney and senior programmer)[4]	$4,272	$4,872[8]
Total new annual burden per fund		12 hours		$4,272	$4,872
Number of funds		× 14 funds[9]		× 14 funds[9]	× 14 funds[9]
Total new annual burden		168 hours		$59,808	$68,208
Total estimated burdens for proposed amendments					
		1,364 hours			$437,473
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current burden estimates		+94,627 hours			+$6,260,392
Revised burden estimates		**95,991 hours**			**6,697,865**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report.
3. Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burden hours. The estimate of 2 hours is based on the following calculation: ((3initial hours /3) + 1 hour of additional ongoing burden hours) = 2 hours.
4. The $356 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($373) and a senior programmer ($339). $356 is based on the following calculation: ($373+$339)/ 2 = $356.
5. $617.5 includes an estimated $248 for 0.5 hours of outside legal services and an estimated $369.50 for 0.5 hours of management consultant services.
6. For PRA purposes, we estimate that 80% of all funds, including BDCs, filing on Form N-2 as of 2021 will incur the burdens associated with the proposed Integration Fund disclosure. We believe this estimate is appropriate because a majority of funds may be required to incur some burdens to determine whether the proposed disclosure requirements would apply to their investment strategies. Furthermore, we have observed that an increasing number of investment advisers have pledged to consider ESG factors to some extent across all their investment products. However, the actual number of funds that meet the definition of an Integration Fund may be lower or higher.
7. Includes initial burden estimates annualized over a three-year period, plus 6 hours of ongoing annual burden hours. The estimate of 12 hours is based on the following calculation: ((18 initial hours /3) + 6 hours of additional ongoing burden hours) = 12 hours.
8. $4,872 includes an estimated $1,956 for 4 hours of outside legal services and an estimated $2,916 for 4 hours of management consultant services.
9. The estimated 14 funds includes the staff's estimated 11 ESG Focused Funds and 3 ESG Impact Funds registered on Form N-2 as of 2021.

D. Forms N–8B–2 and S–6

Form N–8B–2 is used by UITs to initially register under the Investment Company Act pursuant to section 8 thereof.[464] UITs are required to file Form S–6 to register offerings of securities with the Commission under

[464] *See* 17 CFR 274.12.

the Securities Act.[465] As a result, UITs file Form N–8B–2 only once when the UIT is initially created and then use Form S–6 to file all post-effective amendments to their registration statements to update their prospectuses. In our most recent Paperwork Reduction Act submission for Form N–8B–2, we estimated for Form N–8B–2 a total hour burden of 28 hours, and a total annual external cost burden of $10,300, and for Form S–6 a total hour burden of 107,359 hours, and a total annual external cost burden of $68,108,956.[466] Compliance with the disclosure requirements of Forms N–8B–2 and S–6 is mandatory, and the responses to the disclosure requirements will not be kept confidential.

The tables below summarize our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Forms N–8B–2 and S–6.

TABLE 4: FORM N-8B-2 PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
BURDEN ESTIMATES FOR FORM N-8B -2 FILINGS					
Additional information concerning the securities underlying the trust's securities	2.0 hours	0.67 hours[3]	$306 (blended rate for compliance attorney and intermediate portfolio manager)	$254	$617.50[4]
Total new annual burden per UIT		0.67 hours		$254	$617.50
Number of filings		× 1 filing[5]		× 1 filing[5]	× 1 filing[5]
Total new annual burden		0.67 hours		$254	$617.50
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current burden estimates		28 hours[6]			$10,300
Revised burden estimates		**29 hours**[6]			**$10,917.50**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report.
3. Represents initial burden estimates annualized over a three-year period.
4. $617.50 includes an estimated $248 for 0.5 hours of outside legal services and an estimated $369.50 for 0.5 hours of management consultant services.
5. We are assuming one portfolio per filing. In addition, we may be overestimating the number of filings as the trust may not consider ESG factors when it selects portfolio securities.
6. Rounded to the nearest whole number.

[465] *See* 17 CFR 239.16.

[466] These estimates are based on the last time the rules' information collections were each submitted for PRA renewal in 2020. *See* ICR Reference No. 202006–3235–011, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202006-3235-011;* ICR Reference No. 202004–3235–003, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202004-3235-003.*

TABLE 5: FORM S-6 PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM S-6					
Additional information concerning the securities underlying the trust's securities	2.0 hours	0.83 hours[3]	$306 (blended rate for compliance attorney and intermediate portfolio manager)	$254	$617.50[4]
Total new annual burden per UIT		0.83 hours		$254	$617.50
Number of UIT ETFs		× 8 filings[5]		× 8 filings[5]	× 8 filings[5]
Total new annual burden		9.36 hours		$2,032	$4,940
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current burden estimates		107,359 hours[6]			+$4,940
Revised burden estimates		**107,368 hours**[6]			**$68,113,896**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013, as modified by Commission staff for 2020.
3. Includes initial burden estimates annualized over a three-year period, plus 0.5 hours of ongoing annual burden hours. The estimate of 1.17 hours is based on the following calculation: ((2.0 initial hours /3) + 0.5 hours of additional ongoing burden hours) = 1.17 hours.
4. $617.50 includes an estimated $248 for 0.5 hours of outside legal services and an estimated $369.50 for 0.5 hours of management consultant services.
5. For PRA purposes, we are assuming one portfolio per filing. In addition, we may be overestimating the number of filings as the trust may not consider ESG factors when it selects portfolio securities.
6. Rounded to the nearest whole number.

E. Proposed Inline XBRL Data Tagging Requirements

The Investment Company Interactive Data collection of information references current requirements for certain registered investment companies and BDCs to submit to the Commission in Inline XBRL certain information provided in response to specified form and rule requirements included in their registration statements and post-effective amendments thereto; prospectuses filed pursuant to 17 CFR 230.424(b) (''rule 424(b)'') and rule 497(c) or (e) under the Securities Act; Exchange Act reports that are incorporated by reference into a registration statement; BDC financial statements; and, for registered closed-end funds (that are not interval funds) and BDCs, their filing fee exhibits.[467] We are proposing to amend Forms N–1A, N–2, N–8B–2, S–6, and N–CSR; and rules 11 and 405 of Regulation S–T to require that the ESG-related disclosures that certain funds would be providing in their prospectuses and/or annual reports under our proposed amendments be submitted to the Commission in Inline XBRL.[468] While funds filing registration statements on Forms N–1A and N–2 already submit certain information using Inline XBRL, for funds filing registration statements on Forms N–8B–2 and S–6 and for funds that file their annual reports on Form N–CSR, our proposed data tagging requirements would represent wholly new burdens.

In our most recent Paperwork Reduction Act submission for Investment Company Interactive Data, we estimated a total aggregate annual hour burden of 252,602 hours, and a total aggregate annual external cost burden of $15,350,750.[469] Compliance with the interactive data requirements is mandatory, and the responses will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A, Form N–2, Form N–8B–2, Form S–6, and Form N–CSR.

[467] *See* Inline XBRL Adopting Release (requiring Form N–1A prospectus risk/return summary information to be submitted in Inline XBRL); Variable Contract Summary Prospectus Adopting Release (requiring variable contracts to submit specified Form N–3, N–4, and N–6 prospectus information in Inline XBRL); Closed-End Fund Offering Reform Adopting Release (requiring registered closed-end funds and BDCs to submit Form N–2 cover page information, specified Form N–2 prospectus information, and financial statement information (for BDCs only) in Inline XBRL); and Filing Fee Adopting Release (requiring registered closed-end funds (that are not interval funds) and BDCs to submit filing fee exhibits filed on Forms N–2 and N–14 in Inline XBRL), *supra* footnotes 185–186.

[468] The Investment Company Interactive Data collection of information do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

[469] This estimate is based on the last time this information collection was approved in 2020. *See* ICR Reference No. 202008–3235–007, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202008-3235-007.*

TABLE 6: INVESTMENT COMPANY INTERACTIVE DATA

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED INTERACTIVE DATA ESTIMATES					
ESG-related disclosure for current XBRL filers[3]	2.4 hours	1 hour[4]	$356 (blended rate for compliance attorney and senior programmer)	$356	$50[5]
Number of funds		× 11,920 funds[6]		× 11,920 funds	× 11,920 funds
ESG-related disclosure for new XBRL filers[7]	12 hours	5 hours[8]	$356 (blended rate for compliance attorney and senior programmer)	$1,780	$1000[9]
Number of filings		× 9 filings[10]		× 9 filings	x 9 filings
Total new aggregate annual burden		11,965 hours[11]		$4,259,540[12]	$605,000[13]
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates		+ 252,602 hours			+ $15,350,750
Revised aggregate annual burden estimates		264,567 hours			$15,955,750

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report.3. This estimate represents the average burden for a filer on Form N-1A or Form N-2 that is currently subject to interactive data requirements.
4. Includes initial burden estimates annualized over a three-year period, plus 0.20 hour of ongoing annual burden hours. The estimate of 1 hour is based on the following calculation: ((2.4 initial hour /3) + 0.20 hour of additional ongoing burden hours) = 1 hour.
5. We estimate an incremental external cost for filers on Form N-1A and Form N-2 as they already submit certain information using Inline XBRL.
6. The number of funds represents the aggregate number of filings on Forms N-1A and N-2 as of 2021 that staff estimates would be subject to the ESG-related disclosure data tagging requirements.
7. This estimate represents the average burden for a filer on Form N-8B-2 and Form S-6 that is not currently subject to interactive data requirements.
8. Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burden hours. The estimate of 5 hours is based on the following calculation: ((12 initial hours /3) + 1 hour of additional ongoing burden hours) = 5 hours.
9. We estimate an external cost for filers on Form N-8B-2 and Form S-6 of $1,000 to reflect one-time compliance and initial set-up costs. Because these filers have not been previously been subject to Inline XBRL requirements, we estimate that these funds would experience additional burdens related to one time-costs associated with becoming familiar with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, or the training of staff.
10. We believe that using the number of filings instead of the number of registrants on Form N-8B-2 and Form S-6 would form a more accurate estimate of annual burdens. This estimate is therefore based on the average number of filings made on Form N-8B-2 and Form S-6 from 2020 to 2021. Based on a staff review of filings, we estimate that there would 9 filings that would be subject to the ESG-related disclosure data tagging requirements.
11. 11,965 hours = (11,920 funds x 1 hour) + (9 filings x 5 hours).
12. $4,259,540 internal time cost = (11,920 funds x $356) + (9 filings x $1,780).
13. $605,000 annual external cost = (11,920 funds x $50) + (9 filings x $1,000).

F. Proposed New Annual Reporting Requirements Under Rule 30e–1 and Exchange Act Periodic Reporting Requirements for BDCs

As discussed above, we are proposing new disclosure requirements in the MDFP and MD&A sections of annual reports for registered management investment companies and BDCs, respectively.[470] The collection of information burdens for these amendments correspond to information collections under rule 30e-1 for registered management investment companies and Form 10–K for BDCs. We discuss our proposed changes to each of these information collections below.

[470] *See supra,* Section II.A.3.

We have previously estimated that it takes a total of 1,039,868 hours, and involves a total external cost burden of $149,244,791, to comply with the collection of information associated with rule 30e–1.[471] Compliance with the

[471] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2020. *See* ICR Reference No. 202007–

Continued

disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 30e–1.

3235–015, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202007-3235-015.*

TABLE 7: RULE 30E-1 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FUND SHAREHOLDER REPORTS						
ESG Impact Disclosure						
Summary of ESG Impact achievement during reporting period	9 hours	6 hours[3]	×	$345 (blended rate for compliance attorney, senior portfolio manager, and senior programmer)[4]	$2,070	$3,654[5]
Total additional burden per fund		6 hours				$3,654
Number of funds		× 58 funds[6]			× 58 funds	× 58 funds
Annual burden		348 hours			$120,060	$211,932
ESG voting matters and engagement disclosure						
Disclosure of percentage of ESG voting matters and ESG engagement during reporting period	9 hours	6 hours[3]		$345 (blended rate for compliance attorney, senior portfolio manager, and senior programmer)[4]	$ 2,070	$3,654[5]
Total additional burden per fund		6 hours				$3,654
Number of funds		x 769 funds[7]			x 769 funds	x 769 funds
Annual burden		4,614 hours			$1,591,830	$2,809,926
GHG Emissions Metrics Disclosure						
Disclosure of portfolio level GHG emissions metrics for the reporting period	24 hours	16 hours[9]		$307 (blended rate for a senior accountant, compliance attorney, and senior programmer)[8]	$4,912	$4,872[10]
Total additional burden per fund		16 hours				$4,872
Number of funds		x 355 funds[11]			x 355 funds	x 355 funds
Annual burden		5,680 hours			$1,743,760	$1,729,560
Total estimated burdens for proposed amendments						
		10,642 hours				$4,751,418
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+1,039,868 hours				+$149,244,791
Revised burden estimates		1,050,510 hours				$153,996,209

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report.
3. This estimate assumes that, after the initial 9 hours that a fund would spend preparing the proposed disclosure, which we annualize over a 3-year period, the fund would incur 3 additional burden hours associated with ongoing preparation of the proposed disclosure per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours /3) + 3 hours of additional ongoing burden hours) = 6 hours.
4. The $345 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($368), a senior portfolio manager ($332), and a senior programmer ($334). $345 is based on the following calculation: ($368+$332+$334)/ 3 = $345.
5. $3,654 includes an estimated $1,467 for 3 hours of outside legal services and an estimated $2,187 for 3 hours of management consultant services.
6. Based on the staff's estimate of the number of funds registered on Form N-1A and Form N-2 with the term "impact" included in the fund name.
7. The estimated 769 funds includes the staff's estimate of 711 ESG-Focused Funds and 58 ESG Impact Funds registered on Form N-1A and Form N-2.
8. The $307 wage rate reflects current estimates of the blended hourly rate for an in-house senior accountant ($218), compliance attorney ($368), and a senior programmer ($334). $307 is based on the following calculation: ($368+$218+$334) / 3 = $307.
9. This estimate assumes that, after the initial 24 hours that a fund would spend preparing the proposed disclosure, which we annualize over a 3-year period, the fund would incur 8 additional burden hours associated with ongoing preparation of the proposed disclosure per year. The estimate of 6 hours is based on the following calculation: ((24 initial hours /3) + 8 hours of additional ongoing burden hours) = 6 hours.
10. $4,872 includes an estimated $1,956 for 4 hours of outside legal services and an estimated $2,916 for 4 hours of management consultant services.
11. Based on the staff's estimate of the number of funds registered on Form N-1A and Form N-2 with climate-related terms included in the fund name or principal investment strategies.

We have previously estimated that it takes a total of 14,188,040 hours, and involves a total external cost burden of $1,893,793,119, to comply with the collection of information associated with Form 10–K.[472] Compliance with the disclosure requirements of Form 10–K is mandatory. Responses to the disclosure requirements are not kept confidential.

We believe that the incremental increase in information collections burdens associated with the proposed annual report requirements for rule 30e–1 discussed above will be the same for Form 10–K. Therefore, the table below summarizes the estimated incremental burden increase associated with the proposed annual report amendments that ESG-Focused BDCs would be required to disclose Form 10–K.

