

June 3, 2022

SEC Proposes Amendments to Expand Fund “Names Rule”

Proposed Amendments Would Expand Existing Requirements to ESG Funds and Certain Other Funds, and Increase Disclosure and Other Obligations of Funds Subject to the Rule

SUMMARY

On May 25, 2022, the Securities and Exchange Commission (the “SEC”) voted 3 to 1¹ (Commissioner Peirce dissenting) to propose certain amendments² to Rule 35d-1³ (the “Names Rule”) under the Investment Company Act of 1940 (the “Investment Company Act”). The Names Rule is intended to ensure that the name of a registered investment company or business development company (“BDC” and, together, a “fund”) does not misrepresent the fund’s investments and risks.⁴ The proposed amendments follow a number of public statements by SEC Chair Gensler and other commissioners, as well as actions by the SEC staff, suggesting a growing focus on “truth in advertising”⁵ when it comes to fund naming and marketing to investors, particularly with respect to funds that market themselves as “green” or “sustainable” or otherwise focused on environmental, social or governance (“ESG”) criteria.

The proposed amendments would, among other things:

- expand the scope of the current 80% investment policy requirement to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics, including terms such as “growth” and “value” and names that indicate the fund incorporates ESG factors in its investment decisions;
- impose enhanced fund prospectus disclosure requirements that would mandate a fund subject to the 80% investment policy requirement to define the terms used in its name, including the criteria the fund uses to select the investments that the term describes;
- prohibit the use of ESG terminology in the name of so-called “ESG integration” funds (funds that consider one or more ESG factors alongside other, non-ESG factors in its investment decisions, but such ESG factors are generally no more significant than other factors in the investment selection process) as materially deceptive or misleading;

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- permit temporary (up to 30 days) departures from the 80% investment policy only under circumstances specified in the proposed amendments;
- require a fund to value all of its derivatives positions using notional amounts, rather than market value, for purposes of assessing the fund's compliance with its 80% investment policy;
- restrict a registered closed-end fund or BDC whose shares are not listed on a national securities exchange from changing its 80% investment policy without a shareholder vote; and
- retain the Names Rule's shareholder notice requirement for any change in a fund's 80% investment policy (unless the 80% investment policy is a fundamental policy) and update the rule with respect to the use of electronic delivery.

The SEC issued the proposed amendments concurrently with a separate proposal that would impose additional disclosure obligations on ESG funds and investment advisers that consider ESG factors in the significant investment strategies or methods of analysis they pursue (the "ESG Proposal").⁶ We will publish a separate memorandum describing the ESG Proposal in the coming days.

If the proposed amendments are adopted, funds would be required to comply following a one-year transition period commencing on the date of publication of the final amendments in the Federal Register.

The SEC is seeking comment from the public on the proposed amendments, including responses to 100 specific questions included in the Release. Returning to the SEC's traditional approach, comments are due 60 days after the Release is published in the Federal Register.⁷ The Release also states that the SEC staff is reviewing its no-action letters and other statements addressing compliance with the Names Rule to determine which letters and other staff statements, or portions thereof, should be withdrawn in connection with any adoption of the proposed amendments.⁸

BACKGROUND

The SEC views the name of a fund as a "means of communicating information about the fund to investors [that] is an important marketing tool for the fund."⁹ Addressing the concern that investors may place undue reliance on a fund's name to determine its investments and risks, Rule 35d-1 under the Investment Company Act, often referred as the "Names Rule," was adopted in 2001 to help "ensure that a fund's name does not misrepresent the fund's investments and risks."¹⁰

The current Names Rule generally requires that if a fund's name suggests a focus in a particular type of investment, or in investments in a particular industry, or geographic region, the fund must adopt a policy to invest at least 80% of the value of its assets in the type of investment, or in investments in the industry, country, or geographic region, suggested by its name.¹¹

The Names Rule has not been amended since its initial adoption in 2001, whereas "the fund industry has developed, and practices regarding Names Rule compliance have continued to evolve over the past two decades."¹² In particular, the Release states that "interpretive issues as to when a fund is subject to the names rule have raised questions about the rule's application with respect to particular fund names that

