



August 11, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Number S7-17-22

Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices

Dear Ms. Countryman:

Thank you for the opportunity to comment on the Securities and Exchange Commission's (SEC) recently proposed rules and form amendments that would be designed to "create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors."

This comment focuses on the disclosure of critical ESG performance data by and about information and communications technology (ICT) sector companies and, more specifically, about data concerning the societal impact of many of their technologies. The comment is offered by three civil society organizations — Open MIC, Heartland Initiative, and Access Now — with many years of experience concerning ESG issues in the ICT sector globally.¹

We commend the Commission for its ability to recognize the fundamental need to enhance the continuously growing ESG framework and related indices. We believe these rules and form amendments are critical, as our concern is that while the most profitable companies in the ICT

¹ [Open MIC](#) (Open Media and Information Companies Initiative) works to foster greater corporate accountability at media and technology companies, principally through shareholder engagement.

Heartland Initiative is a practice-based research organization that promotes the fundamental rights and freedoms of people impacted by armed conflict. Heartland's work assists investors, companies, and civil society in protecting the rights of vulnerable populations while simultaneously addressing the significant material risks endemic to these areas.

[Access Now](#) defends and extends the digital rights of users at risk around the world. As a global civil society organization, Access Now works with local and regional partners to strengthen human rights protections from national capitals to the grassroots, and to effect real-time policy victories and long-term systemic change.

sector have long espoused values of innovation, ease, and openness, they frequently, if unintentionally, facilitate severe and widespread human rights harms and discriminatory outcomes. We believe that without greater transparency regarding the criteria and methodologies that determine the inclusion and weighting of ICT company stocks in ESG funds and products, investors are unable to allocate their funds to those companies that best reflect their institutional values and commitments.

1. Disclosure about a fund’s approach to ESG should make clear the specific ESG criteria the fund uses to determine a company’s inclusion in their fund.

ICT stocks are overrepresented in ESG funds due to the industry’s relatively low carbon footprint and high returns for shareholders.² Twenty-eight of the largest and best-known ESG funds have invested the majority of their clients’ money in Big Tech: Microsoft, Alphabet, Apple, and Amazon. Meta was also overrepresented in the case of passive funds. The main reason for this preference for tech giants in ESG funds is their relatively small carbon footprint and, to an extent, their profitability. All of those funds branded themselves as ESG funds or socially responsible funds when they are, for the most part, carbon-free funds.³

This overrepresentation in ESG funds obviates the fact that many ICT companies have poor governance practices and fall short on digital rights, labor rights, and other human rights issues. A contributing factor is that the “S” criteria used by mainstream ESG ratings agencies are generally limited to supply chain risks or worker’s rights issues and fail to capture the human rights and broader social risks unique to the ICT sector. **In other words, in most cases, it appears that the “E” in the ESG criteria/score for an ICT company is weighted higher than the equally relevant “S” and the “G,” and the “S” often fails to capture the relevant risks. We are therefore concerned that investors may be misled into believing that their investments in ICT companies are broadly socially responsible if their stocks are assigned an “ESG” label.**

For ICT companies in particular, investors should be aware of the extent to which a company’s impact on all relevant human rights and their governance practices factor into their inclusion in an ESG fund or product. As a recent article in the *Financial Times* noted: “Investors need to be clear about what the methodology they choose is actually measuring, and why. Otherwise ESG scoring risks creating a false sense of confidence among investors who don’t really understand what lies behind the numbers — and therefore don’t really understand what they’re buying.”⁴

² Fernanda Wenzel, [“Behind the Buzz of ESG investing, a focus on tech giants and no regulation”](#)

³ Fernanda Wenzel, [“Behind the Buzz of ESG investing, a focus on tech giants and no regulation”](#)

⁴ Dane M Christensen, George Serafeim & Anywhere (Siko) Sikochi, [“Why is Corporate Virtue in the Eye of the Beholder? The Case of ESG Ratings”](#), 2

2. Disclosure about a fund’s approach to ESG should make clear to investors whether their measure of ESG risk is in view of a company’s bottom line or its impact on people and planet.

Facebook, Volkswagen, and Wirecard all had good ESG ratings from mainstream ratings agencies before their negative ESG incidents were uncovered.⁵ The most fundamental reason companies with harmful business practices receive strong ESG ratings and consequently appear in ESG funds is that for most mainstream ratings agencies, ESG risk is not defined in terms of a company’s social and environmental impact but in terms of how ESG factors affect a company’s profitability.⁶

We are concerned that without adequate disclosure that an ESG fund is measuring risk in terms of profitability, investors may be misled into believing that their investments in ESG funds overexposed to Big Tech are investments in companies with minimal adverse impact to human rights and society.