TABLE 8: FORM 10-K PRA ESTIMATES

	Number of estimated affected responses (A)	Burden hour increase per affected response (B)	Total increase in internal burden hours for affected responses (C) = (A) x (B)	Increase in internal costs per affected response (D)	Total increase in internal costs for affected responses (E) = (A) x (D)	Increase in external costs per affected response (F)	Total increase in external costs for affected responses (G) = (A) x (F)
Requirements to disclose summary of ESG impact, percentage of ESG voting matters and ESG engagement, and portfolio level GHG emissions metrics for the reporting period	1	28	28	$9,052	$9,052	$12,180	$12,180
Current estimated burdens for Form 10-K			14,188,040 hours				$1,893,793,119
Revised Estimated burdens for Form 10-K			14,188,068 hours				$1,893,805,299

Notes:
1. Based on the staff's estimate of the number of business development companies with ESG-related terms included in the fund name or principal investment strategies.

G. Form N–CEN

Form N–CEN is an annual report filed with the Commission by all registered investment companies, other than face-amount certificate companies. We have previously estimated that it takes a total of 54,890 hours, and involves a total external cost burden of $1,344,980, to comply with the collection of information associated with Form N–CEN.[473] Compliance with the disclosure requirements of Form N–CEN is mandatory. Responses to the disclosure requirements are not kept confidential. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–CEN. Staff estimates there will be no external costs associated with this collection of information.

[472] This estimate is based on the last time the rule's information collection was submitted in 2021. *See* ICR Reference No. 202101–3235–003, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202101-3235-003*.

[473] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2021. *See* ICR Reference No. 202012–3235–017, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202012-3235-017*.

TABLE 8: FORM N-CEN PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate[1]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM N-CEN					
Proposed ESG Related Disclosure					
Reporting ESG-related fund census information	1 hour	1 hour[2]	$351 (blended rate for compliance attorney and senior programmer)[3]	$351	$0
Total new annual burden per fund		1 hour		$351	$0
Number of funds		× 14,201 funds[4]		× 14,201 funds	
Total new annual burden		14,201 hours		$4,984,551	
Proposed Index Fund Disclosure					
Reporting Index-related fund census information	0.5 hours	0.5 hours[5]	$351 (blended rate for compliance attorney and senior programmer)[3]	$157.5	$0
Total new annual burden per fund		0.5 hours		$157.5	$0
Number of funds		x 2,638 funds[6]		x 2,638 funds	
Total new annual burden		1,319 hours		$415,485	$0
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current burden estimates		+ 54,890 hours			+ $1,344,980
Revised burden estimates		70,410 hours			$1,344,980

Notes:
1. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report
2. This estimate assumes that, after the initial 1 hour that a fund reporting on Form N-CEN to report the proposed ESG-related data elements, which we annualize over a 3-year period, the fund would incur 0.67 additional burden hours associated with ongoing preparation of the proposed reporting requirements per year. The estimate of 1 hour is based on the following calculation: ((1 initial hour /3) + 0.67 hours of additional ongoing burden hours) = 1 hour.
3. The $351 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($368) and a senior programmer ($334). $351 is based on the following calculation: ($368+$334)/ 2 = $351.
4. This estimate is based on the total number of funds required to complete Part C of Form N-CEN.
5. This estimate assumes that, after the initial 0.5 hours that a fund reporting on Form N-CEN to report the proposed index-related data elements, which we annualize over a 3-year period, the fund would incur 0.3 additional burden hours associated with ongoing preparation of the proposed reporting requirements per year. The estimate of 0.5 hour is based on the following calculation: ((0.5 initial hour /3) + 0.3 hours of additional ongoing burden hours) = 0.5 hours.
6. This estimate is based on the number of index funds required to file Form N-CEN.

H. Form N–CSR

Registered management investment companies are required to file reports with the Commission on Form N–CSR. In our most recent Paperwork Reduction Act submission for Form N–CSR, we estimated the annual compliance burden to comply with the collection of information requirement of Form N–CSR is 181,167.5 burden hours and an external cost burden estimate of $5,199,584.[474] Compliance with the disclosure requirements of Form N–CSR is mandatory, and the responses to the disclosure requirements will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–CSR.

[474] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2020. *See* ICR Reference No. 202005–3235–023, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202005-3235-023.*

TABLE 9: FORM N-CSR PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage Rate[2]	Internal Time Costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM N-CSR						
Total additional burden per filing (proposed new Item 7 of Form N-CSR)	18 hours	11 hours[3]	×	$307 (blended rate for a senior accountant, compliance attorney, and senior programmer)[4]	$3,377	$4,872[5]
Number of filings		×355 funds[6]			× 355 funds	× 355 funds
Total additional burden for Form N-CSR		3,905 hours			$1,198,835	**$1,729,560**
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Current burden estimates		+181,167 hours				+$5,199,584
Revised burden estimates		185,072 hours				$6,929,144

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed reporting requirements that we believe otherwise would be involved in complying with this requirement. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report
3. This estimate assumes that, after the initial 18 hours that a fund would spend preparing the new item on Form N-CSR, which we annualize over a 3-year period, the fund would incur 5 additional burden hours associated with ongoing preparation of this item per year. The estimate of 11 hours is based on the following calculation: ((18 initial hours / 3) + 5 hours of additional ongoing burden hours) = 11 hours.
4. The $307 wage rate reflects current estimates of the blended hourly rate for an in-house senior accountant ($218), compliance attorney ($368), and a senior programmer ($334). $345 is based on the following calculation: ($368+$218+$334) / 3 = $307.
5. $4,872 includes an estimated $1,956 for 4 hours of outside legal services and an estimated $2,916 for 4 hours of management consultant services.
6. Based on the staff's estimate of the number of funds registered on Form N-1A and Form N-2 with climate-related terms included in the fund name or principal investment strategies. While funds make two filings on N-CSR annually, the disclosure required by this item would only be included on Form N-CSR with a fund's annual shareholder report.

I. Form ADV

The proposed amendments to Form ADV would increase the information requested in Form ADV Part 1A and Part 2 for RIAs, and Part 1A for ERAs. The estimated new burdens below also take into account changes in the numbers of advisers since the last approved PRA for Form ADV and increased costs due to inflation. Based on the prior amendments to Form ADV, we estimated the annual compliance burden to comply with the collection of information requirement of Form ADV is 433,004 burden hours and an external cost burden estimate of $14,125,083.[475] Compliance with the disclosure requirements of Form ADV is mandatory, and the responses to the disclosure requirements will not be kept confidential.

We propose the following changes to our PRA methodology for Form ADV:

- *Form ADV Parts 1 and 2.* Form ADV PRA has historically calculated a per adviser per year hourly burden for Form ADV Parts 1 and 2 for each of (i) the initial burden and (ii) the ongoing burden, which reflects advisers' filings of annual and other-than-annual updating amendments. We noted in previous PRA amendments that most of the paperwork burden for Form ADV Parts 1 and 2 would be incurred in the initial submissions of Form ADV. However, recent PRA amendments have continued to apply the total initial hourly burden for Parts 1 and 2 to all currently registered or reporting RIAs and ERAs, respectively, in addition to the estimated number of new advisers expected to be registering or reporting with the Commission annually. We believe that the total initial hourly burden for Form ADV Parts 1 and 2 going forward should be applied only to the estimated number of expected new advisers annually. This is because currently registered or reporting advisers have generally already incurred the total initial burden for filing Form ADV for the first time. On the other hand, the estimated expected new advisers will incur the full total burden of initial filing of Form ADV, and we believe it is appropriate to apply this total initial burden to these advisers. We propose to continue to apply any new initial burdens resulting from proposed amendments to Form ADV Parts 1 and 2, as applicable, to all currently registered or reporting investment advisers plus all estimated expected new RIAs and ERAs annually.
- *Private fund reporting.* We have previously calculated advisers' private fund reporting as a separate initial burden. The currently approved burden for all registered and exempt reporting advisers, including expected new registered advisers and new exempt reporting advisers, with respect to reported private funds, is 1 hour per private fund reported, which we have previously amortized over three years for all private fund advisers. We propose to continue to calculate

[475] *See* Investment Adviser Marketing, Final Rule, Investment Advisers Act Release No. 5653 (Dec. 22, 2020) [81 FR 60418 (Mar. 5, 2021)] and corresponding submission to the Office of Information and Regulatory Affairs at *Reginfo.gov* (''2021 Form ADV PRA'').

advisers' private fund reporting as a separate reporting burden, but we propose to apply the initial burden only with respect to the expected new private funds.

TABLE 10: FORM ADV PRA ESTIMATES

	Initial hours per year	Internal annual amendment burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden[3]
PROPOSED AMENDMENTS TO FORM ADV					
RIAs (burden for Parts 1 and 2, not including private fund reporting)[4]					
Proposed additions (per adviser) to Part 1A Items 5, 6, and 7, and corresponding schedules; Proposed additions to Part 2 brochure and wrap fee program brochure	0.3 hours for Part 1A, other than private fund reporting + 0.8 hours[5] for Part 2 = 1.1 hours	0.4 hours[0]	$279.50 per hour (blended rate for senior compliance examiner and compliance manager)[7]	1.5 hours x $279.50 per hour = $419.25	1 hour of external legal services ($496) for ¼ of advisers that prepare Part 2; 1 hour of external compliance consulting services ($739) for ½ of advisers that prepare Part 2[8]
Current burden per adviser[9]	29.72 hours[10]	11.8 hours[11]	$273 per hour (blended rate for senior compliance examiner and compliance manager)	(29.72 + 11.8) x $273 = $11,334.96	$2,069,250 aggregated (previously presented only in the aggregate)[12]
Revised burden per adviser	29.72 hours + 1.1 hours = 30.82 hours	0.4 hours + 11.8 hours = 12.2 hours	$279.50 (blended rate for senior compliance examiner and compliance manager)	(30.82 + 12.2) x $279.5 = $12,024.09	$4,689.50[13]
Total revised aggregate burden estimate	27,921.86[14]	173,545 hours[15]	Same as above	(27,921.86 + 173,545) x $279.5 = $56,309,987.37	$8,752,986[16]
RIAs (burden for Part 3)[17]					
No proposed changes	--	--	--	--	--
Current burden per RIA	20 hours, amortized over three years = 6.67 hours[18]	1.58 hours[19]	$273 (blended rate for senior compliance examiner and compliance manager)	$273 x (6.67 + 1.71) = $2,287.74	$2,433.74 per adviser[20]
Total updated aggregate burden estimate	64,755.39 hours[21]	14,189.98 hours[22]	Same as above	$22,065,230.92 (($279.50 x (64,755.39 hours + 14,189.98 hours))	$7,985,652.5[23]
ERAs (burden for Part 1A, not including private fund reporting)[24]					
Proposed additions (per adviser) to Part 1A Items 5, 6, and 7, and corresponding schedules	0.3 hours	N/A – would be included in the existing ongoing reporting burden for ERAs	$279.50 (blended rate for senior compliance examiner and compliance manager)	Wage rate x total hours (see below)	$0
Current burden per ERA	3.60 hours[25]	1.5 hours + final filings[26]	$273 (blended rate for senior compliance examiner and compliance manager)		$0
Revised burden per ERA	3.9 hours	1.5 hours + final	$279.50 (blended rate		$0

	(0.3 hours + 3.6 hours)	filings (same as above)	for senior compliance examiner and compliance manager)		
Total revised aggregate burden estimate	2,639.4[27]	7,780.1 hours[28]	Same as above	$2,912,250.25 ($279.5 x (2,639.4 + 7,780.1 hours))	$0
Private Fund Reporting[29]					
Proposed additions to Part 1A Item 7, and corresponding schedules	0.2 hours	N/A – would be included in the existing annual amendment reporting burden for ERAs	$279.50 (blended rate for senior compliance examiner and compliance manager)	Wage rate x total hours (see below)	$0
Current burden per adviser to private fund	1 hour per private fund[30]	N/A – included in the existing annual amendment burden	$273 (blended rate for senior compliance examiner and compliance manager)		Cost of $46,865.74 per fund, applied to 6% of RIAs that report private funds[31]
Revised burden per adviser to private fund	1.2 hours	N/A	$279.50 (blended rate for senior compliance examiner and compliance manager)		
Total revised burden estimate	14,233 hours[32]	N/A	Same as above	$3,978,123.5 ($279.5 x 14,233 hours))	$14,153,453.50[33]
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current per adviser burden/external cost per adviser	23.82 hours[34]			23.82 hours x $273 = $6,502.86 per adviser cost of the burden hour	$777[35]
Revised per adviser burden/external cost per adviser	15.74 hours[36]			15 hours x $279.5 = $4,192.5 per adviser cost of the burden hour	$1,593.44[37]
Current aggregate burden estimates	433,004 initial and amendment hours annually[38]			433,004 x $273 = $118,210,092 aggregate cost of the burden hour	$14,125,083[39]
Revised aggregate burden estimates	305,064.73[40] Initial and amendment hours annually			290,831.73 x $279.5 = $81,287,468.54 aggregate cost of the burden hour	$30,892,092.00[41]

Notes:

1. This column estimates the hourly burden attributable to annual and other-than-annual updating amendments to Form ADV, plus RIAs' ongoing obligations to deliver codes of ethics to clients.

2. As with Form ADV generally, and pursuant to the currently approved PRA (see 2021 Form ADV PRA), we expect that for most RIAs and ERAs, the performance of these functions will most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report

3. External fees are in addition to the projected hour per adviser burden. Form ADV has a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Parts 2 and 3 of the form. In addition to the estimated legal and compliance consulting fees, investment advisers of private funds incur one-time costs with respect to the requirement for investment advisers to report the fair value of private fund assets.

4. Based on Form ADV data as of December 2020, we estimate that there are 13,812 RIAs ("current RIAs") and 413 advisers that are expected to become RIAs annually ("newly expected RIAs").

5. We estimate that 80% of RIAs incorporate ESG factors into their advisory services, which we believe is similar to the estimated percentage of registered funds that pursue either an ESG integration, ESG focused or ESG impact strategy. See discussion of PRA analysis for funds, above. Therefore, 11,380 RIAs (80% of the total of 14,225 combined current and expected RIAs that are required to complete Parts 1 and 2) would incur a burden of 1 hour, and 2,845 RIAs (20% of 14,225 combined current and expected RIAs that are required to complete Parts 1 and 2) would incur a burden of 0 hours. (11,380 RIAs x 1) +

(2,845 RIAs x 0) / 14,225 = 0.8 blended average hours per RIA.

6. We estimate that 11,380 RIAs (80% of the total of 14,225 combined current and expected RIAs that are required to complete Parts 1 and 2) would incur a burden of 0.5 hour, and 2,845 RIAs (20% of 14,225 current and expected RIAs that are required to complete Parts 1 and 2) would incur a burden of 0 hours. (11,380 RIAs x 0.5) + (2,845 RIAs x 0) / 14,225 = 0.4 blended average hours per RIA.

7. The $279.50 wage rate reflects current estimates from the SIFMA Wage Report of the blended hourly rate for a senior compliance examiner ($243) and a compliance manager ($316). ($243 + $316) / 2 = $279.5.