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could mislead investors about the fund's investment focus, such as when a fund's name suggests investment in companies that meet certain [ESG] criteria."¹³ The Release identifies the SEC's further concerns with the current rule that may "deprive investors of the protections of the rule," such as deviations from the investment focus suggested by the fund's name over time and the increasing use of derivatives by funds.¹⁴ Accordingly, the SEC believes improvements to the Names Rule are appropriate for the rule to continue to meet its purpose of ensuring that "investors' assets in funds are invested in accordance with their reasonable expectations based on the fund's name."¹⁵ The proposed amendments follow a Request for Comments the SEC published in March 2020, which sought public comment on the framework for addressing funds' names and potential reforms to the Names Rule, including whether the rule should apply to terms such as "ESG" or "sustainable" that reflect certain qualitative characteristics of an investment.¹⁶

At the open meeting regarding the proposed amendments, Commissioner Peirce voted against the proposal, noting that the proposed amendments "may create more fog than they dissipate and may place unnecessary constraints on fund managers" and expressing concern, among other things, that applying the rule to "names suggesting that a fund focuses on investments with 'particular characteristics,' most prominently, those associated with ESG, will rely on subjective judgments" that will inevitably be at risk of second-guessing in hindsight through "creative enforcement actions."¹⁷

OVERVIEW OF THE PROPOSED AMENDMENTS

80% Investment Policy

As noted above, the current Names Rule generally requires that if a fund's name suggests a focus in a particular type of investment, or in investments in a particular industry, or geographic region, the fund must adopt a policy to invest at least 80% of the value of its assets in the type of investment, or in investments in the industry, country, or geographic region, suggested by its name.¹⁸ The current Names Rule also imposes an 80% investment policy requirement for funds that have names suggesting distributions are tax-exempt.¹⁹ However, the current Names Rule does not apply to the use of terms that suggest an investment strategy (such as "growth" or "value"), rather than a type of investment, and the SEC staff has observed that some funds appear to treat terms such as "ESG" as an investment strategy (to which the Names Rule does not apply).²⁰

The proposed amendments would expand the 80% investment policy requirement so that it would apply to any fund names that include terms suggesting that the fund focuses on investments that have, or whose issuers have, particular characteristics.²¹ The Release notes that the expanded scope of fund names included in the proposed amendments would include names where a fund may not have adopted an 80% investment policy under the current Names Rule; for example, fund names with terms such as "growth" or "value" and those indicating that the fund's investment decisions incorporate one or more ESG factors such as names that include "sustainable," "green" or "ethical."²² This would also include other fund names that

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historically may not have required an 80% investment policy, such as names that include terms such as “global,” “international,” “income” or “intermediate term (or similar) bond.”²³

The Release identifies several types of fund names that would continue to fall outside the 80% investment policy requirement because the names do not connote an investment focus.²⁴ These include names that reference characteristics of a fund’s portfolio as a whole, such as a name indicating the fund seeks to achieve a certain portfolio “duration” or that the fund is “balanced”; names that reference a particular investment technique, such as “long/short”; names that suggest a possible result to be achieved, such as “real return”; and names that reference a retirement target date.²⁵ However, these names would continue to be subject to the prohibition under section 35(d) of the Investment Company Act on materially misleading and deceptive names, and the anti-fraud provisions under the federal securities laws relating to investor disclosures.

Under the proposed amendments, where a fund’s name suggests an investment focus that has multiple elements, the fund’s 80% investment policy must address all the elements in the name, although it would permit the fund to take a reasonable approach in specifying how the fund’s investments will incorporate each such element in the name.²⁶ Funds would be able to define terms used in their names in a reasonable way, subject to the requirement that any terms that suggest an investment focus must be consistent with those terms’ plain English meaning or established industry use.²⁷

Temporary Departures from the 80% Investment Policy

Under the current Names Rule, a fund’s 80% investment policy applies “under normal circumstances,” leaving it to funds to determine what constitutes something other than a normal circumstance.²⁸ In contrast, the proposed amendments would permit a fund to temporarily depart from its 80% investment policy only under the following specified circumstances:

