

MEMO# 34105

April 8, 2022

SEC ESG Update: 2022 Examination Priorities

[34105]

April 11, 2022

TO: ESG Advisory Group

ESG Task Force RE: SEC ESG Update: 2022 Examination Priorities

Last week, the SEC announced the publication of the Division of Examinations' 2022 examination priorities.[\[1\]](#) The examination priorities include a continued focus on ESG-related advisory services and investment products, including mutual funds, exchange-traded funds, and private fund offerings. The ESG-related focus of the examination priorities is summarized below.

The report states that examinations will typically focus on whether registered investment advisers (RIAs) and registered funds are accurately disclosing their ESG investing approaches and have adopted and implemented policies, procedures, and practices designed to prevent violations of the federal securities laws in connection with their ESG-related disclosures, including review of their portfolio management processes and practices. Examinations also will review the voting of client securities in accordance with proxy voting policies and procedures, including whether the votes align with their ESG-related disclosures and mandates, and whether there are misrepresentations of the ESG factors considered or incorporated into portfolio selection.

The report states that there is a risk that disclosures regarding portfolio management practices could involve materially false and misleading statements or omissions, which can result in misinformed investors. It states that this risk may be compounded by:

- the lack of standardization in ESG investing terminology (e.g., strategies that are referred to as sustainable, socially responsible, impact investing, and environmental, social, and governance conscious, which incorporate ESG criteria);
- the variety of approaches to ESG investing (e.g., a portfolio may be labeled as ESG because of consideration of ESG factors alongside traditional financial, industry-related, and macroeconomic indicators, among others; other portfolios may use ESG factors as the driving or main consideration in selecting investments; or some portfolios engage in impact investing seeking to achieve measurable ESG impact goals); and

- the failure to effectively address legal and compliance issues with new lines of business and products.

The report also states that the Divisions' exams will typically focus on whether RIAs and registered funds are:

- accurately disclosing their ESG investing approaches and have adopted and implemented policies, procedures, and practices designed to prevent violations of the federal securities laws in connection with their ESG-related disclosures, including review of their portfolio management processes and practices;
- voting client securities in accordance with proxy voting policies and procedures and whether the votes align with their ESG-related disclosures and mandates; or
- overstating or misrepresenting the ESG factors considered or incorporated into portfolio selection (e.g., greenwashing), such as in their performance advertising and marketing.

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endnotes

[1] See SEC Division of Examinations Announces 2022 Examination Priorities, Press Release, US Securities and Exchange Commission (March 30, 2022), available at <https://www.sec.gov/news/press-release/2022-57>. The full report is available at <https://www.sec.gov/files/2022-exam-priorities.pdf>. ICI's memorandum summarizing the report is available at <https://www.ici.org/memo34101>.

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