8. We estimate that a quarter of RIAs would seek the help of outside legal services and half would seek the help of compliance consulting services in connection with the proposed amendments to Form ADV Part 2. This is based on previous estimates and ratios we have used for advisers we expect to use external services for initially preparing various parts of Form ADV. See 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not change that estimate). Because the SIFMA Wage Report does not include a specific rate for outside compliance consultant, we are proposing to use the rates in the SIFMA Wage Report for outside management consultant, as we have done in the past when estimating the rate of outside compliance counsel. We are adjusting these external costs for inflation, using the currently estimated costs for outside legal counsel and outside management consultants in the SIFMA Wage Report: $495 per hour for outside counsel, and $739 per hour for outside management consultant (compliance consultants).

9. Per above, we are proposing to revise the PRA calculation methodology to apply the full initial burden only to expected RIAs, as we believe that current RIAs have generally already incurred the burden of initially preparing Form ADV.

10. *See* 2020 Form ADV PRA Renewal (stating that the estimate average collection of information burden per adviser for Parts 1 and 2 is 29.22 hours, prior to the most recent amendment to Form ADV). *See also* 2021 Form ADV PRA (adding 0.5 hours to the estimated initial burden for Part 1A in connection with the most recent amendment to Form ADV). Therefore, the current estimated average initial collection of information hourly burden per adviser for Parts 1 and 2 is 29.72 hours (29.22 + 0.5 = 29.72).

11. The currently approved average total annual burden for RIAs attributable to annual and other-than-annual updating amendments to Form ADV Parts 1 and 2 is 10.5 hours per RIA, plus 1.3 hours per year for each RIA to meet its obligation to deliver codes of ethics to clients (10.5 + 1.3 = 11.8 hours per adviser). *See* 2020 Form ADV PRA Renewal (these 2020 hourly estimates were not affected by the 2021 amendments to Form ADV). As we explained in previous PRAs, we estimate that each RIA filing Form ADV Part 1 will amend its form 2 times per year, which consists of one interim updating amendment (at an estimated 0.5 hours per amendment), and one annual updating amendment (at an estimated 8 hours per amendment), each year. We also explained that we estimate in that each RIA will, on average, spend 1 hour per year making interim amendments to brochure supplements, and an additional 1 hour per year to prepare brochure supplements as required by Form ADV Part 2. *See id.*

12. *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not affect that estimate).

13. External cost per RIA includes the external cost for initially preparing Part 2, which we have previously estimated to be approximately 10 hours of outside legal counsel for a quarter of RIAs, and 8 hours of outside management consulting services for half of RIAs. *See* 2020 Form ADV Renewal (these estimates were not affected by subsequent amendments to Form ADV). We add to this burden the estimated external cost associated with the proposed amendment (an additional hour of each, bringing the total to 11 hours and 9 hours, respectively, for ¼ and ½ of RIAs, respectively). (((.25 x 13,812 RIAs) x ($496 x 11 hours)) + ((0.50 x 13,812 RIAs) x ($739 x 9 hours))) / 13,812 RIAs = $4,689.50 per adviser.

14. Per above, we are proposing to revise the PRA calculation methodo ogy for current RIAs to not apply the full initial burden to current RIAs, as we believe that current RIAs have generally already incurred the initial burden of preparing Form ADV. Therefore, we calculate the initial burden associated with complying with the proposed amendment of 1.1 initial hours x 13,812 current RIAs = 15,193.2 initial hours in the first year aggregated for current RIAs. We are not amortizing this burden because we believe current advisers will incur it in the first year. For expected RIAs, we estimate that they will incur the full revised initial burden, which is 30.82 hours per RIA. Therefore, 30.82 hours x 413 expected RIAs = 12,728.66 aggregate hours for expected RIAs. We do not amortize this burden for expected new RIAs because we expect a similar number of new RIAs to incur this initial burden each year. Therefore, the total revised aggregate initial burden for current and expected RIAs is 15,193.2 hours + 12,728.66 hours = 27,921.86 aggregate initial hours.

15. 12.2 amendment hours x (13,812 current RIAs + 413 expected new RIAs) = 173,545 aggregate amendment hours.

16. Per above, for current RIAs, we are proposing to not apply the currently approved external cost for initially preparing Part 2, because we believe that current RIAs have already incurred that initial external cost. For current RIAs, therefore, we are applying only the external cost we estimate they will incur in complying with the proposed amendment. Therefore, the revised total burden for current RIAs is (((.25 x 13,812 RIAs) x ($496 x 1 hour)) + ((0.50 x 13,812 RIAs) x ($739 x 1 hour))) = $6,816,222 aggregated for current RIAs. We do not amortize this cost for current RIAs because we expect current RIAs will incur this initial cost in the first year. For expected RIAs, we apply the currently approved external cost for initially preparing Part 2 plus the estimated external cost for complying with the proposed amendment. Therefore, $4,689.50 per expected RIA x 413 = $1,936,763.50 aggregated for expected RIAs. We do not amortize this cost for expected new RIAs because we expect a similar number of new RIAs to incur this external cost each year. $6,816,222 aggregated for current RIAs + $1,936,763.50 aggregated for expected RIAs = $8,752,986 aggregated external cost for RIAs.

17. Even though we are not proposing amendments to Form ADV Part 3 ("Form CRS"), the burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection. Based on Form ADV data as of December 2020, we estimate that 8,617 current RIAs provide advice to retail investors and are therefore required to complete Form CRS, and we est mate an average of 364 expected new RIAs to be advising retail advisers and completing Form CRS for the first time annually.

18. See Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (June 5, 2019) [84 FR 33492 (Sep. 10, 2019)] ("2019 Form ADV PRA"). Subsequent PRA amendments for Form ADV have not adjusted the burdens or costs associated with Form CRS. Because Form CRS is still a new requirement for all applicable RIAs, we have, and are continuing to, apply the total initial burden to all current and expected new RIAs that are required to file Form CRS, and amortize that initial burden over three years for current RIAs.

19. As reflected in the currently approved PRA burden estimate, we stated that we expect advisers required to prepare and file the relationship summary on Form ADV Part 3 will spend an average 1 hour per year making amendments to those relationship summaries and will likely amend the disclosure an average of 1.71 times per year, for approximately 1.58 hours per adviser. *See* 2019 Form ADV PRA (these estimates were not amended by the 2021 amendments to Form ADV).

20. *See* 2020 Form ADV PRA Amendment (this cost was not affected by the subsequent amendment to Form ADV and was not updated in connection with that amendment; while this amendment did not break out a per adviser cost, we calculated this cost from the aggregate total and the number of advisers we estimated prepared Form CRS). Note, however, that in our 2020 Form ADV PRA Renewal, we applied the external cost only to expected new retail RIAs, whereas we had previously applied the external cost to current and expected retail RIAs. We believe that since Form CRS is still a newly adopted requirement, we should continue to apply the cost to both current and expected new retail RIAs. *See* 2019 Form ADV PRA.

21. 8,617 current RIAs x 6.67 hours each for initially preparing Form CRS = 57,475.39 aggregate hours for current RIAs initially filing Form CRS. For expected new RIAs initially filing Form CRS each year, we are not proposing to use the amortized initial burden estimate, because we expect a similar number of new

RIAs to incur the burden of initially preparing Form CRS each year. Therefore, 364 expected new RIAs x 20 initial hours for preparing Form CRS = 7,280 aggregate initial hours for expected RIAs. 57,475.39 hours + 7,280 hours = 64,755.39 aggregate hours for current and expected RIAs to initially prepare Form CRS.

22. 1.58 hours x (8,617 current RIAs updating Form CRS + 364 expected new RIAs updating Form CRS) = 14,189.98 aggregate amendment hours per year for RIAs updating Form CRS.

23. We have previously estimated the initial preparation of Form CRS would require 5 hours of external legal services for an estimated quarter of advisers that prepare Part 3, and 5 hours of external compliance consulting services for an estimated half of advisers that prepare Part 3. *See* 2020 PRA Renewal (these estimates were not amended by the most recent amendment to Form ADV). The hourly cost estimate of $496 and $739 for outside legal services and management consulting services, respectively, are based on an inflation-adjusted figure in the SIFMA Wage Report. Therefore, (((.25 x 8,617 current RIAs preparing Form CRS) x ($496 x 5 hours)) + ((0.50 x 8,617 current RIAs preparing Form CRS) x ($739 x 5 hours))) = $21,262,447.5. For current RIAs, since this is still a new requirement, we amortize this cost over three years for a per year initial external aggregated cost of $7,087,482.5. For expected RIAs that we expect would prepare Form CRS each year, we use the following formula: (((.25 x 364 expected RIAs preparing Form CRS) x ($496 x 5 hours)) + ((0.50 x 364 expected RIAs preparing Form CRS) x ($739 x 5 hours))) = $898,170 aggregated cost for expected RIAs. We are not amortizing this initial cost because we estimate a similar number of new RIAs would incur this initial cost in preparing Form CRS each year, $7,087,482.5 + $898,170 = $7,985,652.5 aggregate external cost for current and expected RIAs to initially prepare Form CRS.

24. Based on Form ADV data as of December 2020, we estimate that there are 4,859 currently reporting ERAs ("current ERAs"), and an average of 303 expected new ERAs annually ("expected ERAs").

25. *See* 2021 Form ADV PRA.

26. The previously approved average per adviser annual burden for ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2021 Form ADV PRA. As we have done in the past, we add to this burden the burden for ERAs making final filings, which we have previously estimated to be 0.1 hour per applicable adviser, and we estimate that an expected 371 current ERAs will prepare final filings annually, based on Form ADV data as of December 2020.

27. Per above, for current ERAs, we are proposing to not apply the currently approved burden for initially preparing Form ADV, because we believe that current ERAs have already incurred this burden. For current RIAs, therefore, we are applying only the burden we estimate for the proposed amendment. Therefore, the revised total burden for current RIAs is 0.3 hour x 4,859 current ERAs = 1,457.7 aggregate initial hours per year for current ERAs. We are not amortizing this burden because we expect current ERAs to incur this burden in the first year. For expected ERAs, we are applying the revised total initial burden of preparing Form ADV of 3.9 hours. Therefore, 3.9 hours x 303 expected new ERAs per year = 1,181.7 aggregate initial hours for expected ERAs. For these expected ERAs, we are not proposing to amortize this burden, because we expect a similar number of new ERAs to incur this burden each year. Therefore, in total, 1,457.7 hours + 1,181.7 hours = 2,639.4 aggregate initial annual hours for current and expected ERAs.

28. The previously approved average total annual burden of ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2020 Form ADV Renewal (this estimate was not affected by the subsequent amendment to Form ADV). As we have done in the past, we added to this burden the currently approved burden for ERAs making final filings of 0.1 hour, and multiplied that by the number of final filings we are estimating ERAs would file per year (371 final filings based on Form ADV data as of December 2020). (1.5 hours x 4,859 currently reporting ERAs) + (0.1 hour x 371 final filings) = 7,325.6 updated aggregated hours for currently reporting ERAs. For expected ERAs, the aggregate burden is 1.5 hours for each ERA attributable to annual and other-than-annual updating amendments to Form ADV x 303 expected new ERAs = 454.5 annual aggregated hours for expected new ERAs updating Form ADV (other than for private fund reporting). The total aggregate amendment burden for ERAs (other than for private fund reporting) is 7,325.6 + 454.5 = 7,780.10 hours.

29. Based on Form ADV data as of December 2020, we estimate that 4,949 current RIAs advise 41,938 private funds, and expect an estimated 83 new RIAs will advise 332 reported private funds per year. We estimate that 4,791 current ERAs advise 23,053 private funds, and estimate an expected 348 new ERAs will advise 697 reported private funds per year. Therefore, we estimate that there are 64,991 currently reported private funds reported by current private fund advisers (41,938 + 23,053), and there will be annually 1,029 new private funds reported by expected private fund advisers (332 + 697). The total number of current and expected new RIAs that report or are expected to report private funds is 5,032 (4,949 current RIAs that report private funds + 83 expected RIAs that would report private funds).

30. *See* 2020 Form ADV PRA Renewal (this per adviser burden was not affected by subsequent amendments to Form ADV).

31. We previously estimated that an adviser without the internal capacity to value specific illiquid assets would obtain pricing or valuation services at an estimated cost of $37,625 each on an annual basis. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. IA-3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)]. However, because we estimated that external cost in 2011, we are proposing to use an inflation-adjusted cost of $46,865.74, based on the CPI calculator published by the Bureau of Labor Statistics at https://www.bls.gov/data/inflation_calculator.htm. As with previously approved PRA methodologies, we continue to estimate that 6% of RIAs have at least one private fund client that may not be audited. See 2020 Form ADV PRA Renewal.

32. Per above, for currently reported private funds, we are proposing to not apply the currently approved burden for initially reporting private funds on Form ADV, because we believe that current private fund advisers have already incurred this burden. Therefore, we calculated the burden on current private fund advisers for only the proposed incremental new additional burden attributable to private fund reporting of 0.2 hours per private fund x 64,991 currently reported private funds = 12,998.2 aggregate hours for current private fund advisers. We expect advisers to incur this initial burden in the first year and are therefore not amortizing this burden. For the estimated 1,029 new private funds annually of expected private fund advisers, we calculate the initial burden of both the proposed incremental new additional burden attributable to private fund reporting of 0.2 hours per private fund, and the 1 hour initial burden per private fund. Therefore, 1.2 hours per expected new private fund x 1,029 expected new private funds = 1,234.8 aggregate hours for expected new private funds. For these expected new private funds, we are not proposing to amortize this burden, because we expect new private fund advisers to incur this burden with respect to new private funds each year. 12,998.2 hours + 1,234.8 hours = 14,233 aggregate hours for private fund advisers.

33. As with previously approved PRA methodologies, we continue to estimate that 6% of registered advisers have at least one private fund client that may not be audited, therefore we estimate that the total number of audits for current and expected RIAs is 6% x 5,032 current and expected RIAs reporting private funds or expected to report private funds = 301.92 audits. We therefore estimate that approximately 302 registered advisers incur costs of $46,865.74 each on an annual basis (see note 31 describing the cost per audit), for an aggregate annual total cost of $14,153,453.48.

34. 433,004 currently approved burden hours / 18,179 advisers (current and expected annually) = 23.82 hours per adviser. *See* 2021 Form ADV PRA.

35. $14,125,083 currently approved aggregate external cost / 18,179 advisers (current and expected annually) = $777 blended average external cost per adviser.

36. 305,064.73 aggregate annual hours for current and expected new advisers (see infra note 40) / (13,812 current RIAs + 413 expected RIAs + 4,859 current ERAs +303 expected ERAs*) = 15.74 blended average hours per adviser. * The parenthetical totals 19,387 current and expected advisers.

37. $30,892,092.00 aggregate external cost for current and expected new advisers / (19,387 advisers current and expected annually) = $1,593.44 blended average hours per adviser.

38. See 2021 Form ADV PRA.

39. See 2021 Form ADV PRA.

40. 27,921.86 hours + 173,545 hours + 64,755.39 hours + 14,189.98 hours + 2,639.4 hours + 7,780.1 hours + 14,233 hours = 305,064.73 aggregate annual hours for current and expected new advisers.

41. $8,752,986 + $7,985,652.50 + $14,153,453.50 = $30,892,092.00

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J. Request for Comments

We request comment on our estimates for the new estimated burden hours and change in current burden hours, and their associated costs described above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The agency has submitted the proposed collections of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–17–22. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of the proposal, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–17–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[476] It relates to: (i) proposed amendments to fund prospectuses and annual reports, and Form N–CEN; (ii) proposed amendments to Form ADV Part 1A and Part 2A Brochure.