- as a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund’s purchase or sale of a security or the fund’s entering into or exiting an investment;
- to address unusually large cash inflows or unusually large redemptions;
- to take a position in cash and cash equivalents or government securities to avoid a loss in response to adverse market, economic, political or other conditions; and
- to reposition or liquidate a fund’s assets in connection with a reorganization, to launch the fund or when notice of a change in the fund’s 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule.²⁹

Under each of these circumstances a fund would have to bring its investments back into compliance with the 80% investment requirement within 30 consecutive days, other than in the case of fund launches (where temporary departures would be limited to 180 consecutive days from the commencement of fund operations), reorganizations (for which the proposed rule does not specify a required time frame for

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accompanying temporary departures) or where the 60-day notice has been provided to shareholders.³⁰ In all cases, a fund would be required to come back into compliance as soon as reasonably practicable.³¹

The Release states that the proposed amendments are designed to permit appropriate flexibility to depart temporarily from the 80% investment requirement in particular, time-limited circumstances when doing so would be beneficial to the fund and its shareholders, while providing additional parameters designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time.³² The Release further explains that the parameters included in the proposal reflect the SEC's belief that investors' expectations for funds' investment focus may not depend on whether market events negatively affect the investments in a fund's portfolio.³³

Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names

Under the proposed amendments, a fund's name, including terms suggesting that the fund's investment decisions incorporate one or more ESG factors, would be defined as materially deceptive and misleading when the fund considers ESG factors alongside but not more centrally than other, non-ESG factors in its investment decisions (such funds are referred to in the Release as "integration funds").³⁴ The SEC expressed concern that because of the necessary brevity of fund names, the inclusion of ESG terminology in a fund's name has the potential to overstate the importance of the ESG factors in the fund's selection of its portfolio investments unless the fund prioritizes those ESG considerations that its name suggests.

The Release states that while the 80% investment policy requirement is an effective way of generally addressing the consistency of a fund's investment portfolio with the investment focus its name suggests, the adoption of an 80% investment policy alone would not address the SEC's specific concern that the use of ESG terms in an integration fund's name overstates the emphasis of ESG considerations in selecting that fund's portfolio investments.³⁵ Commenters may wish to respond to the SEC's question in the Release seeking comment on whether the SEC should further limit the extent to which funds may use specific ESG-related terms in their names, for example permitting the use of certain terms only if a fund has a certain investment focus (e.g., requiring a fund with "zero" carbon in its name to invest in companies with no or low carbon emissions).³⁶

Use of Derivatives in Assessing Names Rule Compliance

The proposed amendments would require that, in calculating its assets for purposes of Names Rule compliance, a fund value each derivatives instrument using its notional amount with certain adjustments (rather than its market value), and reduce the value of its assets by excluding cash and cash equivalents up to the notional amounts of the derivatives instruments.³⁷ The proposed amendments also address the derivatives instruments that a fund may include in its 80% basket. In addition to any derivatives instrument that a fund includes in its 80% basket because the derivatives instrument provides investment exposure to the investments suggested by the fund's name, the fund may include in its 80% basket a derivatives instrument that provides investment exposure to one or more of the market risk factors associated with the

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investments suggested by the fund's name (such as interest rate risk, credit spread risk and foreign currency risk).³⁸ Accordingly, when a fund determines its compliance with its 80% investment policy, all derivatives instruments would be included in the denominator in the calculation, and all derivatives in the fund's 80% basket would be included in the numerator in the calculation.³⁹

The Release explains that funds currently are permitted to include synthetic instruments, such as derivatives instruments, in the fund's 80% basket if the synthetic instrument has economic characteristics similar to the securities included in the 80% basket.⁴⁰ However, the Release notes that funds' practices in valuing derivatives instruments for purposes of determining their compliance with the 80% test are not consistent—some funds currently value derivatives instruments using their notional amounts while other funds use market values.⁴¹ The Release states that the SEC agrees with some commenters that it could be misleading or deceptive for a fund to gain significant exposure through a derivatives instrument to a particular asset class but use a name that reflects exposure to a different asset class, and that the proposed amendments are designed to address such concern.⁴²

Commenters may wish to focus on the proposed amendments' treatment of derivatives and whether use of notional amounts is appropriate to measure compliance with the Names Rule in all circumstances.

