



ESG Investing Listed Among ‘Significant Areas of Focus’ for SEC Examination Division

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Relative to the [Division's 2021 priorities](#), which we wrote about [here](#), the Division's 2022 priorities clearly indicate that the Division is expanding its regulatory scrutiny of ESG-related investing, product development, product offerings and disclosures. The staff continues to examine whether registered investment advisors and registered funds accurately disclose their ESG investing approaches and adopt and implement policies, procedures and practices that are consistent with ESG-related disclosures.

With respect to the Division's 2022 priorities, the Division notes that “there is a risk that [ESG-related] disclosures regarding portfolio management practices could involve materially false and misleading statements or omissions, which can result in misinformed investors.” The Division is clearly concerned that such risk may be exacerbated by non-standardized terminology (or taxonomy) in connection with ESG investing; variations (even within individual funds or firms) with respect to how ESG considerations impact investment decisions; and potentially deficient compliance policies and procedures governing product development and offerings, and noted that it “will continue to focus on ESG-related advisory services and investment products (e.g., mutual funds, exchange-traded funds (ETFs) and private fund offerings).” Generally, the Division expects to focus on whether 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.
- Overstating or misrepresenting the ESG factors considered or incorporated into portfolio selection (e.g., greenwashing), such as in their performance advertising and marketing¹.

Based on prior statements by the Division, we expect that the Division's staff will continue to review both internal and external documents to ensure that firms articulate what ESG means to them and take care not to mislead investors. With respect to portfolio management, the SEC will examine firms' policies, procedures and practices (including written compliance policies) related to ESG and the use of ESG-related terminology. Expanding on the framework announced in its Risk Alert in April 2021, the Division also will evaluate regulatory filings, websites, reports to sponsors of global ESG frameworks, client presentations and responses to due diligence questionnaires, requests for proposals and client/investor-facing documents, including marketing materials. Firms should be aware that the staff will compare actual due diligence practices (e.g., investment selection and monitoring processes) and proxy voting decision-making processes against disclosed ESG investing approaches. This comprehensive approach to examining ESG investing is intended to insure that firms are not engaged in misleading stakeholders through "greenwashing," which is consistent with recent statements by SEC Chair Gensler.

In light of the Division's 2022 priorities, we recommend that firms undertake an evaluation of their business activities and enhance their ESG compliance policies, procedures and practices in order to identify potential deficiencies. In particular, and consistent with effective processes and procedures observed by the Division in its April 2021 Risk Alert, firms should:

- Ensure that ESG-related product disclosures are clear, precise and tailored to address specific approaches to ESG investing.
- Ensure that disclosures are aligned with actual practices and set forth how other factors, in addition to ESG, are used to make investment decisions.
- Make clear explanations of how investments were evaluated using goals established under global ESG frameworks.
- Establish and/or refine policies and procedures that address ESG investing and cover key aspects of a firm's relevant practices.
- Ensure that compliance personnel are actually knowledgeable about ESG practices.

These actions should be undertaken given the Division’s 2022 priorities and the enhanced regulatory scrutiny that the Division is prepared to exercise with respect to ESG investing.

¹ See *2022 Examination Priorities, Division of Examinations* (Mar. 30, 2022) at 13.

Categories

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