

MEMO# 33085

February 4, 2021

SEC's Asset Management Advisory Committee's ESG Subcommittee: Preliminary Recommendations on Issuer and Fund Disclosure; Commissioner Roisman Statement

[33085]

February 4, 2021 TO: ICI Members

ESG Advisory Group

ESG Task Force SUBJECTS: ESG RE: SEC's Asset Management Advisory Committee's ESG Subcommittee: Preliminary Recommendations on Issuer and Fund Disclosure; Commissioner Roisman Statement

The SEC's Asset Management Advisory Committee's ("AMAC") ESG Subcommittee presented for consideration several preliminary recommendations regarding ESG-related disclosures at a December meeting.[\[1\]](#) AMAC did not vote on the recommendations, and it directed the Subcommittee to engage with issuers. The Subcommittee then would consider whether to revise the recommendations and brief the full committee with a view towards seeking committee approval to publish the recommendations. Commissioner Roisman published a statement reflecting his observations and questions regarding ESG investing.[\[2\]](#) The Subcommittee's preliminary recommendations and Commissioner Roisman's statement are briefly summarized below.

I. Preliminary Recommendations regarding Public Company ESG-Related Disclosure

The Subcommittee recommended that the SEC: (i) take steps to require the adoption of standards by which corporate issuers would disclose material ESG risks; (ii) utilize standard setters' frameworks to require disclosure of material ESG risks; (iii) after appropriate study, designate those third-party standards as authoritative and binding, akin to generally accepted accounting principles (GAAP); and (iv) require issuers to disclose material ESG risks in a manner consistent with the presentation of other financial disclosures.

The Subcommittee further recommended that any standard setter framework: (i) apply to disclosure of *material* ESG risks and guide issuers in determining whether an ESG risk is

material or could become so in the future; (ii) have standards that are material, limited by industry, and provide clear guidance on relevant metrics; and (iii) allow uniform comparison of material ESG risks across industries and specific comparison within industries.

In addition, the Subcommittee recommended that the SEC ensure that public company disclosure: (i) comprehensively addresses all material ESG risks; (ii) meaningfully conveys the issuer's exposure to each material ESG risk; and (iii) be presented in a manner consistent with the presentation of other financial disclosures, integrating ESG disclosure into required SEC reports in a standard format and taxonomy that is machine-readable.

II. Preliminary Recommendations regarding ESG Investment Product Disclosure

With respect to fund disclosure, the ESG Subcommittee recommended that: (i) the SEC suggest best practices to foster comparability; (ii) align ESG investment product disclosure with the ICI's Board of Governors approved taxonomy;[\[3\]](#) and (iii) clearly describe each product's strategy and investment priorities, including describing non-financial objectives, such as environmental impact. In addition, the ESG Subcommittee recommended that the SEC suggest best practices for investment products to describe: (i) each product's planned approach to share ownership activities in the Statement of Additional Information ("SAI"), and (ii) any notable recent ownership activities outside proxy voting in shareholder reports.

III. Performance Measurement and Attribution

The Subcommittee concluded that given the state of public data and the early evolution of practices, it would not recommend specific approaches to ESG performance measurement. Further, it recommended that ESG should not be subject to different or more stringent performance disclosure obligations than other fund types. They also stated that, as the ESG market further develops, secondary, ESG-themed benchmarks may become valuable information for investors.

IV. Commissioner Roisman Statement

Commissioner Roisman indicated that he agreed with several aspects of the Subcommittee's preliminary recommendation, including that: (i) a prescriptive approach to mandating that public issuers provide "E-," "S-," or "G-" disclosures is not likely to strike the best balance between obtaining decision-useful information and minimizing burden on those issuers; (ii) it is important to seek information that is tailored to the particular issuer rather than impose one-size-fits-all disclosure requirements; and (iii) the SEC's existing principles-based rule set, which is grounded in materiality, provides a good framework upon which to build.

Commissioner Roisman also set forth several questions with respect to the Subcommittee's preliminary recommendations, which are provided below verbatim

- First, how do you believe this recommendation would serve and benefit *investors*? I understand many in the asset management industry would like public issuers to provide more ESG information. But the SEC must understand *how investors themselves* are to benefit from any action we take.
- Second, investors have invested now around \$2 Trillion into funds labeled "ESG," "green," and the like. But, it is not clear to me that we understand these investors' objectives, which (as you noted in your draft recommendation) *may fall outside risk/return alone*. SEC required disclosure is predicated on materiality to investors. Without knowing more about these investors' goals—particularly those unrelated to

risk/return objectives—how can we assess what information may be *material* to them when thinking about imposing new disclosure requirements?

- Third, I have heard from public issuers who are considering how to fulfill investors' requests for information about environmental or social information that they worry about the liability that comes with providing such information in publicly filed SEC documents. Did you consider ways to mitigate this cost, such as allowing this information to be furnished rather than filed with the SEC?
- Fourth, to the extent that the goal of this recommendation with respect to public issuers is comparability of disclosure—not new disclosure—why are disclosures of material information different if they happen to fall under the “ESG” umbrella when, in other contexts, we do not demand perfect comparability across all categories of material information?
- Fifth, there have been significant efforts in private ordering around ESG topics that have been valuable in furthering the same objectives sought in this draft recommendation. Have you considered the extent to which rule-based mandates might stifle the development of such currently evolving measures?
- Finally, to the extent that you are considering recommending that the SEC incorporate certain third parties' disclosure guidelines into our rule set, have you thought about how the SEC should oversee those third parties? Also, should we extend our oversight further, for example, to ESG-index providers and ESG-rating agencies, since so many “ESG” funds and investment products are derivative of their work?

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

[1] See U.S. Securities and Exchange Commission Asset Management Advisory Committee Potential Recommendations of ESG Subcommittee December 1, 2020, *available at* <https://www.sec.gov/files/potential-recommendations-of-the-esg-subcommittee-12012020.pdf>; and Potential Recommendations from the ESG Subcommittee SEC Asset Management Advisory Committee December 1, 2020, *available at* <https://www.sec.gov/files/update-from-esg-subcommittee-12012020.pdf>

[2] Commissioner Roisman, Statement at the Meeting of the Asset Management Advisory Committee, *available at* <https://www.sec.gov/news/public-statement/roisman-statement-amac-meeting-120120>

[3] See ICI Memorandum No. 32635 (July 24, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32635

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.