

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 56 No. 20 November 22, 2023

FINDING GOLD IN EUROPE IN GREEN WHILE MAINTAINING REGULATORY COMPLIANCE

In this article, the authors discuss and compare the regulatory regimes in the United States, the European Union, and the United Kingdom governing investment fund products that take into account environmental, social, and governance (“ESG”) investing considerations. The authors highlight some of the key regulatory, risk, and other considerations for asset managers in organizing, offering, and managing non-U.S. ESG products while simultaneously managing U.S. retail funds.

By Christopher D. Christian and Katie Carter *

In recent years, environmental, social, and governance (“ESG”) considerations have become an increasingly important component in attracting capital to an investment fund product. In Europe, institutional clients and distributors show a strong preference for investment fund products that invest according to ESG criteria.¹ To capture the increased demand from European investors, U.S. asset managers have created and marketed investment funds and strategies that consider ESG factors in investing.² While demand for ESG-related

products increases in Europe, U.S. asset managers are faced with a maze of legislation as to the meaning of the phrase “ESG” and encounter often competing and inconsistent ESG regulatory frameworks. In an effort to “classify” or “label” ESG-related products outside of the United States to increase distribution, U.S. asset managers may, if not careful, inadvertently increase their regulatory and litigation risk in the United States as well as alienate current clients.

This article will: (1) examine the current ESG classification and labeling regimes for investment fund products in Europe and compare those frameworks with the proposed ESG disclosure regime in the United States for mutual funds and (2) highlight some of the key regulatory, risk, and other considerations for asset managers in organizing, offering, and managing non-

¹ Report from PWC, Asset and Wealth Management Revolution 2022: Exponential Expectations for ESG, pub. avail. at <https://www.pwc.com/gx/en/industries/financial-services/asset-management/publications/asset-and-wealth-management-revolution-2022.html> (discussing the acceleration of ESG-related investments and the demand for ESG-related investment products).

² Carlson, Debbie, “ESG Investing Now Accounts for One-Third of Total U.S. Assets Under Management”, Market Watch

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(Nov. 17, 2020), available at <https://www.marketwatch.com/story/esginvesting-now-accounts-for-one-third-of-total-u-s-assets-under-management-11605626611>.

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