3. Disclosure about a fund’s approach to ESG should reflect the extent to which ESG performance is measured on the basis of company self-reporting or on actual outcomes.

ESG funds hold portfolio firms with higher than average ESG scores, but ESG scores are more often correlated with the quantity of voluntary ESG-related disclosures – not with firms’ compliance records or actual impacts.⁷ The data underlying ESG ratings generally comes from five sources: voluntary corporate reporting, regulatory filings, media coverage, questionnaires completed by companies, and modeled data.⁸ This suggests an overwhelming reliance on company self-reporting. In practice, if a company fails to report its adverse impacts and these impacts are not reported in the media, they will not be factored into the company’s ratings.⁹

This is particularly of concern in the context of ICT companies. Most of the larger companies have sophisticated disclosures regarding their human rights commitments and general processes for mitigating human rights risk. These policies and processes are generally thought of as market leading. As a result, these large ICT companies are more likely to receive higher ESG scores from raters, despite persistent evidence of adverse human rights impacts. An additional issue arises from the fact that most of the commercial ESG rating providers do not disclose their methodologies publicly, making it very difficult, if not impossible, for investors to compare the different ratings from different index providers.

⁵ Dragon Yongjun Tang, Jiali Yan & Yaqiong Yao, [“The Determinants of ESG Ratings: Rater Ownership Matters”](#), 1

⁶ David Pred & Natalie Bugalski, [“Why ESG investing is bad for human rights - and what we can do about it”](#)

⁷ Aneesh Raghunandan & Shivaram Rajgopal, [“Do ESG Funds Make Stakeholder-Friendly Investments?”](#)

⁸ Florian Berg, Julian F Kolbel, Anna Pavlova & Roberto Rigodon, [“ESG Confusion and Stock Returns: Tackling the Problem of Noise”](#), 12

⁹ David Pred & Natalie Bugalski, [“Why ESG investing is bad for human rights - and what we can do about it”](#)

For example, Meta recently released its first human rights audit, which assesses the company’s approach to managing human rights risks. For many of the ratings providers, the mere act of publishing a human rights impact assessment would be sufficient for the company to earn top scores in their human rights performance, or the “S” in “ESG. However, the company’s disclosure failed to include a full assessment of its impact in India, which is home to Facebook’s largest user base. This omission drew criticism from human rights advocates. Ritumbra Manuvie, an academic who was interviewed as part of the audit, said the disclosed summary was a “cover up of [Meta’s] acute fault-lines in India,” and showed that the company’s “commitment to human rights is rather limited.”¹⁰

We are concerned that where funds measure ESG performance in terms of the volume or sophistication of corporate disclosures, investors may be under the assumption that Big Tech companies have fewer adverse human rights impacts in practice, relative to other companies. More attention should be paid to the quality (or the contents) of the disclosures, not on the quantity, and investors should have the ability to know when this is not the case.

Conclusion

To summarize, to ensure the “ESG” label becomes a truly reliable indicator of responsible investment, equal relevance and weight needs to be put on the “S” and the “G” in future ESG frameworks. While climate change is an urgent issue requiring attention from all parties alike, companies must also ensure the steps they are taking to address climate change do not result in further human rights violations, which in turn puts additional importance on the need for appropriate governance as a whole. For this reason, we support greater transparency around how ESG funds factor each of the “E,” “S,” and “G” criteria and on the methods used to measure them.

Incidentally, we welcome the SEC’s effort to include additional disclosure requirements on the ESG funds’ proxy voting behavior when it comes to voting on their portfolio companies’ ESG related shareholder resolutions in the companies’ annual general meetings. This could serve as additional evidence and confirmation on the relevant funds’ consistency in supporting responsible corporate behavior.

We believe the Commission’s proposed rule changes and amendments are of extreme importance to investors, particularly those who may wish to apply an ESG analysis to their investments in ICT companies. We thank the Commission for this opportunity to comment and look forward to participating in the ongoing discussion regarding these proceedings.

Should you have any questions regarding this filing, please contact Audrey Mocle, Deputy Director of Open MIC, via email at [REDACTED].

¹⁰ Billy Perrigo, [“Facebook Accused of ‘Whitewashing’ Long-Awaited Human Rights Report on India”](#)

Sincerely,



Open MIC



Heartland Initiative



Access Now