

16 August 2022

Ms. Vanessa Countryman  
Secretary U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington D.C. 20549-100

Dear Ms. Countryman,

**Re: May 25, 2022, Request for Public Input on Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social and Governance Investment Practices (IA-6034, IC-34594) (File No. S7-17-22)**

At the Standards Board for Alternative Investments (SBAI), we welcome the opportunity to respond to the U.S. Securities and Exchange Commission's (SEC) request for public input on ESG Rules<sup>1</sup>.

At the SBAI, we are an active alliance of over 150 asset managers and over 95 institutional investors dedicated to advancing responsible practices, partnership and knowledge. Our community includes asset managers with over \$2 trillion in AUM and institutional investors responsible for over \$4 trillion in assets. We aim to improve industry outcomes through our Alternative Investment Standards<sup>2</sup>, practical industry guidance<sup>3</sup> and engagement with the global regulatory community<sup>4</sup>. Our mission is to bring asset managers and investors together to achieve new best practices and improve industry outcomes.

We support efforts to facilitate fair and efficient markets, reduce systemic risk and enable investors to make well-informed investment decisions. We believe appropriate disclosure and transparency for investors is important in achieving these goals. We run a Responsible Investment Working Group comprised of over 180 representatives from both institutional investors and investment advisers that have dedicated a significant amount of time to discussing these issues. Our SBAI Toolbox publication "Responsible Investment Policy Framework"<sup>5</sup> covers many of the disclosures discussed in this proposed rule along with examples of the level of detail that may be required. Our Responsible Investment Toolbox<sup>6</sup> also contains strategy specific disclosure guidance. As such, we are broadly supportive of the SEC's decision to require these ESG-related disclosures.

In our response to your request for input we address only the questions that are specific to Private Funds and their advisers as this reflects our member base. That said, we are supportive of the efforts to standardise and

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<sup>1</sup> <https://www.sec.gov/rules/proposed/2022/ia-6034.pdf>

<sup>2</sup> <https://www.sbai.org/standards.html>

<sup>3</sup> <https://www.sbai.org/toolbox.html>

<sup>4</sup> <https://www.sbai.org/regulatory-engagement.html>

<sup>5</sup> <https://www.sbai.org/resource/responsible-investment-policy-framework.html>

<sup>6</sup> <https://www.sbai.org/toolbox/responsible-investment.html>

simplify disclosures for those funds targeted at retail investors. We would; however, like to raise two important points related to the climate disclosure section of the proposed rule relating to “funds”:

1. Sequencing of regulation is important. Asset managers will rely on disclosure from issuers to produce their fund disclosures, therefore issuer disclosure should be mandated in advance of fund disclosure, and
2. Short positions should not be excluded from this reporting. Short positions can be an important tool in ESG-focused funds. We recommend that long and short positions are reported separately to allow the end investor to use this data how they choose to<sup>7</sup>.

Below we note some key points from our response to this proposal. We would be delighted to discuss any of the points raised in our response, or ESG disclosures more broadly, with the SEC.

#### Key Points from Response:

- **Distinction between different types of ESG strategy:** We are supportive of the SEC’s distinction between integration, ESG-focused and ESG impact strategies and believe that this level of disclosure is important for investors to make informed investment decisions. ESG is often discussed as if it is one thing when there are many different approaches that advisers may take when employing ESG strategies. The definitions provided by the SEC in this proposed rule, align with the definitions we have laid out in our Responsible Investment Framework<sup>8</sup> as shown in the table included in our response to question 140.
- **Process Disclosures:** We support the SEC’s focus on process disclosures. Given the variety of approaches to ESG strategies, disclosures on the processes, methodologies and criteria used are important information for investors to make informed investment decisions. **We would stress that given the variety of approaches to ESG, any enacted rule must provide advisers with the flexibility to accurately describe their processes rather than becoming a “check box exercise”.** The proposed rules for private funds and their advisers include amendments to Part 2 (“brochure”) and Part 1A of Form ADV. We would make the following high-level observations that are repeated in our responses to the SEC’s specific questions below:
  - Disclosures should only be required where an adviser markets in any way ESG credentials of the adviser or the firm. It should not be the expectation that all advisers will provide these disclosures. There may be advisers that due to the nature of their strategy will consider some E, S or G risks in their processes, but not for ESG related reasons. It should be acceptable for advisers to state they run neither ESG integration or ESG focused strategies and provide no further disclosures. **We recommend that this is stated clearly in the rule.**
  - Part 1A should include high-level disclosures of check box style (except for ESG service providers and frameworks where the entity name would be sufficient). This data is submitted in a way that can be analysed electronically and these high-level disclosures are more suitable to this type of analysis. Indicating the type of strategy and the methodology here means that investors can then review the relevant parts of the brochure for the more detailed disclosures.