Unlisted Closed-End Funds and BDCs

The proposed amendments would require that a registered closed-end investment company or BDC that does not have shares that are listed on a national securities exchange (together, "unlisted closed-end funds and BDCs") that is required to adopt an 80% investment policy must make its 80% investment policy a fundamental investment policy in all cases.⁴³ As a result of requiring the 80% investment policy to be a fundamental policy, unlisted closed-end funds and BDCs would not be permitted to change their 80% investment policies without authorization by a majority vote of the outstanding voting securities of the fund.⁴⁴

Currently, a fund may generally elect to make its 80% investment policy a fundamental policy or instead provide shareholders notice at least 60 days prior to any change in its non-fundamental 80% investment policy.⁴⁵ The Release explains the SEC's view that advance notice is not effective for unlisted closed-end funds and BDCs whose shareholders have limited ability to redeem or quickly sell their shares if the fund were to change its investment policy or focus.⁴⁶ The proposed amendments are intended to ensure that investors in unlisted closed-end funds and BDCs would be able to vote on a change in investment policy in light of their limited options to exit their investments if such a change were to be made.⁴⁷

Effect of Compliance with an 80% Investment Policy

The proposed amendments would clarify that a fund's name may be materially deceptive or misleading under the Names Rule even if the fund adopts an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy.⁴⁸ A fund's name could be materially deceptive or misleading if, for example, a fund complies with its 80% investment policy but makes a substantial investment with the remaining 20% basket that is antithetical to the fund's investment focus or invests in a

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way such that a substantial portion of the fund's risk or return is different from what would reasonably be expected based on the fund's name, regardless of the fund's compliance with the requirements of the Names Rule.⁴⁹ For example, a fund's name could be materially deceptive or misleading under the proposed amendments if a short-term bond fund using the 20% basket to invest in highly volatile equity securities that introduce significant volatility into a fund that investors would expect to have lower levels of volatility associated with short-term bonds.⁵⁰ Such proposal codifies the SEC's previous position that the Names Rule's 80% investment policy requirement is not intended to create a safe harbor for fund names.⁵¹

Prospectus Disclosure Defining Terms Used in Fund Name

The proposed amendments would modify fund registration forms—specifically Form N-1A, Form N-2, Form N-8B-2 and Form S-6—so that each fund required to adopt and implement an 80% investment policy would also be required to include disclosure in its prospectus that defines any word or phrase used in a fund's name related to the fund's investment focus or strategies.⁵² Such disclosures would also include the specific criteria the fund uses to select the investments that the term describes, if any.⁵³ While funds would have “flexibility to use reasonable definitions of the terms” used in their names, the definitions should have “a meaningful nexus between the term used in the fund's name and the fund's investment focus.”⁵⁴ Additionally, the proposed amendments would require funds to tag new information that would be included using a structured, machine-readable data language (specifically Inline eXtensible Business Reporting Language).⁵⁵

Plain English/Established Industry Use Requirement

For a fund required to adopt an 80% investment policy, the proposed amendments further require that any terms used in the fund's name suggesting either an investment focus or that such fund is a tax-exempt fund must be consistent with those terms' plain English meaning or established industry use.⁵⁶ If a term in a fund's name is defined in a way that is inconsistent with its plain English meaning or established industry use, such name would be considered to be materially deceptive or misleading under the proposed amendments, even if the fund's prospectus disclosure defines a given term in the name to match the fund's investments.⁵⁷ Additionally, under the proposed amendments, disclosure would not be permitted to “fix” or “remedy” a misleading name that uses terms in a way that is inconsistent with their plain English meaning or established industry use, and therefore “contrary to reasonable expectations.”⁵⁸

Names Rule Notice

The current rule requires that, unless the 80% investment policy is a fundamental policy of the fund, fund shareholders must receive at least 60 days prior notice of any change in the fund's 80% investment policy.⁵⁹ The proposed amendments are intended to update the existing notice requirement to better address the needs of shareholders who have elected electronic delivery and to require notices to describe not only a change in the fund's 80% investment policy, but also a change to the fund's name that accompanies the investment policy change.⁶⁰ The proposed amendments would require the notice to contain a prominent statement that references the fact of the name change, putting investors on alert.⁶¹ The proposed