A. Reason for and Objectives of the Proposed Action

Many registered funds and investment advisers to institutional and retail clients consider ESG factors (as described above) in their investment strategies.[477] We understand that some funds and advisers today engage in a diversity of different ESG investing practices, with varying levels of ESG factors consideration, in managing their investment strategies. Investor interest in ESG strategies has rapidly increased in recent years with significant inflows of capital to ESG-related services and investment products. Asset managers, as key conduits for these investments, have responded to this increase in investor demand by creating and marketing funds and strategies that consider ESG factors in their selection process.

While advisers are required to adhere to disclosure rules that currently exist under the Federal securities laws and Commission rules, registered funds and investment advisers are not currently subject to specific ESG factors disclosure requirements in their ESG investing. Investors looking to participate in ESG investing therefore face a lack of consistent and comparable information among investment products and advisers that say they consider one or more ESG factors. This lack of consistent and comparable information can create a risk that a fund or adviser's actual consideration of ESG does not match investor expectations, particularly given that funds and advisers implement ESG strategies in a variety of ways. This also creates the potential for ''greenwashing,'' as discussed above.[478]

We understand that some fund investors and advisory clients are seeking reliable, comprehensive, and comparable information about these ESG investing practices to enhance their investment decision making about for example, whether to invest in a particular ESG fund or to hire or retain an adviser that incorporates ESG factors into its advisory services.[479] Accordingly, the Commission is proposing various disclosure and reporting requirements to provide shareholders and clients improved information from funds and advisers that consider one or more ESG factors. These enhancements are designed to help investors, and those who provide advice to investors, make more informed choices regarding ESG investing and better compare funds and investment strategies. The proposed enhancements create a framework for qualitative disclosures about a fund or adviser's ESG related strategies, and enhance the quantitative data for environmentally focused strategies, where methodologies for reporting emissions metrics are becoming more standardized. In addition to these investor-facing disclosures, we are also proposing that funds and advisers report census type information on their ESG investment practices in regulatory reporting to the Commission, which would inform our regulatory enforcement, examination, disclosure review, and policymaking roles, and help us track trends in this evolving area of asset management.

1. Proposed Amendments to Forms N–1A and N–2 and Fund Annual Reports

We are proposing amendments to Forms N–1A and N–2 to provide additional information in fund prospectuses about the fund's principal investment strategies to help investors better understand how the fund implements ESG factors. The level of detail required would depend on the extent to which a fund considers ESG factors in its investment process. ESG-

476 5 U.S.C. 603(a).

477 *See supra* Section I.

478 *See id.*

479 *See id.*

Focused Funds would include specific disclosure about how the fund considers ESG factors in its investment process in tabular format and would include an overview of the fund's ESG strategy, how the fund incorporates ESG factors in its investment decisions, and how the fund engages with companies in its investment portfolio about ESG issues (including, if applicable, an overview of its ESG voting policy). In addition, to the foregoing, Impact Funds would be required to disclose the ESG impact the fund seeks to generate with its investments as part of its investment objective. Integration Funds also be required to provide disclosure, but it would be limited to a description of how the fund incorporates ESG factors into its investment selection process.

In addition to the amendments to Forms N–1A and N–2 focusing on prospectus disclosure, we are proposing amendments to fund annual reports to provide additional ESG-related information. Impact Funds would be required to discuss the fund's progress on achieving its specific impact in quantifiable or numerical terms, and to discuss the factors that materially affected the fund's ability to achieve its specific impact. Additionally, a fund for which proxy voting on ESG voting matters is a significant means of implementing its ESG strategy would be required to disclose certain information regarding how the fund voted proxies relating to portfolio securities on ESG voting matters during the reporting period, and a fund for which engagement with issuers on ESG matters is a significant means of implementing its ESG strategy would be required to disclose information about its ESG engagement meetings. Finally, the proposal would require an ESG-Focused Fund that considers environmental factors to disclose the aggregated GHG emissions of the portfolio. Collectively, the amendments to Forms N–1A and N–2 are designed to provide investors clear information about how a fund considers ESG factors and to address the significant variability in the ways different funds approach their consideration of ESG factors in their investment decisions.

All of these requirements are discussed in detail above in Section II.A. The burdens of these requirements on small entities are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all investment companies.

2. Proposed Amendments to Form N–8B–2 and Form S–6

We are proposing amendments to Form N–8B–2 to provide additional information in fund prospectuses about how portfolios are selected based on ESG factors. The proposed amendment would require any UIT that provides exposures to portfolios that were selected based on one or more ESG factors to explain how those factors were used to select the portfolio securities. We believe these amendments will provide UIT investors with the ability to understand the role ESG factors played in the portfolio selection process.

All of these requirements are discussed in detail above in Section II.A. The burdens of these requirements on small entities are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all investment companies.

3. Proposed Amendments to Form N–CEN

We are also proposing to amend Form N–CEN to collect census-type information about funds' use of ESG factors (including use of ESG providers) in a structured format designed to provide the Commission and investors with consistent and comparable data. A fund would be required to indicate whether or not it incorporates ESG factors and, if it does incorporate ESG factors, to report: (i) the type of ESG strategy it employs, (ii) the ESG factor(s) it considers (*i.e.,* E, S, and/or G), and (iii) if applicable, whether it considers ESG factors as part of its proxy voting policies and procedures. We believe that the proposed new data collected on Form N–CEN would assist both the Commission staff and investors in understanding the trends in this evolving space and to make more informed decisions about their selection of funds that consider ESG factors.

All of these requirements are discussed in detail above in Section II.B. The burdens of these requirements on small advisers and broker-dealers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all investment companies.

4. Proposed Amendments to Form N–CSR

We are proposing to amend Form N–CSR to provide additional information regarding any assumptions and methodologies the fund applied in calculating the portfolio's GHG emissions disclosed in its prospectus or shareholder reports, and any limitations associated with the fund's methodologies and assumptions, as well as explanations of any good faith estimates of GHG emissions the fund was required to make. BDCs, which do not file reports on Form N–CSR, would provide this information in their annual reports on Form 10–K. In addition to the above metrics, an ESG-Focused Fund that considers environmental factors would also be required to disclose the financed Scope 3 emissions of its portfolio companies, to the extent that Scope 3 emissions data is reported by the fund's portfolio companies. Collectively, these amendments provide important context to information that we propose to require to be disclosed in the proposed amendments to Forms N–1A and N–2, consistent with a layered disclosure framework.

All of these requirements are discussed in detail above in Section II.A. The burdens of these requirements on small advisers and broker-dealers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all investment companies.

5. Proposed Amendments to Form ADV (Parts 1 and 2)

We are proposing amendments to both Form ADV Part 1A and Form ADV Part 2A (the brochure and the wrap fee program brochure) to address advisers' uses of ESG factors in their advisory businesses. For the brochure, we are proposing to require ESG-related disclosures from advisers that consider ESG factors as part of their advisory businesses, including when making investment recommendations or decisions and when voting client securities. Our proposed requirements reflect that the brochure discloses key aspects of the advisory relationship, including a description of any services that are tailored to the individual needs of clients and any relationships with affiliates and third parties that present conflicts of interest and affect the adviser-client relationship. We also similarly proposing disclosures about a wrap fee program sponsor's use of ESG factors, tailored to wrap fee programs, for the wrap fee program brochure. We are also proposing amendments to Form ADV Part 1A designed to collect information about an adviser's considerations of ESG factors in its advisory business. These proposed amendments would expand the information collected about the advisory services provided to separately

management account clients and reported private funds.

All of these requirements are discussed in detail above in Sections II.B and II.C.2. The burdens of these requirements on small advisers and broker-dealers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all advisers.

B. Legal Basis

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in sections 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a *et seq.*], sections 203, 204, and 211 of the Advisers Act [15 U.S.C. 80b *et seq.*], sections 5, 6, 7, 10, and 19 of the Securities Act [15 U.S.C. 77a *et seq.*], and sections 13, 15, 23, and 35A of the Exchange Act [15 U.S.C. 78b *et seq.*], and 44 U.S.C. 3506–3507.

C. Small Entities Subject to the Rule and Rule Amendments

1. Proposed Amendments to Forms N–1A, N–2, N–8B–2, N–CEN, N–CSR, and S–6 and Fund Annual Reports

Under Commission rules, for the purposes of the Investment Company Act and the RFA, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[480] Commission staff estimates that, as of June 2021, there were approximately 27 registered open-end mutual funds, 6 registered open-end ETFs, 23 registered closed-end funds, 5 unit investment trusts and 9 business development companies (collectively, 70 funds) are small entities.

2. Proposed Amendments to Form ADV

Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[481]

Our proposed new rules and amendments would not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of December 2020, approximately 434 SEC-registered advisers are small entities under the RFA.[482] Because these entities are registered, they, like all SEC-registered investment advisers, would all be subject to the proposed amendments to Form ADV.

The only small entity exempt reporting advisers that would be subject to the proposed amendments would be exempt reporting advisers that maintain their principal office and place of business outside the United States. Advisers with less than $25 million in assets under management generally are prohibited from registering with us unless they maintain their principal office and place of business outside the United States. Exempt reporting advisers are not required to report regulatory assets under management on Form ADV and therefore we do not have a precise number of exempt reporting advisers that are small entities. Exempt reporting advisers are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage.[483] Advisers with their principal office and place of business outside the United States may have additional assets under management other than what is reported in Schedule D. Based on IARD filings, approximately 14.1% of registered investment advisers with their principal office and place of business outside the U.S. are small entities.[484] There are approximately 1,954 exempt reporting advisers with their principal office and place of business outside the U.S.[485] We estimate that 14.1% of those advisers, approximately 276 exempt reporting advisers with their principal office and place of business outside the U.S., are small entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

1. Proposed Amendments to Forms N–1A, N–2, and N–CSR and Fund Annual Reports

We propose to require a fund engaging in ESG investing to provide additional information about the fund's principal investment strategies to help investors better understand how the fund implements ESG factors. The proposed amendments are designed to provide investors clear information about how a fund considers ESG factors and to address the significant variability in the ways different funds approach their consideration of ESG factors in their investment decisions. The level of detail required by this enhanced disclosure would depend on the extent to which a fund considers ESG factors in its investment process, with ESG-Focused Funds providing detailed information in a tabular format while Integration Funds would provide more limited disclosures.

For purposes of this analysis, we assume that all funds that are small entities would provide all proposed disclosures, even though whether or not a particular fund is required to provide certain disclosure depends on whether it considers ESG issues and whether it is an environmentally focused fund. Assuming that all funds that are small entities are ESG-Focused Funds that are also environmentally focused funds, we estimate that 65 funds that are small entities would be subject to these requirements. Of those, approximately 33 prepare prospectuses pursuant to the requirements of Form N–1A and 32 prepare prospectuses pursuant to the requirements of Form N–2. We estimate that compliance with the proposed amendments to Form N–1A would entail internal time costs of $4,272 (12 hours) per fund, compliance with the proposed amendments to Form N–2 would entail internal time costs of $4,272 (12 hours) per fund, and compliance with the proposed amendments to Form N–CSR would entail internal time costs of $3,377 (11 hours) per fund.[486] This would result in aggregate costs of approximately $234,960 for funds that are small entities that prepare prospectuses pursuant to Forms N–1A or N–2. In addition to prospectus disclosure on Form N–1A or N–2, as applicable, funds would be required to disclose certain information on their annual reports. Of

[480] 17 CFR 270.0–10(a).

[481] 17 CFR 275.0–7(a) (''Advisers Act rule 0–7(a)'').

[482] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV as of Dec. 2020.

[483] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A, Question 11.

[484] Based on adviser data as of Dec. 2020. The number of small entity, non-U.S. RIAs is 130, out of 924 total non-U.S. RIAs. 130 is approximately 14.1% of 940.

[485] Based on adviser data as of Dec. 2020.

[486] See Sections IV.B and IV.C, respectively. Cost estimates only refer to the paperwork collection costs estimated in connection with the PRA, not all possible costs associated with compliance.

the estimated 65 small entity funds that would be subject to these requirements, we estimate that 56 are registered management investment companies and 9 are BDCs. We estimate that the burdens of compliance with the proposed annual report disclosure requirements would be the same both for registered management investment companies and for BDCs, and that they would entail internal time costs of $9,052 (28 hours).[487] This would result in aggregate costs of up to approximately $588,380.

2. Proposed Amendments to Forms N–8B–2 and S–6

We are proposing amendments to Form N–8B–2 that are designed to provide investors with clear information about how portfolios are selected based on ESG factors. The proposed amendments are intended to provide similar information to the proposed amendments to Forms N–1A and N–2 so that investors do not face a disclosure gap based on the type of fund they select, but the level of detail required by the proposed amendment reflects the unmanaged nature of UITs. We estimate that 5 UITs that are small entities would be subject to these requirements to the extent that they consider ESG factors in their strategy. We estimate that compliance with the proposed amendments to Form N–8B–2 and S–6 would each entail internal time costs of $254 (0.67 hours) per UIT.[488] This would result in aggregate costs of approximately $1,270 for UITs that are small entities that prepare prospectuses pursuant to Form N–8B–2.

3. Proposed Amendments to Form N–CEN

We are proposing amendments to Form N–CEN that are designed to collect census-type information regarding funds' incorporation of ESG into their investment strategies and investment holdings, as well as the ESG-related service providers they use in a structured data format. The proposed amendments are designed to complement the tailored narrative disclosure included in the fund prospectus and annual reports, and to give the Commission, investors and other market participants the ability to identify efficiently funds that incorporate ESG factors into their investment strategies and categorize funds based on the type of ESG strategy they employ.

We estimate that 70 funds that are small entities would be subject to these requirements. We estimate that compliance with the proposed amendments to Form N–CEN would entail internal time costs of $351 (1 hour) per fund.[489] This would result in aggregate costs of approximately $24,570 for funds that are small entities.

4. Proposed Amendments to Form ADV

The proposed amendments to Form ADV would impose certain reporting, recordkeeping, and compliance requirements on all Commission-registered advisers, including small advisers. All Commission-registered small advisers would be required to file Form ADV, including the proposed amendments. The proposed amendments to Form ADV would require registered investment advisers and exempt reporting advisers to report different or additional information than what is currently required. Approximately 710 small advisers currently registered, or reporting as an exempt reporting adviser, with us would be subject to these requirements.[490] We expect these 434 small entity RIAs to spend, on average, 1.9 hours per year to respond to the proposed new and amended questions, for a total of 824.6 aggregate hours per year. We expect these 276 small entity ERAs to spend, on average, 0.3 hours per year to respond to the proposed new and amended questions, for a total of 82.8 aggregate hours per year. The total for all small entity advisers would therefore be 907.4 hours per year.[491] We expect the aggregate cost to small advisers associated with this burden would be $419,275.50.[492]

E. Duplicative, Overlapping, or Conflicting Federal Rules

Commission staff has not identified any Federal rules that currently duplicate, overlap, or conflict with the proposed disclosure and reporting requirements. We recognize that the Commission also has proposed certain GHG disclosure requirements that would apply to BDCs in the Climate Disclosure Proposing Release. We believe the GHG disclosure requirements we are proposing in this release that would apply to a BDC that is an environmentally focused fund would complement the disclosure proposed in the Climate Disclosure Proposing Release if both proposals are adopted.[493] We request comment on this belief, whether commenters perceive any duplication or overlap if both proposals are adopted and, if so, how the Commission should address any such duplication or overlap.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission considered the following alternatives for small entities in relation our proposed amendments: (1) Establishing different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities; (2) exempting small entities from the proposed reporting, recordkeeping, and other compliance requirements, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using performance rather than design standards.

