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NAVIGATING THE ESG LANDSCAPE AS A PRIVATE FUND ADVISER

The world of “ESG” for private fund advisers is complex and dynamic with shifting investor preferences, evolving state laws, and proposed SEC rulemaking. This can make strategic decision-making and effective compliance efforts seem daunting. This article posits that the same tried and true principles that apply in many other areas of Advisers Act compliance — transparency and alignment between disclosures and practices — will serve private fund advisers well in navigating the complex landscape and offers practical suggestions for doing so.

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From Wall Street to Main Street, from Washington, DC to the steps of state capitol buildings across the country, ESG has been a hot topic in recent years. Yet, despite all of the discourse, the landscape for investment advisers remains difficult to navigate due to the nebulous definition of “ESG,” shifting investor preferences, evolving state laws, and pending U.S. Securities and Exchange Commission (“SEC”) action. This complexity can be disorienting, but advisers can successfully navigate using the simple principles of transparency and alignment between disclosures and practices.

The definition of “ESG” is broad and continually evolving. At a high level, ESG describes a set of factors used to measure the non-financial impacts of particular investments and companies. When one drills down, the term encompasses a wide range of disparate issues. For example:

- The “E” — for Environmental — captures energy efficiencies, carbon footprints, greenhouse gas

emissions, deforestation, biodiversity, climate change and pollution mitigation, waste management, and water usage.

- The “S” — for Social — covers labor standards, wages and benefits, workplace and board diversity, racial justice, pay equity, human rights, talent management, community relations, privacy and data protection, health and safety, supply-chain management, and other human capital and social justice issues.
- The “G” — for Governance — covers corporate board composition and structure, strategic sustainability oversight and compliance, executive compensation, political contributions and lobbying, and bribery and corruption.

Each of these areas is complex in its own right, and the interplay between them can be difficult to manage. The term “ESG” itself has been politicized which has caused

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