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amendments would also require additional specificity with respect to the content that the notices include, such as the fund's 80% investment policy, the nature of the change to the 80% investment policy, the fund's old and new names, and the effective date of any investment policy and/or name changes.⁶²

Other Proposed Amendments

The Release also proposed the following rule and form changes:

- **Amendments to Form N-PORT Reporting Requirements.** The proposed amendments would amend Form N-PORT to include a new reporting item for registered investment companies, other than money market funds, including information relating to the value of the fund's 80% basket, as a percentage of the value of the fund's assets, and if applicable, the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's assets during the reporting period.⁶³ The proposed amendments would also include another new Form N-PORT reporting item, which would require a registered investment company, other than a money market fund, subject to the 80% investment policy requirement to indicate, with respect to each portfolio investment, whether the investment is included in the fund's 80% basket.⁶⁴ A registered investment company would be required to provide information relating to new reporting items as of the end of the reporting period, and the information would be publicly available for the third month of each fund's quarter.⁶⁵ As proposed, money market funds and BDCs, which are not subject to Form N-PORT reporting requirements, would not be subject to the proposed new reporting requirements.⁶⁶
- **Amendment to Recordkeeping Requirements.** The proposed amendments would require funds subject to the 80% investment policy requirement to maintain written records documenting their compliance with the rule, including (i) the fund's record of which investments are included in the fund's 80% basket and the basis for including each such investment in the 80% basket, (ii) the value of the fund's 80% basket, as a percentage of the value of the fund's assets, (iii) the reasons for any departures from the 80% investment policy, (iv) the dates of any departures from the 80% investment policy, and (v) any notice sent to the fund's shareholders pursuant to the rule.⁶⁷ Funds that do not adopt an 80% investment policy would be required to maintain a written record of their analysis that the 80% investment policy is not required under the rule.⁶⁸
- **Exception for Certain Unit Investment Trusts.** The proposed amendments would include certain exceptions for unit investment trusts ("UITs") that have made their initial deposit of securities prior to the effective date of any final rule amendments the SEC adopts.⁶⁹ Such UITs would be excepted from the requirements to adopt an 80% investment policy and the recordkeeping policy, including recordkeeping for funds that do not adopt an 80% investment policy, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule.⁷⁰

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ENDNOTES

- 1 The Commission is currently comprised of only four commissioners following the recent departure of Commissioner Roisman which was announced in December 2021. See Statement of Commissioner Elad L. Roisman (Dec. 20, 2021), available at <https://www.sec.gov/news/statement/roisman-20211220>.
- 2 Investment Company Names, SEC Release No. IC-34593 (May 26, 2022) (the “Release”), available at <https://www.sec.gov/rules/proposed/2022/33-11067.pdf>. See also SEC Fact Sheet: Amendments to the Fund “Names Rule” (May 26, 2022), available at <https://www.sec.gov/files/ic-34593-fact-sheet.pdf>.
- 3 17 C.F.R. § 270.35d-1.
- 4 See Release at 5-8.
- 5 See Chair Gary Gensler, Prepared Remarks Before the Asset Management Advisory Committee (July 7, 2021), available at <https://www.sec.gov/news/public-statement/gensler-amac-2021-07-07>. See also Chair Gary Gensler, Prepared Remarks Before the Principles for Responsible Investment “Climate and Global Financial Markets” Webinar (July 28, 2021), available at <https://www.sec.gov/news/speech/gensler-pri-2021-07-28>. See also Paul Kiernan, *SEC Proposes More Disclosure Requirements for ESG Funds*, The Wall Street Journal, May 25, 2022.
- 6 Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, SEC Release No. 33-11068 (May 25, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11068.pdf>.
- 7 The SEC had imposed shorter comment deadlines on several recent rulemaking proposals under Chair Gensler. See, e.g., The Enhancement and Standardization of Climate-Related Disclosures for Investors, SEC Release Nos. 33-11042; 34-94478 (Mar. 21, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>; and Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, SEC Release No. IA-5955 (Feb. 9, 2022), available at <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>. The original deadline for comments on these proposals was 30 days after publication of the proposal in the Federal Register, or 60 days after publication on the SEC website, whichever was later. The SEC subsequently extended the comment period of the climate-related disclosures proposal and reopened comments on the private fund advisers proposal and another proposal that also had a shorter comment period. SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS (May 9, 2022), available at <https://www.sec.gov/news/press-release/2022-82>.
- 8 Release at 111-12.
- 9 *Id.* at 5.
- 10 *Id.* at 6.
- 11 Release at 8-9.
- 12 *Id.* at 6-7.
- 13 *Id.* at 7.
- 14 *Id.*
- 15 *Id.* at 6-7.
- 16 Request for Comments on Fund Names, Investment Company Act Release No. 33809 (Mar. 2, 2020) [85 FR 13221 (Mar. 6, 2020)], available at <https://www.govinfo.gov/content/pkg/FR-2020-03-06/pdf/2020-04573.pdf>.