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<sup>7</sup> For further information on our views on short selling and ESG please see this thought piece:

<https://www.sbai.org/resource/short-selling-and-responsible-investment.html>

<sup>8</sup> <https://www.sbai.org/resource/responsible-investment-policy-framework.html>

- The brochure should contain all the detailed ESG related disclosures in one place, as opposed to the current proposal to split these across multiple sections. **The required disclosures should also allow flexibility for advisers that use proprietary frameworks to determine ESG scores or similar, to provide high-level information about these frameworks and refer the investor directly to the adviser for more detailed information.**
- **Engagement:** Currently the proposals for disclosure of adviser methodologies refer only to proxy voting policies where ESG factors are considered. Many alternative investment strategies invest in instruments or asset classes that do not have voting rights attached. As part of an ESG strategy, some advisers will engage in other ways to further their ESG objectives such as directly with issuers or through investor collectives or industry organisations. **We recommend that the non-exhaustive list of methodologies provided by the SEC specifically include engagement of this nature to ensure investors have full and detailed information on how the ESG strategy is employed. We also recommend that it is specifically acknowledged that there are certain alternative investment instruments and asset classes where neither voting nor engagement is possible (for example insurance linked securities, currencies etc.).**

## Responses to Specific Questions

We have not responded to Questions 1 to 134. These are product level reporting requirements for registered investment companies, BDCs or UITs and Private Funds are not in scope.

### Question 135:

Instead of proposing 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 similar 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?

### SBAI Response:

The current proposal requires ESG disclosures in different parts of the brochure, this would require investors looking specifically for ESG information to review several parts of the brochure to fully understand the advisor's processes. **We believe this information would be most user friendly if all ESG-related disclosures were in one separate section of the brochure.**

There are many ways that ESG-focused products can be run and as such, advisers need to have flexibility to accurately describe their processes. While simplified tables are appropriate for retail investors, institutional investors are more sophisticated and would typically review these processes in more detail. To use a table in this way for private funds would likely require a large degree of flexibility in the structure, particularly for

alternative investments, and would therefore defeat the purpose of a standardised table. With the right level of flexibility in the rules, advisers would still be able to present this information in tabular form if they feel that would be most useful to the adviser.

**Question 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.

**SBAI Response:**

The disclosures proposed in this rule are:

- A description of the ESG factor(s) considered and how they are incorporated when providing investment advice (including when recommending or selecting other investment advisors),
- An explanation of whether and how the adviser employs integration, and/or ESG-focused or ESG impact strategies,
- Integration strategies – how the specific factor(s) is incorporated and an explanation that the factor(s) are considered alongside and no more significant than other factors and may not be determinative in deciding whether to recommend a particular investment,
- ESG-focused strategies – describe the ESG factor(s) and how they are incorporated when providing investment advice. A description of any methodologies used to evaluate, select or exclude investments based on consideration of ESG factors where applicable,
- Impact strategies – The disclosure required for ESG-focused strategies AND an overview of the impact(s) the adviser is seeking to achieve and how it will seek the impact(s). Includes how the adviser will measure progress towards the specific impact(s), key performance indicators analysed, time horizon used to analyse progress and the relationship between the impact sought and financial performance, and
- A non-exhaustive list of criteria and methodologies to address in the disclosure including the use of:
  - Internal methodologies, third-party criteria or methodology such as ESG scores or frameworks or a combination of both. Should include an explanation of how the quality of third-party data is evaluated,
  - For inclusionary or exclusionary screens, an explanation of the factor(s) the screen applies (e.g., particular industries or business activities) for inclusion or exclusion and, if applicable, any exceptions to this screen, and
  - Where an index is used, the name of the index, its description and an explanation of how the index uses ESG factors to determine its constituents.

Additional disclosures include describing material relationships with any related person that is an ESG consultant or other ESG service provider and, where ESG factors are part of specific voting policies or procedures, a description of the factor(s) considered and how they are considered.