1. Proposed Amendments to Forms N–1A, N–2, N–8B–2, N–CEN, N–CSR, and S–6 and Fund Annual Reports

We do not believe that different compliance or reporting requirements or an exemption from coverage of the forms, or any part thereof, for small entities, would be appropriate for the amendments to Forms N–1A, N–2, N–8B–2, N–CEN, N–CSR, and S–6. Small entities currently follow the same requirements that large entities do when preparing, transmitting, and filing annual reports and preparing and sending or giving prospectuses to investors. The proposal is designed to address a disclosure gap under current law; if the proposal included different requirements for small funds, it could raise investor protection concerns for investors in small funds to the extent

[487] See Section IV.F. Cost estimates only refer to the paperwork collection costs estimated in connection with the PRA, not all possible costs associated with compliance.

[488] *See* Section IV.D. Cost estimates only refer to the paperwork collection costs estimated in connection with the PRA, not all possible costs associated with compliance.

[489] *See* Section IV.G. Cost estimates only refer to the paperwork collection costs estimated in connection with the PRA, not all possible costs associated with compliance.

[490] 434 small entity RIAs + 276 small entity ERAs = 710 advisers.

[491] *See supra* section IV.I. of this release.

[492] *See supra* section IV.I. of this release. For the small entity RIAs the cost calculation is as follows: 434 RIAs × $419.25 = $181,954.50 in internal cost average per RIA + (434 RIAs × .25 hrs) × $496) + (434 RIAs × .5 hrs) × $739) = $214,179 in external cost average per RIA for a total of $404,133.50. For the small entity ERAs the calculation is as follows: 276 ERAs × (0.3 hours × 279.50) = $23,142. Cost estimates only refer to the paperwork collection costs estimated in connection with the PRA, not all possible costs associated with compliance.

[493] *See* Proposed Instruction 10 to Item 24 of Form N–2 [17 CFR 274.11a–1]; Climate Disclosure Proposing Release, *supra* footnote 127.

that investors in small funds would not receive the same disclosures as investors in larger funds.

Similarly, we do not believe it would be appropriate to exempt small funds from the proposed amendments. As discussed above, our contemplated disclosure framework would be disrupted if investors in smaller funds received different disclosures than investors in larger funds. We believe that investors in all funds should benefit from the Commission's proposed disclosure amendments, not just investors in large funds. Further, the amendments we are proposing generally only apply to ESG-Focused Funds, Integration Funds, and Impact Funds, the definitions of which require affirmative actions on the part of a fund by electing to make certain claims in its disclosure documents. To the extent a small entity wishes to be exempted from the rules, such an exemption is already available to all funds regardless of size simply by avoiding making claims that the Commission has determined require additional disclosure in order to protect investors.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the proposal for small funds would permit us to achieve our stated objectives. We have sought to create as clear, consolidated, and simple a regulatory framework as we believe appropriate under the circumstances. As noted above, due to the ''opt-in'' nature of many of the requirements, small entities are already able to benefit from a simpler regulatory framework simply by not making claims about certain ESG goals for which additional disclosure is necessary in order to protect investors.

Finally, we do not believe it would be appropriate to use performance rather than design standards. As discussed above, we believe the regulatory disclosures that small funds provide to investors should be consistent with the disclosures provided to investors in larger entities. Our proposed disclosure requirements are tailored to meet the informational needs of different investors, and to implement a layered disclosure framework. We believe all fund investors should experience the anticipated benefits of the new disclosure requirements and that ESG disclosure should be uniform and standardized in order to allow investors to compare funds reporting the same information on the same frequency, and to help all investors to make more informed investment decisions based upon those comparisons.

2. Proposed Amendments to Form ADV

We do not believe that different compliance or reporting requirements or an exemption from coverage of the Form ADV, or any part thereof, for small entities, would be appropriate. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisers, it would be inconsistent with the purposes of the Act to specify differences for small entities under the proposed amendments. In addition, as discussed above, our staff would use the information that advisers would maintain to help prepare for examinations of investment advisers. Establishing different conditions for large and small advisers would negate these benefits.

We believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. We also believe that using performance rather than design standards would be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information in a uniform and quantifiable manner so that it is useful to our regulatory and examination program.

G. Solicitation of Comments

The Commission requests comments regarding matters discussed in this IRFA. We request comment on the number of small entities that would be subject to the proposed disclosure and reporting requirements and whether the proposed disclosure and reporting requirements would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the proposed disclosure and reporting requirements and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of the proposed disclosure and reporting requirements and how they would affect small entities.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [494] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation. We request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in the Securities Act, particularly, sections 5, 6, 7, 10, and 19 thereof [15 U.S.C. 77a *et seq.*], the Exchange Act, particularly, sections 13, 15, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], the Advisers Act, particularly, sections 203, 204, and 211 thereof [15 U.S.C. 80b *et seq.*], and 44 U.S.C. 3506–3507.

List of Subjects in 17 CFR Parts 200, 230, 232, 239, 249, 274, and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

■ 1. The authority citation for part 200, subpart N, continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

■ 2. Amend § 200.800 in the table in paragraph (b) by adding an entry for ''Form N–CSR'' between the entries for ''Form N–27F–1'' and ''Form N–PORT'' to read as follows:

[494] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
* * * * *	*	*
Form N–CSR	274.128	3235–0570
* * * * *	*	*

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

■ 4. Amend § 230.485 by revising paragraph (c)(3) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(c) * * *

(3) A registrant's ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit any Interactive Data File (as defined in § 232.11 of this chapter) required by the form on which the registrant is filing the post-effective amendment. A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit an Interactive Data File as required by the relevant form. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted the Interactive Data File required by the relevant form.

* * * * *

■ 5. Amend § 230.497 by revising paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used. Investment companies filing on Form N–1A, N–3, N–4, or N–6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the form on which the registrant files its registration statement.

* * * * *

(e) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission. Investment companies filing on Form N–1A, N–3, N–4, or N–6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which the registrant files its registration statement.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 6. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Amend § 232.11 by revising the definition of ''Related Official Filing'' to read as follows:

§ 232.11 Definition of terms used in this part.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which all or part of an Interactive Data File appears as an exhibit or, in the case of a filing on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–6 (§§ 239.17c and 274.11d of this chapter), Form N–8B–2 (§ 274.12 of this chapter), Form S–6 (§ 239.16 of this chapter), and Form N–CSR (§§ 249.331 and 274.128 of this chapter), and, to the extent required by § 232.405 [Rule 405 of Regulation S–T] for a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), Form 10–K (§ 249.310 of this chapter), Form 10–Q (§ 249.308a of this chapter), and Form 8–K (§ 249.308 of this chapter), the ASCII or HTML format part of an official filing that contains the information to

which an Interactive Data File corresponds.

* * * * *

■ 8. Amend § 232.405 by:
■ a. Revising the introductory text, paragraphs (a)(2), (a)(3)(i) introductory text, (a)(3)(ii), (a)(4), (b)(1) introductory text, (b)(2) introductory text, and (b)(2)(i), (iii), and (iv);
■ b. Adding paragraphs (b)(2)(v) and (vi);
■ c. Revising paragraph (b)(3)(iii); and
■ d. Revising the final sentence of Note 1 to the section.

The revisions and additions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(*l*) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(*l*) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); General Instruction 2.(*l*) of Form N–8B–2 (§ 274.12 of this chapter); General Instruction 5 of Form S–6 (§ 239.16 of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80–4), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, a separate account (as defined in Section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an Interactive Data File must consist of only a

complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the information set forth in:

(i) Items 2, 3, and 4 of Form N–1A (§§ 239.15A and 274.11A of this chapter); and, as applicable, the information provided in response to Item 9(b)(2) of Form N–1A pursuant to Instructions 1 or 2, as well as any information provided in response to Item 27(b)(7)(i)(B)–(E) of Form N–1A included in any annual report filed on Form N–CSR;

* * * * *

(iii) Items 2, 4, 5, 10, and 17 of Form N–4 (§§ 239.17b and 274.11c of this chapter);

(iv) Items 2, 4, 5, 10, 11, and 18 of Form N–6 (§§ 239.17c and 274.11d of this chapter);

(v) Item 11 of Form N–8B–2 (§ 274.12 of this chapter), pursuant to Instruction 2, including to the extent required by § 239.16 of this chapter (Form S–6); or

(vi) Item 7 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable.

(3) * * *

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.2.e, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N–2 in any registration statement or post-effective amendment thereto filed on Form N–2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N–2, any documents filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, any to the extent such information appears therein; as well as any information provided in response to Instructions 4.g.(1)(B)–(E) or 10 to Item 24 of Form N–2 that is included in any annual report filed on Form N–CSR or Form 10–K.

* * * * *

Note 1 to § 232.405: * * * For an issuer that is a management investment company, unit investment trust or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(*l*) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 9. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m,78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 10. Amend Form S–6 (referenced in § 239.16) by adding Instruction 5 to the General Instructions to read as follows:

Note: The text of Form S–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–6

* * * * *

General Instructions

* * * * *

Instruction 5. Interactive Data

(a) An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–6 [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form S–6 that includes or amends information provided in response to Item 11 of Form N–8B–2 (as provided pursuant to Instruction 1.(a) of the Instructions As To The Prospectus of this Form).

(1) Except as required by paragraph (a)(2), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(2) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of Rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted with the filing to which the Interactive Data Filing relates on or before the date the post-effective amendment that contains the related information becomes effective.

(b) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

■ 12. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

■ a. Revising General Instruction C.3(g);

■ b. Revising Item 2;

■ c. Revising Item 4(a);

■ d. In Item 9, adding Instructions to Item 9(b)(2); and

■ e. Revising Item 27(b)(7)(i).

The revisions and additions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–1A

* * * * *

General Instructions

* * * * *

C. * * *

3. * * *

(g) Interactive Data

(i) An Interactive Data File (§ 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3, and 4, and, as applicable, any information provided in response to Item 9(b)(2) pursuant to Instructions 1 or 2.

(A) * * *

(B) * * *

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to

paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 3, 4, or Item 9(b)(2) pursuant to Instructions 1 or 2 that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

(iii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any information provided in response to Item 27(b)(7)(i)(B)–(E) of Form N–1A that is included in any annual report filed on Form N–CSR.

(iv) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Series and, for any information that does not relate to all of the Classes in a filing, each Class of the Fund to be separately identified.

* * * * *

Item 2. * * *

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.,* that it is a Money Market Fund or a balanced fund).

Instruction. If the Fund is an Environmental, Social, or Governance (''ESG'') Impact Fund, as defined in Item 4(a)(2)(i)(C), disclose the ESG impact that the Fund seeks to generate with its investments.

* * * * *

Item 4. * * *

(a) Principal Investment Strategies of the Fund.

(1) Based on the information given in response to Item 9(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(2) Environmental, Social and Governance (''E,'' ''S,'' or ''G,'' and collectively, ''ESG'') Considerations.

(i) Definitions

(A) ''Integration Fund'' is a Fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but those 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.

(B) ''ESG-Focused Fund'' is a Fund is a Fund that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments or (2) in its engagement strategy with the companies in which it invests. An ESG-Focused Fund includes (i) any fund that has a name including terms indicating that the Fund's investment decisions incorporate one or more ESG factors; and (ii) any Fund whose advertisements, as defined pursuant to rule 482 under the Securities Act of 1933 [17 CFR 230.482], or sales literature, as defined pursuant to rule 34b–1 under the Investment Company Act of 1940 [17 CFR 270.34b–1], indicate that the Fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments.

(C) ''Impact Fund'' is an ESG-Focused Fund that seeks to achieve a specific ESG impact or impacts.

(ii) If the Fund considers ESG factors as part of its principal investment strategies, based on the information given in response to Item 9(b)(2), provide the following disclosure:

(A) If the Fund is an Integration Fund, summarize in a few sentences how the Fund incorporates ESG factors into the investment selection process, including what ESG factors the Fund considers.

(B) If the Fund is an ESG-Focused Fund, disclose the following information in a tabular format in the order specified below.

[ESG] Strategy Overview

Overview of the Fund's [ESG] strategy	The Fund engages in the following to implement its [ESG] Strategy (check all that apply): □ Tracks an index □ Applies an inclusionary screen □ Applies an exclusionary screen □ Seeks to achieve a specific impact □ Proxy voting □ Engagement with issuers □ Other
How the Fund incorporates [ESG] factors in its investment decisions	
How the Fund votes proxies and/or engages with companies about [ESG] issues	

Instructions

1. The table should precede other disclosure required by Item 4(a). Disclosure provided in the table does not need to be repeated as narrative disclosure in Item 4(a)(1).

2. The Fund may replace the term ''ESG'' in each row with another term or phrase that more accurately describes the applicable ESG factors the Fund considers. The Fund also may replace the term ''the Fund'' in each row with an appropriate pronoun, such as ''we'' or ''our.''

3. The Fund's disclosure for each row should be brief and limited to the information required by the row's instruction. Funds should use lists and other text features designed to provide overviews. Electronic versions of the summary prospectus should include a hyperlink to the location where the information is described in greater detail.

4. *Overview of the Fund's [ESG] strategy.* Provide a concise description in a few sentences of the ESG factor or factors that are the focus of the Fund's strategy. The Fund must also include the list shown in the table above of common ESG strategies in a ''check the box'' style and indicate with a check mark or other feature all that apply. The Fund should only check the box for proxy voting or engagement with issuers (or both, as applicable) if it is a significant means of implementing the Fund's ESG strategy, meaning that the Fund, as applicable, regularly and proactively votes proxies or engages with issuers on ESG issues to advance one or more particular ESG goals the fund has identified in advance.

5. *How the Fund incorporates [ESG] factors in its investment decisions.* Summarize how the Fund incorporates ESG factors into its investment process for evaluating, selecting, or excluding investments. The summary must include, as applicable:

(a) An overview of how the Fund applies any inclusionary or exclusionary screen, including a brief explanation of the factors the screen applies, such as particular industries or business activities it seeks to include or exclude, and if applicable, what exceptions apply to the inclusionary or exclusionary screen. For these purposes, an inclusionary screen is a method of selecting investments based on ESG criteria. An exclusionary screen starts with a given universe of investments and then excludes investment based on ESG criteria. If applicable, state what exceptions apply to the inclusionary or exclusionary screen. In addition, state the percentage of the portfolio, in terms of net asset value, to which the screen is applied, if less than 100%, excluding cash and cash equivalents held for cash management, and explain briefly why the screen applies to less than 100% of the portfolio.

(b) An overview of how the Fund uses an internal methodology, third-party data provider, such as a scoring or ratings provider, or a combination of both.

(c) The name of any index the Fund tracks and a brief description of the index and how the index utilizes ESG factors in determining its constituents.

Information must be provided with respect to each applicable common ESG strategy (*e.g.,* inclusionary and exclusionary screens) in a disaggregated manner if more than one applies. For example, inclusionary screening must be explained distinctly from exclusionary screening. Funds may use multiple rows or other text features to

clearly identify the disclosure related to each applicable common ESG strategy.

