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RESPONSIBLE INVESTING: LEGAL AND COMPLIANCE CONSIDERATIONS FOR ASSET MANAGERS

Investor demand for responsible investment strategies has grown substantially in recent years, creating both opportunities and challenges for asset owners and asset managers. The author surveys the field, focusing on the types of responsible investing, the differing regulatory landscapes in the U.S. and Europe, and various topics in compliance and legal considerations arising in connection with responsible investing strategies.

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Whether you call it ESG, SRI, Impact, or Responsible Investing, investing with a purpose for a better tomorrow has attracted the attention of many investors. As a result, asset managers around the globe are looking to accommodate investor appetite for these types of investment strategies.[1] However, before marketing themselves as "Responsible Investors," asset managers need to be aware of the legal and compliance obligations and challenges that are attached to these strategies. Those who ignore building out a robust compliance and legal framework run the risk of reputational damage, regulatory penalties, and not being able to capitalize on investor demand for these strategies.

This article aims to provide an overview of the Responsible Investing landscape. It explores certain regulatory initiatives in the United States and Europe, and the role of non-governmental entities in this area. It analyzes the increasing investor appetite for these strategies. Finally, it discusses certain compliance and legal obligations associated with managing Responsible Investment strategies.

I. WHAT IS THE PROPER TERMINOLOGY?

For purposes of this article, the term "Responsible Investing" is used as an overarching term meant to encapsulate ESG, SRI, Impact, and Responsible Investing investment strategies. In practice, however, each of these generally represents a specific type of investment strategy, employing varying investment screens or goals. As a result, asset managers should take care to ensure that their marketing terminology corresponds to their underlying investment thesis and objective. Below is a brief description of each.

Environmental, Social and Governance ("ESG")

Asset managers pursuing an ESG investment strategy typically employ negative or positive screens that aim to enhance traditional financial analysis by incorporating environmental, social, and governance screens. For example, an asset manager may structure an investment product that will analyze companies based on their corporate governance, or based on their involvement in

[1] Blaine F. Aikin, *ESG Data Getting Better as the Market Matures*, Inv. News (Aug. 21, 2019), https://www.investmentnews.com/article/20190821/BLOG09/190829981/esg-data-getting-better-as-the-market-matures (noting that sustainable funds attracted an estimated $8.9 billion in net flows in the first half of 2019, surpassing their $5.5 billion in flows for all of 2018).

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