These disclosures align with the recommended disclosures in the guidance in our SBAI Toolbox publication – Responsible Investment Policy Framework<sup>9</sup>. As such we are supportive of the required disclosures within the

<sup>9</sup> <https://www.sbai.org/resource/responsible-investment-policy-framework.html>

proposed rule. **We would recommend that it is made clear in the enacted rule that an adviser is not expected to provide disclosures on this entire list, only where advisers use these tools as part of their ESG strategy.**

In our Responsible Investment Policy Framework, we also recommend disclosure on the use of engagement other than voting by investment advisers, if this is used as part of their ESG strategy. Many alternative investment strategies use instruments that do not include voting rights but may engage in other ways for example through direct engagement with issuers or via investor collectives or industry organisations. Whilst the list provided by the SEC is not intended to be exhaustive, we believe specifying engagement in this list would be beneficial and would give investors more transparency into the ESG investment process where voting cannot be used.

**We would recommend that the non-exhaustive list of disclosures on criteria and methodologies specifically includes a description of how engagement is used, who is being engaged and the ESG factor(s) considered where engagement is used as a significant part of the advisers ESG strategy.**

Third party frameworks, methodology and criteria are only available for certain instruments and asset classes – typically those related to corporate issuers. There are many alternative investment strategies that have to rely on internal frameworks to determine how they invest in their ESG-focused strategies. Whilst the non-exhaustive list does refer to “internal methodologies” as well as third-party data – **we would recommend a separate line in the non-exhaustive list for internal or proprietary methodologies, frameworks etc.**

**Question 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 advisors currently describe and disclose information about their tailored ESG services in their brochures?

**SBAI Response:**

For clarity, it may be advisable to specifically state 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).

**Question 138:**

To what extent do advisers tailor their advisory business to address the ESG preferences of individual clients? What level of tailoring to 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 customise?

**SBAI Response:**

There are a few ways that advisers may tailor their advisory business to the ESG needs of specific investors:

- Separately Managed Accounts (SMAs) and Fund of Ones are bespoke products set up for a specific client. These can therefore be tailored to the client’s ESG needs including the creation of their own investment screens.
- Advisers may have a menu of ESG related strategies that clients can choose from, and some clients will elect to replicate an existing strategy within its SMA or fund of one.
- In closed-end funds, advisers may offer certain investors “opt-outs” of certain investments for ESG related reasons.
- Less commonly, an adviser may be able to provide for specific client needs within a commingled or pooled private fund, for example, using dedicated share classes.
- Advisers may also provide non-discretionary advisory services where ESG-focused decisions are taken by the client rather than the adviser.

The SEC should consider requiring that where an adviser offers ESG related opt-outs within a commingled vehicle to only certain investors that this is disclosed in the details of their process for that strategy.

**Question 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?

**SBAI Response:**

We agree with the SEC’s approach of not defining ESG.

**Question 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?

**SBAI Response**

We are very supportive of the distinction that the SEC has made between integration, ESG-focused and ESG-impact. This distinction highlights some significant differences in how advisers’ approach ESG in their investment process and we believe it is important for investors to understand where an advisers process sits on a spectrum of approaches to ESG investment.

These distinctions broadly align with the definitions we laid out in our Responsible Investment Policy Framework<sup>10</sup> as shown in the table below:

Different Approaches to Responsible Investment	Responsible Integration	The inclusion of RI-related factors into investment and risk management processes, where they have financial materiality. This involves the use of all relevant financial and non-financial information to aid asset valuation and risk assessment, but RI factors are not used to pre-define an asset universe.	
	Responsible Asset Selection	Exclusions	An "Exclusion List" or "Negative Screening" is used to pre-define an investment universe. Exclusions may be based on "damaging industries" such as gambling, fossil fuels, or tobacco, relatively low ESG ratings or other considerations such as faith-based investing.
		Inclusions	"Positive Screening" is used to pre-define an investment universe. Inclusions may be on a "best in class" basis, i.e., those with relatively high ESG ratings or on a "thematic" basis with investments in particular sectors or industries targeted.
		Impact	Investing with the specific goal of delivering meaningful societal and environmental outcomes, for example, reduction of carbon emissions, or more generally contributing to societal goals such as the UN's Social Development Goals (SDGs).
	Responsible Ownership	Voting	A form of engagement based on participating in Annual Company Meetings and using voting rights to support RI-related initiatives or express a negative view on current practices.
		Engagement	Having a dialogue with underlying issuers or companies with a view to achieving improvements on RI-related practices. This can also be used for improvements in wider industries through collective engagement for example with regulators or investor groups.
		Activism	A more involved form of engagement where investors look to promote change through building up a significant holding within a company and potentially gaining a seat on the board. This may also be a more public form of engagement.