6. *How the Fund incorporates [ESG] factors in its investment decisions.* As applicable, provide an overview of any third-party ESG frameworks that the Fund follows as part of its investment process.

7. *How the Fund incorporates [ESG] factors in its investment decisions.* An Impact Fund must provide an overview of the impact(s) the Fund is seeking to achieve and how the Fund is seeking to achieve the impact(s). The overview must include (i) how the Fund measures progress toward the specific impact, including the key performance indicators the Fund analyzes, (ii) the time horizon the Fund uses to analyze progress, and (iii) the relationship between the impact the Fund is seeking to achieve and financial return(s). State that the Fund reports annually on its progress in achieving the impact(s) in the Fund's annual report to shareholders.

8. *How the Fund votes proxies and/or engages with companies about [ESG] issues.* The Fund must fill out this row regardless of whether the proxy voting or engagement boxes are checked. The Fund must describe briefly how the Fund engages or expects to engage with issuers on ESG issues (whether by voting proxies or otherwise). The Fund must state whether it has specific or supplemental policies and procedures that include one or more ESG considerations in voting proxies and, if so, state which considerations. If the Fund seeks to engage other than through shareholder voting, such as through meetings with or advocacy to management, the Fund must provide an overview of the objectives it seeks to achieve with the engagement strategy. If the Fund does not engage or expect to engage with issuers on ESG issues (whether by voting proxies or otherwise), the Fund must provide that disclosure in the row.

* * * * *

Item 9. * * *

(b) * * *

(2) * * *

Instructions

1. If the Fund is an Integration Fund, as defined in Item 4(a)(2)(i)(A), describe how the Fund incorporates ESG factors into its investment selection process, including:

(a) The ESG factors that the Fund considers.

(b) If the Fund considers the GHG emissions of its portfolio holdings as an ESG factor in its investment selection process, describe how the Fund considers the GHG emissions of its portfolio holdings, including a description of the methodology the Fund uses for this purpose.

2. If the Fund is an ESG-Focused Fund, as defined in Item 4(a)(2)(i)(B), describe how the Fund incorporates ESG factors into its investment process, including:

(a) The index methodology for any index the fund tracks, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors.

(b) Any internal methodology used and how that methodology incorporates ESG factors.

(c) The scoring or ratings system of any third-party data provider, such as a scoring or ratings provider, used by the Fund or other third-party provider of ESG-related data about companies, including how the Fund evaluates the quality of such data.

(d) The factors applied by any inclusionary or exclusionary screen, including any quantitative thresholds or qualitative factors used to determine a company's industry classification or whether a company is engaged in a particular activity.

(e) A description of any third-party ESG frameworks that the Fund follows as part of its investment process and how the framework applies to the Fund.

(f) With regard to engagement, whether by voting proxies or otherwise, a description of specific objectives of such engagement, including the Fund's time horizon for progressing on such objectives and any key performance indicators that the Fund uses to analyze or measure of the effectiveness of such engagement.

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Item 27. * * *

(b) * * *

(7) * * *

(i)(A) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(B) If the Fund is an Impact Fund as defined in Item 4(a)(2)(i)(C), summarize briefly the Fund's progress on achieving the impacts described in response to Instruction 7 of Item 4(a)(2) in both qualitative and quantitative terms during the reporting period, and the key factors that materially affected the Fund's ability to achieve the impact(s).

(C) If the Fund is an ESG-Focused Fund, as defined in Item 4(a)(2)(i)(B), and indicates that it uses proxy voting as a significant means of implementing its ESG strategy in response to Item C.3(j)(iii) on Form N–CEN, disclose the percentage of ESG voting matters during the reporting period for which the Fund voted in furtherance of the initiative. The Fund may limit this disclosure to voting matters involving the ESG factors the Fund incorporates into its investment decisions. The Fund, other than a business development company, also must include a cross reference, and for electronic versions of the shareholder report include a hyperlink, to its most recent complete voting record filed on Form N–PX.

(D) If the Fund is an ESG-Focused fund, as defined in Item 4(a)(2)(i)(B), and indicates that it uses ESG engagement as a significant means of implementing its ESG strategy in response to Item C.3(j)(iii) on Form N–CEN, discuss the Fund's progress on any key performance indicators. Disclose the number or percentage of issuers with which the Fund held ESG engagement meetings and total number of ESG engagement meetings. For this purpose, an ''ESG engagement meeting'' is a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with the issuer regarding this goal. If personnel of the Fund's adviser hold an ESG engagement meeting with an issuer on behalf of multiple Funds advised by the adviser, each Fund for which the meeting is within its ESG strategy may count the ESG engagement meeting.

(E) If a Fund is an ESG-Focused fund, as defined in Item 4(a)(2)(i)(B), and indicates that it considers environmental factors in response to Item C.3(j)(ii) on Form N–CEN, except for an ESG-Focused fund that affirmatively states in the ''ESG Strategy Overview'' table required by Item 4(a)(2)(ii)(B) that it does not consider the greenhouse gases (''GHG'') emissions of the portfolio companies in which it invests, disclose the following aggregated GHG emissions metrics of the portfolio for the reporting period: (1) Carbon Footprint and (2) Weighted Average Carbon Intensity. Calculate these metrics using the methodologies in the instructions below, and provide all related disclosures.

Instructions

1. Computation of Aggregated GHG Emissions

(a) Carbon Footprint: Disclose the total GHG emissions associated with the Fund's portfolio, normalized by the Fund's net asset value and expressed in

tons of carbon dioxide equivalent (''CO_2e'') per million dollars invested in the Fund. Calculate the Portfolio Carbon Footprint as follows for each portfolio holding:

$$\frac{\text{current value of portfolio holding}}{\text{portfolio company's enterprise value}} \times \text{portfolio company's Scope 1 and Scope 2 emissions}$$

$$\text{current portfolio net asset value}$$

(i) Calculate the enterprise value of the portfolio company. Enterprise value is the sum of the portfolio company's equity value and the book value of its short- and long-term debt.

(ii) Calculate the GHG emissions associated with each portfolio holding by dividing the current value of the holding by the enterprise value of the portfolio company. Then, multiply the resulting value by the portfolio company's Scope 1 and Scope 2 emissions.

(iii) Add the GHG emissions associated with all portfolio holdings, then divide the resulting amount by the Fund's net asset value to derive the Fund's carbon footprint.

(b) Weighted Average Carbon Intensity: Disclose the Fund's exposure to carbon-intensive companies, expressed in tons of CO_2e per million dollars of the portfolio company's total revenue, calculated as follows for each portfolio holding:

$$\frac{\text{current value of portfolio holding}}{\text{current portfolio net asset value}} \times \frac{\text{portfolio company's Scope 1 and Scope 2 emissions}}{\text{portfolio company's total revenue (\$M)}}$$

(i) Calculate the portfolio weight of each portfolio holding by dividing the current value of the portfolio holding by the current net asset value of the Fund's whole portfolio.

(ii) Calculate the GHG emissions of each portfolio company by dividing the portfolio company's Scope 1 and Scope 2 emissions by the portfolio company's total revenue.

(iii) Multiply the portfolio weight of each portfolio holding by the GHG emissions of each portfolio company. The sum of these values for all portfolio holdings is the Fund's weighted average carbon intensity.

(c) Scope 3 Emissions: If the fund holds investments in portfolio companies that disclose their Scope 3 emissions, disclose the Scope 3 emissions associated with the Fund's portfolio, to the extent Scope 3 emissions are publicly available as provided in Instruction (d)(x) of this Item, using the Carbon Footprint methodology described in paragraph (a) of this Item.

(i) Disclose Scope 3 emissions separately for each industry sector in which the Fund invests, as well as the percentage of the fund's net asset value invested in each industry sector.

(d) GHG Metric Calculation Data: To calculate the GHG emissions as discussed in paragraphs (a), (b) and (c) above, apply the following definitions, data inputs, and assumptions:

(i) CO_2e means the common unit of measurement to indicate the global warming potential of each greenhouse gas, expressed in terms of the global warming potential of one unit of carbon dioxide.

(ii) Global warming potential means a factor describing the global warming impacts of different greenhouse gases. It is a measure of how much energy will be absorbed in the atmosphere over a specified period of time as a result of the emission of one ton of a greenhouse gas, relative to the emissions of one ton of carbon dioxide.

(iii) Greenhouse gases (''GHG'') means carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(iv) GHG emissions means direct and indirect emissions of greenhouse gases expressed in metric tons of CO_2e, of which:

(A) Direct emissions are GHG emissions from sources that are owned or controlled by a portfolio company.

(B) Indirect emissions are GHG emissions that result from the activities of the portfolio company, but occur at sources not owned or controlled by the portfolio company.

(v) Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a portfolio company.

(vi) Scope 2 emissions are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a portfolio company.

(vii) Scope 3 emissions are all indirect GHG emissions not otherwise included in a portfolio company's Scope 2 emissions, which occur in the upstream and downstream activities of a portfolio company's value chain.

(viii) Value chain means the upstream and downstream activities related to a portfolio company's operations. Upstream activities in connection with a value chain may include activities by a party other than the portfolio company that relate to the initial stages of a portfolio company's production of a good or service (*e.g.,* materials sourcing, materials processing, and supplier activities). Downstream activities in connection with a value chain may include activities by a party other than the portfolio company that relate to processing materials into a finished product and delivering it or providing a service to the end user (*e.g.,* transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments).

(ix) A portfolio company or portfolio holding means a Fund's investment in, including an indirect investment through a derivatives instrument:

(A) An issuer that is engaged in or operates a business or activity that generates GHG emissions; or

(B) An investment company, or entity that would be an investment company under section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act, that invests in issuers described in paragraph A of this subsection, except for an investment in reliance on § 270. 12d1–1.

(x) Use the values necessary to calculate the portfolio company's equity value, total debt, and total revenue: (1) from the portfolio company's most recent public report required to be filed with the Commission pursuant to the Securities Exchange Act or the Securities Act (''regulatory report'') containing such information) or, (2) absent a regulatory report, based on information provided by the portfolio company. If a portfolio company's total revenue is reported in currency other than US dollars, convert the reported revenue into US dollars using the exchange rate as of the date of the relevant regulatory report providing the company's revenue.

(xi) *Sources of portfolio company emissions data.*

(A) If the portfolio company reports Scope 1, Scope 2, and Scope 3 emissions in a regulatory report, the Fund must use the Scope 1, Scope 2, or Scope 3 emissions in the portfolio company's most recent regulatory report.

(B) If the portfolio company does not report its Scope 1, Scope 2, and Scope 3 emissions as described in subsection 1 of this instruction, the Fund must use Scope 1, Scope 2, or Scope 3 emissions that are publicly provided by the portfolio company.

(C) If the portfolio company does not report or otherwise publicly provide its Scope 1 and Scope 2 emissions, use a good faith estimate of the portfolio company's Scope 1 and Scope 2 emissions. Discuss briefly how the Fund calculates such estimates, including the sources of data for determining such estimates, and the percentage of the Fund's aggregated GHG emissions for which the Fund used estimates rather than reported emissions.

(xii) Use the value of each portfolio holding and the net asset value of the portfolio as of the end of the Fund's most recently completed fiscal year.

(xiii) If a Fund obtains exposure to a portfolio company by entering into a derivatives instrument, the derivatives instrument will be treated as an equivalent position in the securities of the portfolio company that are referenced in the derivatives instrument. A derivatives instrument for this purpose means any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument.

* * * * *

■ 13. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

■ a. Revising General Instructions I.2 and 3, redesignating I.5 as I.6, and adding new I.5;

■ b. Adding Item 8.2.e; and

■ c. Revising Instructions 4.g.(1) and 10 to Item 24.

The revisions and additions read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–2

* * * * *

General Instructions

* * * * *

I. Interactive Data

* * *

2. An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto filed on Form N–2 or for any form of prospectus filed pursuant to Rule 424 under the Securities Act [17 CFR 230.424] that includes or amends information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.2.e, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates, on or before the date the registration statement or post-effective amendment that contains the related information becomes effective. Interactive Data Files must be submitted with the filing made pursuant to Rule 424.

3. If a Registrant is filing a registration statement pursuant to General Instruction A.2, an Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any of the documents listed in General Instruction F.3.(a) or General Instruction F.3.(b) that include or amend information provided in response to Items 3.1, 4.3, 8.2.b., 8.2.d, 8.2.e, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted with the filing of the document(s) listed in General Instruction F.3.(a) or General Instruction F.3.(b).

* * *

5. An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any information provided in response to Instructions 4.g.(1)(B)–(E) or 10 to Item 24 of Form N–2 that is included in any annual report filed on Form N–CSR or Form 10–K.

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Part A—Information Required in a Prospectus

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Item 8. * * *

2. * * *

e. Environmental, Social, and Governance (''E,'' ''S,'' or ''G,'' and collectively, ''ESG'') Considerations

(1) Definitions.

(A) ''Integration Fund'' is a Fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but those 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.

(B) ''ESG-Focused Fund'' is a Fund that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments or (2) in its engagement strategy with the companies in which it invests. An ESG-Focused Fund includes (i) any fund that has a name including terms indicating that the Fund's investment decisions incorporate one or more ESG factors; and (ii) any Fund whose advertisements, as defined pursuant to rule 482 under the Securities Act of 1933 [17 CFR 230.482], or sales literature, as defined pursuant to rule 34b–1 under the Investment Company Act of 1940 [17 CFR 270.34b–1], indicate that the Fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments.

(C) ''Impact Fund'' is an ESG-Focused Fund that seeks to achieve a specific ESG impact or impacts.

(2) If the Fund considers ESG factors as part of its principal portfolio emphasis, provide the following disclosure:

(A) If the Fund is an Integration Fund, summarize in a few sentences how the Fund incorporates ESG factors into the investment selection process, including what ESG factors the Fund considers.

(B) If the Fund is an ''ESG-Focused Fund,'' disclose the following information in a tabular format in the order specified below.

[ESG] Strategy Overview

Overview of the Fund's [ESG] strategy	The Fund engages in the following to implement its [ESG] Strategy (check all that apply): □ Tracks an index □ Applies an inclusionary screen □ Applies an exclusionary screen □ Seeks to achieve a specific impact □ Proxy voting □ Engagement with issuers □ Other
How the Fund incorporates [ESG] factors in its investment decisions	
How the Fund votes proxies and/or engages with companies about [ESG] issues	

Instructions

1. The table should precede other disclosure required by Item 8.2.

2. The Fund may replace the term ''ESG'' in each row with another term or phrase that more accurately describes the applicable ESG factors the Fund considers. The Fund also may replace the term ''the Fund'' in each row with an appropriate pronoun, such as ''we'' or ''our.''

3. The Fund's disclosure for each row should be brief and limited to the information required by the row's instruction. Funds should use lists and other text features designed to provide overviews. Electronic versions of the table should include a hyperlink to the location in the filing where the information is described in greater detail.

4. *Overview of the Fund's [ESG] strategy.* Provide a concise description in a few sentences of the ESG factor or factors that are the focus of the Fund's strategy. The Fund must also include the list shown in the table above of common ESG strategies in a ''check the box'' style and indicate with a check mark or other feature all that apply. The Fund should only check the box for proxy voting or engagement with issuers (or both, as applicable) if it is a significant means of implementing the Fund's ESG strategy, meaning that the Fund, as applicable, regularly and proactively votes proxies or engages with issuers on ESG issues to advance one or more particular ESG goals the fund has identified in advance.