ENDNOTES (CONTINUED)

- 17 Commissioner Hester M. Peirce, Statement by Commissioner Peirce on Investment Company Names (May 25, 2022) (“Peirce Statement”), available at <https://www.sec.gov/news/statement/peirce-fund-names-statement-052522>.
- 18 Release at 8-9.
- 19 *Id.* at 9.
- 20 See *id.* at 13-14.
- 21 The Release also proposes to add BDCs to the definition of “fund” in the rule. Release at 19, n.31.
- 22 *Id.* at 19-20.
- 23 *Id.* at 23-24.
- 24 *Id.* at 24.
- 25 *Id.* at 24-25.
- 26 *Id.* at 25-26.
- 27 *Id.* at 26-27. The Release criticized the reliance by some funds on “text analytics to assign issuers to industries based on the frequency of particular terms in an issuer’s disclosure documents,” stating “[a]lthough text analysis may be a helpful component of a fund’s analysis, [the SEC does] not believe it is reasonable to conclude that an issuer is in a given industry solely because the issuer’s disclosure documents frequently include words associated with the industry. *Id.* at 27-28.
- 28 *Id.* at 34.
- 29 *Id.* at 33-34.
- 30 *Id.* at 34.
- 31 *Id.*
- 32 *Id.* at 35.
- 33 *Id.* at 36. Commissioner Peirce noted her view that the 30-day time limit on temporary departures “would unduly constrain advisers’ ability to make decisions that are best for the funds” and may “[induce] portfolio managers to make undesirable investments in order to remain in compliance with the rule,” citing as an example that funds with an investment focus in emerging central European markets may not have been able to comply with the proposed rule after Russia’s invasion of Ukraine. Peirce Statement, *supra* n.17.
- 34 *Id.* at 81-82. The SEC requests comment on whether integration funds should be permitted to use an ESG term in its name if the fund identifies itself as an integration fund (e.g., “XYZ ESG Integration Fund.”) The companion ESG Proposal categorizes funds engaging in ESG-investing into three broad categories—“Integration Funds,” “ESG-Focused Funds” and “Impact funds”—depending on how central ESG factors are to a fund’s strategy. See *supra* n.16.
- 35 Release at 84.
- 36 *Id.* at 86.
- 37 *Id.* at 48.
- 38 *Id.*
- 39 *Id.* at 48-49.
- 40 *Id.* at 49.
- 41 *Id.*
- 42 *Id.* at 58-59.
- 43 *Id.* at 65-66.

- 44 *Id.* at 66.
- 45 *Id.*
- 46 *Id.* at 66-67.
- 47 *Id.* at 67.
- 48 *Id.* at 69.
- 49 *Id.* at 69-70.
- 50 *Id.*
- 51 *Id.* at 69.
- 52 *Id.* at 72.
- 53 *Id.*
- 54 *Id.* at 74-75.
- 55 *Id.* at 75-76.
- 56 *Id.* at 78-79.
- 57 *Id.* at 79.
- 58 *Id.* at 79-80.
- 59 *Id.* at 86.
- 60 *Id.* at 86-87.
- 61 *Id.* at 90.
- 62 *Id.* at 92.
- 63 *Id.* at 95-96.
- 64 *Id.* at 100.
- 65 *Id.* at 96, 100.
- 66 *Id.* at 98.
- 67 *Id.* at 103-04.
- 68 *Id.* at 106-07.
- 69 *Id.* at 109.
- 70 *Id.*

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