Whilst any private fund that contains "ESG", "Sustainable" or other similar words in its name should fall into one of the categories the SEC has defined, **we would be supportive of the additional specification that private funds with these terms in their name should have their ESG processes disclosed.**

**Question 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?

**SBAI Response**

We believe these definitions are sufficiently clear.

<sup>10</sup> <https://www.sbai.org/resource/responsible-investment-policy-framework.html>



**Question 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?

**SBAI Response**

The proposal as it stands already indicates different levels of disclosure for integration and ESG-focused strategies. Integrations strategies disclose the factor(s) considered and how they are incorporated, whereas ESG-focused and ESG impact have additional disclosures on exclusions/inclusions or impact objectives. We believe the proposed approach is appropriate.

**Question 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 key performance indicators used to measure progress given that advisers do not have a disclosure that corresponds to MDFP, where we are preparing to require specific disclosures by Impact Funds on their progress?

**SBAI Response**

The proposal requires disclosure at the adviser or “significant strategy” level. This would make it difficult for this type of information to be disclosed, while processes may be similar across different products within the same “significant strategy”, the impacts and KPIs used may differ product to product.

Reporting on specific progress at regular intervals may be better suited to individual product disclosures to investors as opposed to part of the Brochure.

**Question 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?

**SBAI Response**



In our Responsible Investment Policy Framework<sup>11</sup>, we also recommend disclosure on the use of engagement other than voting by investment advisers, if this is used as part of their ESG strategy. Many alternative investment strategies use instruments that do not include voting rights but may engage in other ways for example through direct engagement with issuers or via investor collectives or industry organisations. Whilst the list provided by the SEC is not intended to be exhaustive, we believe specifying engagement in this list would be beneficial and would give investors more transparency into the ESG investment process where voting is not a tool that can be used.

**We would recommend that the non-exhaustive list of disclosures on criteria and methodologies specifically includes a description of how engagement is used, who is being engaged and the ESG factor(s) considered where engagement is used as a significant part of the advisers ESG strategy.**

**Question 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 on what constitutes ESG?

**SBAI Response**

We do not believe the SEC should try to provide a non-exhaustive list of ESG factors. This could be a long list and the nature of ESG is dynamic meaning this list will change. Providing a list with the option to add additional factors that are not included in the list does not add any value above advisers determining their own factors. Provided the advisers are required to disclose the ESG factor(s) they are considering we believe this to be sufficient for an investor to determine whether the adviser's approach aligns with their own.

**Question 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 commentators agree with the non-exhaustive list of criteria or methodology we included in this Item? Is it clear and appropriate?

**SBAI Response**

We believe that the SEC should require disclosure on the criteria or methodology for evaluating, selecting or excluding investments based on the consideration of ESG factors as proposed. The items currently listed in the non-exhaustive list of criteria and methodology are clear and appropriate; however, as per our response to question 144 we recommend that engagement either directly with issuers or through other means is also included in this list.

**Question 147:**

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<sup>11</sup> <https://www.sbai.org/resource/responsible-investment-policy-framework.html>

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?

### **SBAI Response**

We agree with the proposal to disclose the use of any third-party frameworks that incorporate ESG factors. The proposed disclosure of a description of the framework/standard and its use is an appropriate level of disclosure.

As noted in prior responses it is also important that internal or proprietary methodologies, criteria, frameworks etc. are included in this non-exhaustive list. External frameworks are typically only useful where the adviser trades predominantly corporate issuer-based securities. Many alternative investment strategies trade other securities where these frameworks are not available and therefore rely on internal methodologies.

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

### **SBAI Response**

As per our response to question 144, we recommend that engagement either directly with issuers or through other means is also included in this list. We also recommend that internal methodologies, criteria or framework are included as a separate item on this list for advisers that do not necessarily have access to third-party frameworks.

As per our response to question 135, we believe that all ESG disclosures in the brochure should be located in one place as opposed to split between different existing items.