5. *How the Fund incorporates [ESG] factors in its investment decisions.* Summarize how the Fund incorporates ESG factors into its investment process for evaluating, selecting, or excluding investments. The summary must include, as applicable:

a. An overview of how the Fund applies any inclusionary or exclusionary screen, including a brief explanation of the factors the screen applies, such as particular industries or business activities it seeks to include or exclude. For these purposes, an inclusionary screen is a method of selecting investments based on ESG criteria. Conversely, a fund applying an exclusionary screen starts with a given universe of investments and then excludes investment based on ESG criteria. If applicable, state what exceptions apply to the inclusionary or exclusionary screen. In addition, state the percentage of the portfolio, in terms of net asset value, to which the screen is applied, if less than 100%, excluding cash and cash equivalents held for cash management, and explain briefly why the screen applies to less than 100% of the portfolio.

b. An overview of how the Fund uses an internal methodology, third-party data provider, such as a scoring or ratings provider, or a combination of both.

c. The name of any index the Fund tracks and a brief description of the index and how the index utilizes ESG factors in determining its constituents.

Information must be provided with respect to each applicable common ESG strategy (*e.g.,* inclusionary and exclusionary screens) in a disaggregated manner if more than one applies. For example, inclusionary screening must be explained distinctly from exclusionary screening. Funds may use multiple rows or other text features to

clearly identify the disclosure related to each applicable common ESG strategy.

6. *How the Fund incorporates [ESG] factors in its investment decisions.* As applicable, provide an overview of any third-party ESG frameworks that the Fund follows as part of its investment process.

7. *How the Fund incorporates [ESG] factors in its investment decisions.* An Impact Fund must provide an overview of the impact(s) the Fund is seeking to achieve and how the Fund is seeking to achieve the impact(s). The overview must include (i) how the Fund measures progress toward the specific impact, including the key performance indicators the Fund analyzes, (ii) the time horizon the Fund uses to analyze progress, and (iii) the relationship between the impact the Fund is seeking to achieve and financial return(s)). State that the Fund reports annually on its progress in achieving the impact(s) in the Fund's annual report to shareholders or annual report on Form 10–K as applicable.

8. *How the Fund votes proxies and/or engages with companies about [ESG] issues.* The Fund must fill out this row regardless of whether the proxy voting or engagement boxes are checked. The Fund must describe briefly how the Fund engages or expects to engage with issuers on ESG issues (whether by voting proxies or otherwise). The Fund must state whether it has specific or supplemental policies and procedures that include one or more ESG considerations in voting proxies and, if so, state which considerations. If the Fund seeks to engage other than through shareholder voting, such as through meetings with or advocacy to management, the Fund must provide an overview of the objectives it seeks to achieve with the engagement strategy. If the Fund does not engage or expect to engage with issuers on ESG issues (whether by voting proxies or otherwise), the Fund must provide that disclosure in the row.

9. *Supplemental ESG disclosure.* As applicable, the following items must be disclosed by Integration Funds or ESG-Focused Funds to supplement the disclosures in the ESG Strategy Overview Table, to the extent not discussed in the Table. However, such disclosures do not need to precede other disclosures in Item 8.2.

a. If the Fund is an Integration Fund, describe how the Fund incorporates ESG factors into its investment selection process, including:

(1) The ESG factors that the Fund considers.

(2) If the Fund considers the GHG emissions of its portfolio holdings as an ESG factor in its investment selection process, describe how the Fund considers the GHG emissions of its portfolio holdings, including a description of the methodology the Fund uses for this purpose.

b. If the Fund is an ESG-Focused Fund, describe how the Fund incorporates ESG factors into its investment process, including:

(1) The index methodology for any index the fund tracks, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors.

(2) Any internal methodology used and how that methodology incorporates ESG factors.

(3) The scoring or ratings system of any third-party data provider, such as a scoring or ratings provider, used by the Fund or other third-party provider of ESG-related data about companies, including how the Fund evaluates the quality of such data.

(4) The factors applied by any inclusionary or exclusionary screen, including any quantitative thresholds or qualitative factors used to determine a company's industry classification or whether a company is engaged in a particular activity.

(5) A description of any third-party ESG frameworks that the Fund follows as part of its investment process and how the framework applies to the Fund.

(6) With regard to engagement, whether by voting proxies or otherwise, a description of specific objectives of such engagement, including the Fund's time horizon for progressing on such objectives and any key performance indicators that the Fund uses to analyze or measure of the effectiveness of such engagement.

10. If the Fund is an Impact Fund, where the Fund first describes its objective in the filing, disclose the ESG impact that the Fund seeks to generate with its investments.

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Part B—Information Required in a Statement of Additional Information

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Item 24. Financial Statements

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Instructions

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4. * * *

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g. *Management's Discussion of Fund Performance.* Disclose the following information:

(1)(A) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund. The information presented may include tables, charts, and other graphical depictions.

(B) If the Fund is an Impact Fund as described in Item 8.2.e.(1)(C), summarize briefly the Fund's progress on achieving the impacts described in response to Instruction 7 of Item 8.2.e in both qualitative and quantitative terms during the reporting period, and the key factors that materially affected the Fund's ability to achieve the impact(s).

(C) If the Fund is an ESG-Focused fund, as defined in Item 8.2.e.(1)(B), and indicates that it uses proxy voting as a significant means of implementing its ESG strategy in response to Item C.3(j)(iii) on Form N–CEN, disclose the percentage of ESG voting matters during the reporting period for which the Fund voted in furtherance of the initiative. The Fund may limit this disclosure to voting matters involving the ESG factors the Fund incorporates into its investment decisions. The Fund, other than a business development company, also must include a cross reference, and for electronic versions of the shareholder report include a hyperlink, to its most recent complete voting record filed on Form N–PX.

(D) If the Fund is an ESG-Focused fund, as defined in Item 8.2.e.(1)(B), and indicates that it uses ESG engagement as a significant means of implementing its ESG strategy in response to Item C.3(j)(iii) on Form N–CEN, discuss the Fund's progress on any key performance indicators. Disclose the number or percentage of issuers with which the Fund held ESG engagement meetings and total number of ESG engagement meetings. For this purpose, an ''ESG engagement meeting'' is a substantive discussion with management of an issuer advocating for one or more specific ESG goals to be accomplished over a given time period, where progress that is made toward meeting such goal is measurable, that is part of an ongoing dialogue with the issuer regarding this goal. If personnel of the Fund's adviser hold an ESG engagement meeting with an issuer on behalf of multiple Funds advised by the adviser, each Fund for which the meeting is within its ESG strategy may count the ESG engagement meeting.

(E) If the Fund is an ESG-Focused fund, as defined in Item 8.2.e.(1)(B), and indicates that it considers environmental factors in response to Item C.3(j)(ii) on Form N–CEN, except for an ESG-Focused fund that affirmatively states in the ''ESG Strategy Overview'' table required by Item

4(a)(2)(ii)(B) that it does not consider the greenhouse gases (''GHG'') emissions of the portfolio companies in which it invests, disclose the following aggregated GHG emissions metrics of the portfolio for the reporting period: (1) Carbon Footprint and (2) Weighted Average Carbon Intensity. Calculate these metrics using the methodologies in the instructions below, and provide all related disclosures.

Instructions

1. Computation of Aggregated GHG Emissions

(a) *Carbon Footprint:* Disclose the total GHG emissions associated with the Fund's portfolio, normalized by the Fund's net asset value and expressed in tons of carbon dioxide equivalent (''CO_2e'') per million dollars invested in the Fund. Calculate the Portfolio Carbon Footprint as follows for each portfolio holding:

$$\sum \frac{\text{current value of portfolio holding}}{\text{portfolio company's enterprise value}} \times \frac{\text{portfolio company's scope 1 and scope 2 emissions}}{\text{current portfolio net asset value}}$$

(i) Calculate the enterprise value of the portfolio company. Enterprise value is the sum of the portfolio company's equity value and the book value of its short- and long-term debt.

(ii) Calculate the GHG emissions associated with each portfolio holding by dividing the current value of the holding by the enterprise value of the portfolio company. Then, multiply the resulting value by the portfolio company's Scope 1 and Scope 2 emissions.

(iii) Add the GHG emissions associated with all portfolio holdings, then divide the resulting amount by the Fund's net asset value to derive the Fund's carbon footprint

(b) *Weighted Average Carbon Intensity:* Disclose the Fund's exposure to carbon-intensive companies, expressed in tons of CO_2e per million dollars of the portfolio company's total revenue, calculated as follows for each portfolio holding:

$$\sum \frac{\text{current value of portfolio holding}}{\text{current portfolio value}} \times \frac{\text{portfolio company's scope 1 and scope 2 emissions}}{\text{portfolio company's total revenue (\$M)}}$$

(i) Calculate the portfolio weight of each portfolio holding by dividing the current value of the portfolio holding by the current net asset value of the Fund's whole portfolio.

(ii) Calculate the GHG emissions of each portfolio company by dividing the portfolio company's Scope 1 and Scope 2 emissions by the portfolio company's total revenue.

(iii) Multiply the portfolio weight of each portfolio holding by the GHG emissions of each portfolio company. The sum of these values for all portfolio holdings is the Fund's weighted average carbon intensity.

(c) *Scope 3 Emissions:* If the fund holds investments in portfolio companies that disclose their Scope 3 emissions, disclose the Scope 3 emissions associated with the Fund's portfolio, to the extent Scope 3 emissions are publicly available as provided in Instruction (d)(x) of this Item, using the Carbon Footprint methodology described in paragraph (a) of this Item.

(i) Disclose Scope 3 emissions separately for each industry sector in which the Fund invests, as well as the percentage of the fund's net asset value invested in each industry sector.

(d) *GHG Metric Calculation Data:* To calculate the GHG emissions as discussed in paragraphs (a), (b) and (c) above, apply the following definitions, data inputs, and assumptions:

(i) CO_2e means the common unit of measurement to indicate the global warming potential of each greenhouse gas, expressed in terms of the global warming potential of one unit of carbon dioxide.

(ii) Global warming potential means a factor describing the global warming impacts of different greenhouse gases. It is a measure of how much energy will be absorbed in the atmosphere over a specified period of time as a result of the emission of one ton of a greenhouse gas, relative to the emissions of one ton of carbon dioxide.

(iii) Greenhouse gases (''GHG'') means carbon dioxide; methane; nitrous oxide; nitrogen trifluoride; hydrofluorocarbons; perfluorocarbons; and sulfur hexafluoride.

(iv) GHG emissions means direct and indirect emissions of greenhouse gases expressed in metric tons of CO_2e, of which:

(A) Direct emissions are GHG emissions from sources that are owned or controlled by a portfolio company.

(B) Indirect emissions are GHG emissions that result from the activities of the portfolio company, but occur at sources not owned or controlled by the portfolio company.

(v) Scope 1 emissions are direct GHG emissions from operations that are owned or controlled by a portfolio company.

(vi) Scope 2 emissions are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a portfolio company.

(vii) Scope 3 emissions are all indirect GHG emissions not otherwise included in a portfolio company's Scope 2 emissions, which occur in the upstream and downstream activities of a portfolio company's value chain.

(viii) Value chain means the upstream and downstream activities related to a portfolio company's operations. Upstream activities in connection with a value chain may include activities by a party other than the portfolio company that relate to the initial stages of a portfolio company's production of a good or service (*e.g.,* materials sourcing, materials processing, and supplier activities). Downstream activities in

connection with a value chain may include activities by a party other than the portfolio company that relate to processing materials into a finished product and delivering it or providing a service to the end user (*e.g.,* transportation and distribution, processing of sold products, use of sold products, end of life treatment of sold products, and investments).

(ix) A portfolio company or portfolio holding means a Fund's investment in, including an indirect investment through a derivatives instrument:

(A) An issuer that is engaged in or operates a business or activity that generates GHG emissions; or

(B) An investment company, or entity that would be an investment company under section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7), that invests in issuers described in paragraph A of this subsection, except for an investment in reliance on § 270. 12d1–1.

(x) Use the values necessary to calculate the portfolio company's equity value, total debt, and total revenue: (1) from the portfolio company's most recent public report required to be filed with the Commission pursuant to the Exchange Act or the Securities Act (''regulatory report'') containing such information) or, (2) absent a regulatory report, based on information provided by the portfolio company. If a portfolio company's total revenue is reported in currency other than U.S. dollars, convert the reported revenue into US dollars using the exchange rate as of the date of the relevant regulatory report providing the company's revenue.

(xi) *Sources of portfolio company emissions data.*

(A) If the portfolio company reports Scope 1, Scope 2, and Scope 3 emissions in a regulatory report, the Fund must use the Scope 1, Scope 2, or Scope 3 emissions in the portfolio company's most recent regulatory report.

(B) If the portfolio company does not report its Scope 1, Scope 2, and Scope 3 emissions as described in subsection 1 of this instruction, the Fund must use Scope 1, Scope 2, or Scope 3 emissions that are publicly provided by the portfolio company.

(C) If the portfolio company does not report or otherwise publicly provide its Scope 1 and Scope 2 emissions, use a good faith estimate of the portfolio company's Scope 1 and Scope 2 emissions. Discuss briefly how the Fund calculates such estimates, including the sources of data for determining such estimates, and the percentage of the Fund's aggregated GHG emissions for which the Fund used estimates rather than reported emissions.

(xii) Use the value of each portfolio holding and the net asset value of the portfolio as of the end of the Fund's most recently completed fiscal year.

(xiii) If a Fund obtains exposure to a portfolio company by entering into a derivatives instrument, the derivatives instrument will be treated as an equivalent position in the securities of the portfolio company that are referenced in the derivatives instrument. A derivatives instrument for this purpose means any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument.

* * * * *

10. *Business Development Companies.*

a. Every annual report filed under the Exchange Act by a business development company must contain the information required by Instruction 4.b, and, as applicable, Instructions 4.g(1)(B)–(E) and 4.h to this Item.

b. The requirement to respond to Instructions 4.g(1)(C)–(E) is predicated on responses to certain disclosures required by Item C.3(j) of Form N–CEN. For purposes of this Item, provide the information required by Instructions 4.g(1)(C)–(E) to the extent that a business development company would have supplied the predicate responses to Item C.3(j) were it required to file Form N–CEN.

c. Any information provided in response to Instructions 4.g(1)(B)–(E) to this Item that appears in a business development company's annual report must be included with the disclosure required by Item 7 of Form 10–K (Management's Discussion and Analysis of Financial Condition and Results of Operations).

d. Every annual report filed on Form 10–K that contains the information required by Instruction 4.g(1)(E) to this Item also must contain the information required by Item 7 of Form N–CSR (Disclosure of Greenhouse Gas (GHG) Emissions Methodologies and Assumptions).

* * * * *

■ 14. Amend Form N–8B–2 (referenced in § 274.12) by:

■ a. In the heading of ''2. Preparation and filing of Registration Statement'' under the General Instructions, adding a new instruction (l); and

■ b. Revising the instructions to II.11.

The addition and revisions read as follows:

Note: The text of Form N–8B–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–8B–2

* * * * *

General Instructions for Form N–8B–2

* * * * *

2. * * *

(l). Interactive Data

(1) An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement on Form N–8B–2 that includes information provided in response to Item 11 pursuant to Instruction 2. The Interactive Data File must be submitted with the filing to which it relates on the date such filing becomes effective.