### **Question 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?

### **SBAI Response**

Where an adviser tailors a strategy for a specific client this is typically done via an SMA or fund of one, the terms of which have been agreed between the client and the adviser. In this case, if the strategy is not a “significant strategy” for the adviser we do not see a requirement to disclose this process twice.

We feel “significant strategy” is the right level to set for disclosure.

**Question 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?

**SBAI Response**

If there is a material risk caused by the ESG investment process, then we would expect an adviser to disclose this alongside any other material risks to the strategy. For other ESG related disclosures we recommend that these disclosures be combined in one place within the brochure as per our previous responses.

**Question 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?

**SBAI Response**

Whilst we would agree that there may be divergence in returns between ESG strategies and similar non-ESG strategies, the disclosure as it stands “may not generate the same level of returns” appears to suggest that the ESG strategies would have lower returns. We believe that it is not a clear conclusion amongst various studies that selecting investments based on ESG factors would result in lower levels of returns and as such this disclosure statement would not be accurate.

**Whilst our preference would be for advisers to describe the applicable risks in their own words, we would recommend that if this disclosure is required it should state that “the consideration of ESG factors may leave to the adviser selecting or recommending an investment that could cause the returns to be different to other similar strategies.”**

**Question 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?

### SBAI Response

We agree that there should be disclosure on any relationships or arrangements with related person ESG providers in the same way as any other related person relationships or arrangements would be disclosed. It is hard to assess how common it is for advisers to have these relationships or arrangements; however, it is still possible for these to occur. These could create potential conflicts of interest in the same way that any other related person could – for example, selecting this provider over another more suitable one – and therefore we agree on the disclosure.

#### Question 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?

### SBAI Response

We believe there is not a need to define the term “ESG consultants or other ESG service providers”.

#### Question 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.

### SBAI Response

We believe these disclosures should be required as proposed and that the level of disclosure currently proposed is sufficient. Note that many alternative investment asset classes do not have voting rights and as such this disclosure should not be expected for all advisers, only those that trade securities that have voting rights *and* consider ESG factors in their voting processes.

**Question 155:**

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

**SBAI Response**

For clarity, we believe that advisers should either specifically state that they do not consider ESG factors when voting or that they do not trade securities that have voting rights attached (where applicable).

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

We have not responded to Questions 156 to 161 which relate to wrap fee products.

Regulatory Reporting on Form N-CEN and ADV Part 1

We have not responded to Questions 162 to 171 which cover Form N-CEN Proposals.

**Question 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?

**SBAI Response:**

Whilst this information may be useful to the SEC, and potentially to market participants wishing to understand the size/number of ESG strategies, due to its use of structured XML-data based languages, it is unlikely to offer much additional benefit to current and prospective clients over and above the proposals for disclosure in the brochure.

The exception to this may be larger institutional investors or consultants that wish to collect basic ESG disclosures electronically. The basic level of the proposed disclosures for Form ADV Part 1 (i.e., the type of ESG strategy and factors considered) would likely not on their own provide enough information for institutional investors to understand the ESG investment processes of an adviser.

**Question 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?

**SBAI Response:**

We believe that the information required, whether the private fund is integration, ESG-focused or ESG impact and the ESG factor(s) considered, should be readily available to advisers.

**Question 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?

**SBAI Response:**

The definitions of integration, ESG-focused and ESG impact should be consistent with those provided for the brochure i.e., consistent across the entire Form ADV.

**Question 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?

**SBAI Response:**

We agree with the proposed process as stated in the proposed rules.

**Question 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?

**SBAI Response:**

The activities described above would be applicable to advisers' SMA strategies and private funds where they are used. We believe adding this level of detail would make the Part 1A disclosures more useful to investors. Given the nature of Part 1A indicating which of these strategies are used is an appropriate level of disclosure. Investors can then refer to the brochure and/or the advisers ESG policy for more detailed information on how the methodology is used for the product.

Private funds and SMAs in general are marketed for institutional investors, unlike retail investors, these investors typically conduct detailed due diligence (either directly or via investment consultants) on advisers and will have opportunities to discuss these processes in more detail during this process. This is a key difference when considering disclosures for private funds vs those for registered investment companies and the like which are targeted at retail investors.

**Question 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?

**SBAI Response:**

We believe that this level of detailed disclosure should be included in the brochure rather than Part 1A. The structure of disclosure in the brochure allows for a more detailed description of the relevant index. It should also not be an expectation that an index is used as there are certain alternative investment asset classes (such as insurance linked securities) where these indices have not yet been developed by ESG providers.

**Question 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?

**SBAI Response:**

As per our response to question 176, we believe it would be useful for private funds or SMAs that are ESG-focused to disclose which methodologies are used i.e., tracking of indexes, exclusionary/inclusionary screens or engagement. Further details on how these strategies are used should be disclosed in the brochure as already proposed in these rules.

Providing this information would be helpful to ensure that investors can relate the appropriate disclosures at the adviser level in the brochure to the specific product they are invested in.



**Question 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?

**SBAI Response:**

We believe the level of disclosure proposed, plus our suggestion to indicate the type of ESG strategy, is sufficient for SMAs. As noted in earlier responses SMAs are bespoke agreements negotiated between a single client and the adviser and the details of how ESG is incorporated in specific SMAs will be part of this discussion and therefore would not require more detailed disclosure in Part 1A.

**Question 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)?

**SBAI Response:**

For the Part 1A simplified disclosure should be sufficient; however, the name of the framework may be a useful piece of information. More detailed disclosures would be included in the brochure where the narrative style allows more flexibility to accurately describe how this is applied to different "significant strategies".

Advisers should also be able to disclose in the same location whether they apply internal frameworks. For some alternative investment asset classes and instruments, external ESG frameworks have not yet been developed.

**Question 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?

**SBAI Response:**

It may be beneficial to provide the name of any ESG providers used for the private fund in the same way that information about other service providers is included in the Form ADV Part 1A but any disclosures beyond the name, including whether these providers are related persons, should be included in the brochure as already proposed.

**Question 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?

**SBAI Response:**

Detailed disclosures, such as those described in question 182, are more suited to the brochure as proposed. The narrative format provides the flexibility to properly describe these processes.

If the SEC elects to include an indication of the methodologies used for ESG strategies in Part 1A then used of proxy voting could be added as a check box in this section. It may also be useful to have an option to state that proxy voting is not applicable to certain strategies as the securities traded do not have voting rights.

**Question 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?

**SBAI Response:**

If the SEC requires only the high-level information that we recommend in Part 1A, then we do not believe this would reveal any non-public information regarding an adviser's strategy, analytical or research methodologies, trading data and/or computer hardware or software containing intellectual property.

The disclosures required in the brochure are more detailed and require descriptions of internal methodologies. **Where advisers use proprietary frameworks to determine ESG scores etc. there should be flexibility to describe these at a relatively high level and inform the investor that more information is available directly from the adviser if required.**

**Question 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?

**SBAI Response:**

We believe it is appropriate for both RIAs and ERAs to report this data.

Additional Information about Other Business Activities and Financial Industry Affiliations

**Question 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?

**SBAI Response:**

We believe it is appropriate for both RIAs and ERAs to report this data.

**Question 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)?

**SBAI Response:**

We believe the disclosures as proposed by the amendments are appropriate.

**Question 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?

**SBAI Response:**

We believe that the term ESG providers should be sufficient and that an exhaustive list of the types of providers is not required.

**Question 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 conducting 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?

**SBAI Response:**

We believe the proposals as they stand are sufficient.

Compliance Policies and Procedures and Marketing and Compliance Dates

**Question 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?

**SBAI Response:**

Given that the information required should be known by advisers, particularly those running ESG focused or impact strategies, we believe that a one-year transition period is appropriate for compliance. Whilst this information is known there may be confidentiality agreements or similar (for example with ESG data providers) that would need to be reviewed before the relevant disclosures can be made therefore, we would not recommend making this transition period less than the proposed one year.

**Question 190:**

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

**SBAI Response:**

We believe that the same compliance period for both integration and ESG focused funds is appropriate providing the compliance period is not shorter than one year as currently proposed.

**We have not responded to Questions 191 to 193 which relate to registered fund changes**

**Question 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?

**SBAI Response:**

As per our previous responses we believe the one-year transition periods is appropriate for the proposed disclosures for private funds and their advisers.

Should you wish to discuss any elements of our response we would be more than happy to oblige. For further information please contact our Research and Content Director Maria Long ([maria.long@sbai.org](mailto:maria.long@sbai.org)).

Yours Sincerely

Thomas Deinet  
Executive Director

**Standards Board for Alternative Investments (SBAI)**