(2) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

General Description of the Trust and Securities of the Trust

* * * * *

11. * * *

Instructions

1. The registrant need only disclose information with respect to an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the registrant has issued more than one class or series of securities, the requested information must be disclosed for the class or series that has securities that are being registered.

2. If one or more environmental, social, or governance (''E,'' ''S,'' or ''G,'' and collectively, ''ESG'') factors are used to select the portfolio securities, describe briefly how such factors are incorporated into the investment selection process, including which ESG factors are considered.

* * * * *

■ 15. Amend Form N–CEN (referenced in §§ 249.330 and 274.101) by:

■ a. Redesignating Items C.3.b.i. through C.3.b.iv. as Items C.3.b.ii. through C.3.b.v., and

■ b. Adding new Items C.3.b.i. and C.3.j.

The additions read as follows:

Note: The text of Form N–CEN does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–CEN

* * * * *

Part C: Additional Questions for Management Investment Companies

Item C.3. * * *

b. * * *

i. Full name and LEI, if any, or provide and describe other identifying number of index: _____

* * * * *

j. Funds that incorporate Environmental, Social and/or Governance (''E,'' ''S,'' or ''G,'' and collectively, ''ESG'') factors: ____

i. Does the Fund provide the disclosure required by Item 4(a)(2)(ii) of Form N–1A or Item 8.2.e.(2)(B) of Form N–2? [Y/N] If yes,

1. Is the Fund an ''Integration Fund'' as described in Item 4(a)(2)(i)(A) of Form N–1A or Item 8.2.(e)(1)(A) (A)of Form N–2? [Y/N]

2. Is the Fund an ''ESG-Focused Fund'' as described in Item 4(a)(2)(i)(B) of Form N–1A or Item 8.2.e.(1)(B) of Form N–2? [Y/N] If yes,

A. Is the Fund an ''Impact Fund'' as described in Item 4(a)(2)(i)(C) of Form N–1A or Item 8.2.e.(1)(C) of Form N–2? [Y/N]

ii. Which of the following factors does the Fund consider:

1. Environmental factors? [Y/N]
2. Social factors? [Y/N]
3. Governance factors? [Y/N]

iii. Which of the following does the Fund engage in to implement its ESG strategy:

1. Tracks an index? [Y/N]
2. Applies an inclusionary screen? [Y/N]
3. Applies an exclusionary screen? [Y/N]
4. Proxy voting? [Y/N]
5. Engagement with issuers? [Y/N]
6. Other? [Y/N]

iv. Does the Fund consider ESG information or scores from ESG consultant(s) or other ESG service provider(s)? [Y/N] If yes,

1. Full name(s) and LEI, if any, or provide and describe other identifying number of ESG consultant(s) or other ESG service provider(s): _____

2. Is the ESG consultant(s) or other service provider(s) an affiliated person of the Fund? [Y/N]

v. Does the Fund follow any third-party ESG framework(s)? [Y/N] If yes,

1. Name(s) of the framework(s):

_____

* * * * *

■ 16. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. Revising Instruction C.4;

■ b. Revising the second sentence of Item 2.(c);

■ c. Revising Item 2.(f)(1);

■ d. Redesignating Items 7 through 13 as Items 8 through 14;

■ e. Adding a new Item 7; and

■ f. In Certifications, revising the introductory text of Instruction to paragraph (a)(2); and

■ g. Revising the heading ''Instructions to Item 13'' to read ''Instructions to Item 14.''.

The revisions and addition read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–CSR

* * * * *

General Instructions

* * * * *

C. * * *

4. *Interactive Data File.* An Interactive Data File as defined in Rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T [17 CFR 232.405] by a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) to the extent required by Rule 405 of Regulation S–T for information provided in response to, as applicable:

(a) Item 27(b)(7)(i)(B)–(E) of Form N–1A included in any annual report filed on this Form;

(b) Items 3.1, 4.3, 8.2.b, 8.2.d, 8.2.e, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N–2 included in any annual report filed on this Form by a Registrant that is filing a registration statement pursuant to General Instruction A.2 of Form N–2;

(c) Instructions 4.g.(1)(B)–(E) to Item 24 of Form N–2 included in any annual report filed on this Form; and

(d) Item 7 of this Form.

* * * * *

Item 2. * * *

(c) * * * The registrant must file a copy of any such amendment as an exhibit pursuant to Item 14(a)(1), unless the registrant has elected to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2) of this Item, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (f)(3) of this Item.

* * * * *

(f) * * *

(1) File with the Commission, pursuant to Item 14(a)(1), a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report on this Form N–CSR;

* * * * *

Item 7. Disclosure of Greenhouse Gas (GHG) Emissions Methodologies and Assumptions

If a registrant is required to disclose the aggregated GHG emissions of its portfolio in its report transmitted to stockholders pursuant to Rule 30e-1 under the Act, the registrant must provide descriptions of any assumptions and methodologies it applied in calculating the portfolio's GHG emissions, any limitations associated with the registrant's assumptions and methodologies, and explanations of any good faith estimates of GHG emissions the registrant was required to make in response to Item 27(b)(7)(i)(E) of Form N–1A or Instruction 4.g.(1)(E) to Item 24 of Form N–2.

* * * * *

Certifications

* * * * *

Instruction to Paragraph (a)(2)

Until the date that the registrant has filed its first report on Form N–PORT (17 CFR 270.150), in the certification required by Item 14(a)(2), the registrant's certifying officers must certify that they have disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

* * * * *

Instructions to Item 14

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 17. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.,* Pub. L. 111–203, 124 Stat. 1376.

■ 18. Form ADV (referenced in § 279.1) is amended by:

■ a. In Part 1A, Item 5, adding paragraphs K.(5), K.(6), and M.;

■ b. In Part 1A, Item 6, adding paragraph A.(15);

■ c. In Part 1A, Item 7, adding paragraph A.(17);

■ d. In Part 1A, Schedule D, adding Section 6.A.(15);

■ e. In Part 1A Schedule D, adding 7.A.5.(q);
■ f. In Part 1A Schedule D, adding Section 7.B.(1)A.29.;
■ g. In Part 2A Item 8, adding paragraph D.;
■ h. In Part 2A, adding Item 10.C.12.;
■ i. In Part 2A, revising 17.A.;
■ j. In Part 2A Appendix 1, revising Items 4.A, Items 6A. and C.

The revisions and additions read as follows:

Note: The text of Form ADV does not, and the amendments will not, appear in the Code of Federal Regulations.

FORM ADV (Paper Version)

* * * * *

PART 1A

* * * * *

Item 5. * * *

* * * * *

K. Separately Managed Account Clients

* * * * *

BILLING CODE 8011–01–P

(5) Do you consider any Environmental, Social or Governance ("E," "S," or "G," and collectively, "ESG") factors (i) as part of one or more significant investment strategies or methods of analysis in the advisory services you provide to your separately managed account *clients*, including in your selection of other investment advisers if applicable, and/or (ii) as part of your advisory services when requested by your separately managed account *clients*?

☐ Yes ☐ No

(6) If you answered "Yes" to Item 5.K(5), for those advisory services:

a. Do you consider one or more ESG factors alongside other, non-ESG factors in your investment advice, but such ESG factors are generally no more significant than other factors in advising your clients with respect to investments, such that ESG factors may not be determinative in providing advice with respect to any particular investment ("integration")?

☐ Yes ☐ No

b. Do you focus on ESG factors by using them as a significant or main consideration in advising your clients with respect to investments or in your engagement strategy with the companies in which your separately managed account clients invest (ESG-"focused")?

☐ Yes ☐ No

c. If you answered "Yes" to (6)b., do you seek to achieve a specific ESG impact or impacts (ESG "impact")?

☐ Yes ☐ No

(*Select all that apply*. For example, if you have some significant investment strategies that are integration, others that are ESG-focused, and others that are ESG-focused *and* seek to achieve a measurable ESG impact, select "Yes" to a., b., and c.).

d. Which of the following factors do you consider for your separately managed account clients described in Item 5.K(5):

i. Environmental factors?	☐	Yes	☐	No
ii. Social factors?	☐	Yes	☐	No
iii. Governance factors?	☐	Yes	☐	No

(Select all that apply)

* * * * *

M. Third-Party ESG Framework(s):

(1) Do you follow any third-party ESG framework(s) in connection with your advisory services?

☐ Yes ☐ No

If "Yes," state the name(s) of the framework(s): _____ [multiple free text boxes]

Item 6. * * *

* * * * *

A. * * *

☐ (15) ESG consultant or other ESG service provider

* * * * *

Item 7. * * *

* * * * *

A. * * *

☐ (17) ESG consultant or other ESG service provider

* * * * *

Schedule D

* * * * *

Section 6.A. * * *

* * * * *

☐ (15) ESG consultant or other ESG service provider

* * * * *

Section 7.A. * * *

* * * * *

5. * * *

☐ (q) ESG consultant or other ESG service provider

Section 7.B.(1) * * *

* * * * *

A. * * *

* * * * *

29. (a) Do you consider any ESG factors as part of one or more significant investment strategies or methods of analysis in the advisory services you provide to this *private fund*?

☐ Yes ☐ No

(b) If you answered "Yes" to 29.(a), for the significant investment strategy or method of analysis for which you consider ESG factors for this *private fund*:

(1) Do you consider one or more ESG factors alongside other, non-ESG factors in your investment advice, but such ESG factors are generally no more significant than other factors in advising the fund with respect to investments, such that ESG factors may not be determinative in providing advice with respect to any particular investment ("integration")?

☐ Yes ☐ No

(2) Do you focus on ESG factors by using them as a significant or main consideration in advising the fund with respect to investments or in your engagement strategy with the companies in which the fund invests (ESG "focused")?

☐ Yes ☐ No

(3) If you answered "Yes" to 29.(b)(2), do you seek to achieve a specific ESG impact or impacts (ESG "impact")?

☐ Yes ☐ No

(4) Which of the following factors do you consider when providing advisory services to this *private fund*:

a. Environmental factors? ☐ Yes ☐ No

b. Social factors? ☐ Yes ☐ No

c. Governance factors? ☐ Yes ☐ No

(select all that apply)

BILLING CODE 8011–01–C

* * * * *

Uniform Application for Investment Adviser Registration

Part 2: Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements

* * * * *

Part 2A of Form ADV: Firm Brochure

* * * * *

Item 8. Methods of Analysis, Investment Strategies and Risk of Loss

* * * * *

D. For each significant investment strategy or method of analysis you use for which you consider any ESG factors, provide a description of the ESG factor or factors you consider, and how you incorporate these factors when advising your clients with respect to investments, including in the selection or recommendation of other investment advisers, and whether and how you incorporate E, S, or G factors, or a combination of ESG factors. This must include, but not be limited to, an explanation of whether and how you:

1. consider one or more ESG factors alongside other, non-ESG factors in your investment advice, but such ESG factors are generally no more significant than other factors in advising your clients with respect to investments, such that ESG factors may not be determinative in providing advice with respect to any particular investment (''integration''); or

2. focus on one or more ESG factors by using them as a significant or main consideration in advising your clients with respect to investments or in your engagement strategy with the companies in which your clients invest (ESG-''focused''). ESG ''impact'' strategies or methods of analysis are those ESG-focused strategies or methods of analysis that seek to achieve a specific ESG impact or impacts. For any ESG impact strategy or methodology, you must provide an overview of the impact(s) you are seeking to achieve and how you are seeking to achieve the impact(s) (including how you measure progress toward the stated impact, disclosing the key performance indicators you analyze, the time horizon you use to analyze progress, and the relationship between the impact you are seeking to achieve and financial return(s)).

If you use criteria or a methodology for evaluating, selecting, or excluding investments in your significant investment strategy or method of analysis based on the consideration of ESG factors, describe that criterion and/or methodology and how you use it for each applicable significant investment strategy or method of analysis. This must include, but is not limited to, a description of whether (and how) you use any of the following:

1. an internal methodology, a third-party criterion or methodology such as a scoring provider or framework, or a combination of both, including an explanation of how the adviser evaluates the quality of relevant third-party data;

2. an inclusionary or exclusionary screen, including an explanation of the factors the screen applies, such as particular industries or business activities it seeks to include or exclude and if applicable, what exceptions apply to the inclusionary or exclusionary screen; and/or

3. an index, including the name of the index and a description of the index and how the index utilizes ESG factors in determining its constituents.''

Note: If you utilize or follow a third-party ESG framework, criterion, or index, you may include a hyperlink to any such framework, criterion, or index in your response to this Item.

* * * * *

Item 10. Other Financial Industry Activities and Affiliations

C. * * *

* * * * *

12. ESG consultant or other ESG service provider.

* * * * *

Item 17. Voting Client Securities

A. If you have, or will accept, authority to vote *client* securities, describe briefly your voting policies and procedures, including those adopted pursuant to SEC rule 206(4)–6. If you have specific voting policies or procedures to include one or more ESG considerations when voting client securities, describe which ESG factors you consider and how you consider them. Describe whether (and, if so, how) your *clients* can direct your vote in a particular solicitation. Describe how you address conflicts of interest between you and your *clients* with respect to voting their securities. Describe how *clients* may obtain information from you about how you voted their securities. Explain to *clients* that they may obtain a copy of your proxy voting policies and procedures upon request.

* * * * *

Part 2A Appendix 1 of Form ADV: Wrap Fee Program Brochure

* * * * *

Item 4. Services, Fees and Compensation

A. Describe the services, including the types of portfolio management services, provided under each program. Indicate the wrap fee charged for each program or, if fees vary according to a schedule, provide your fee schedule. Indicate whether fees are negotiable and identify the portion of the total fee, or the range of fees, paid to portfolio managers. If you consider Environmental, Social, or Governance (''ESG'') factors under your programs, provide a description of the factors you consider, and how you incorporate them under each program.

* * * * *

Item 6. Portfolio Manager Selection and Evaluation

A. * * *

4. If you consider ESG factors when selecting, reviewing, or recommending portfolio managers as described in this Item, describe the ESG factors you consider and how you consider them. Your description of those factors must include:

(i) a description of any criteria or methodology you use to assess portfolio managers' applications of the relevant ESG factors into their portfolio management, including any industry or other standards for presenting the achievement of ESG impacts and/or third-party ESG frameworks, and any internal criteria or methodology;

(ii) an explanation of whether you review, or whether a third-party reviews, portfolio managers' applications of the relevant ESG factors described above. If so, describe the nature of the review and the name of any third party conducting the review.

(iii) if applicable, an explanation that neither you nor a third-party assesses portfolio managers' application of the relevant ESG factors into their portfolio management, and/or that the portfolio managers' application of the relevant ESG factors may not be calculated, compiled, assessed, or presented on a uniform and consistent basis.

* * * * *

C. If you, or any of your supervised persons covered under your investment adviser registration, act as a portfolio manager for a wrap fee program described in the wrap fee program brochure, respond to Items 4.B, 4.C, 4.D (Advisory Business), 6 (Performance-Based Fees and Side-By-Side Management), 8.A and 8.D (Methods of Analysis, Investment Strategies and Risk of Loss), and 17 (Voting Client Securities) of Part 2A of Form ADV.

By the Commission.

Dated: May 25, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–11718 Filed 6–16–22; 8:45 am]

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