The Investment Lawyer
Covering Legal and Regulatory Issues of Asset Management
VOL. 28, NO. 10 • OCTOBER 2021

ICI 2021 Fact Book Illuminates Current SEC Issues

By Gary O. Cohen

The Investment Company Institute (ICI) 2021 Investment Company Fact Book (Book)[1] presents data relevant to current[2] matters facing the US Securities and Exchange Commission (SEC) regarding environmental, social, and governance (ESG) funds, proxy voting on shareholder proposals, mutual fund price competition, and SEC Congressional budget requests.

Fact Book

The Book is a marvel of number crunching. It provides 321 pages of highly detailed numerical presentations and narrative exegesis. The information is historical and analytical. The numerical presentations include 67 tables and 112 bar graphs, pie charts, and the like.

This is the 61st fact book. As a testament to the depth and comprehensiveness of the fact books, the SEC has relied on their data. Most notably, the SEC has cited data from the fact books in adopting and proposing rules under federal securities acts[3] and testifying before Congressional committees.[4] SEC Commissioner Allison Herren Lee, while recently serving as Acting SEC Chairman,[5] stated that "[t]he ICI has always been a great partner in providing research, analysis, and valuable input into our regulatory efforts."[6]

The Book serves a number of purposes. The obvious purpose is "to accurately depict trends in the fund industry."[7] A less obvious purpose is "to use facts to correct misimpressions or misinterpretations about the role and importance of funds to the US economy."[8] However, the Book does not appear to spell out these misimpressions and misinterpretations.

Perhaps a more subtle purpose is to underscore arguments that the mutual fund industry has made to the SEC. For example, the Book emphasizes the fact that mutual fund expense ratios have steadily decreased over the last 20 years, in order, among other things, to meet investor demand for lower-cost funds. This information can be read to update, if not counter, SEC statements over the years that adequate price competition has not existed in the industry.[9]

The Book's most current information is as of the end of year 2020. The Book contains certain worldwide information and uses the term "investment company" to include four categories: (1) mutual funds (funds), (2) exchange-traded funds (ETFs), (3) closed-end investment companies, and (4) unit investment trusts (UITs). This article relates only to United States investment companies. It focuses on funds, but includes some information about other categories of investment companies.

ESG Funds

The SEC, under the chairmanship of Gary Gensler, has announced that its Division of

Investment Management "is considering recommending that the Commission propose requirements for investment companies and investment advisers related to environmental, social and governance (ESG) factors, including ESG claims and related disclosures."[10] These factors relate to such topics as climate change, diversity and inclusion, human rights, company shareholder rights, and company compensation structures.[11]

This announcement follows more than a year of SEC activity regarding development of rules or guidelines for ESG fund disclosure. The SEC's Investor Advisory Committee and the SEC's Asset Management Advisory Committee[12] have recommended[13] disclosure approaches. The SEC's Investor Advocate has endorsed the former recommendations in his annual report to Congress for 2020.[14] In addition, then Acting Chairman Lee appointed a Senior Policy Advisor for ESG and climate matters[15] and a Task Force on Climate and ESG in the Division of Enforcement.[16] Consequently, the SEC has five separate in-house streams of recommendations regarding ESG disclosure. Then acting Chairman Lee also invited[17] comments from the public, and the SEC received over 5,700 comments.

Commissioner Hester M. Peirce has questioned the approaches recommended by some of the advisory voices named above and admonished her fellow Commissioners to "rethink the path we are taking before it is too late."[18]

The Book reports "a sharp increase in [ESG] funds," comparing 511 funds with assets of $321 billion at year-end 2019 with 592 funds and ETFs with assets of $465 billion at year-end 2020.[19]

The ICI uses prospectus language to classify "all types of funds that invest according to ESG criteria" into groups based on the frameworks or guidelines expressed at the forefront of their principal investment strategies sections.[20] The 592 ESG funds at the end of 2020 fall into the following ICI groups, listed in descending order of number of funds and asset size:

- Broad focus ESG funds (233 funds with assets of $167 billion) focus on all three environmental, social, and governance matters or may include ESG in their names. Index funds may track a socially responsible index such as the MSCI KLD 400 Social Index.
- Other focus ESG funds (159 funds with assets of $152 billion) focus more narrowly on some combination of environmental, social, or governance matters, but not all three. These funds often negatively screen to eliminate certain kinds of investments.
- Religious values ESG funds (144 funds with assets of $119 billion) invest in accordance with specific religious considerations.
- Environmental ESG funds (56 funds with assets of $28 billion) focus on environmental matters. These funds may include terms such as alternative energy, climate change, clean energy, environmental solutions, or low carbon in their principal investment strategies or fund names.[21]

Investment Company Proxy Voting

The SEC late last year adopted[22] amendments to its proxy rules that would impact proxy voting on shareholder proposals. The amendments raise minimum ownership levels for investors to be eligible to submit a proposal for shareholder vote, add requirements for documentation from investors submitting proposals, impose requirements on investors to specify when they can meet with management to discuss proposals, limit investors to one proposal per shareholder meeting, and raise the level of shareholder support that proposals must receive to be eligible for resubmission.

Thereafter, the SEC's Investor Advocate reported to Congress that he opposes the amendments on both policy and procedural grounds. His policy ground is that the amendments "significantly diminish the ability of shareholders with smaller investments to submit proposals."[23] His procedural ground is that "the economic analysis in this rulemaking was fundamentally flawed."[24] The Investor Advocate concludes that "this particular rulemaking was adopted in contravention of the Commission's internal policies for full and objective economic analysis, Exchange Act Section 4(g)(5), and, at the very least, the spirit of the Administrative Procedure Act."[25] He calls for the rules to be "overturned or reversed" by Congress or "new leadership at the SEC."[26]

The SEC, with Gary Gensler as its new Chairman, has announced that the Staff is "considering recommending that the Commission propose rule amendments regarding shareholder proposals under Rule 14a-8."[27] Any such amendments could roll back the restrictions adopted by the Commission when Jay Clayton was Chairman.

Commissioners Elad L. Roisman and Peirce said that Chairman Gensler was "engaging in a game of seesaw with our rulebook" and characterized the announcement as a "regrettable decision to spend our scarce resources to undo a number of rules the Commission just adopted."[28]

Then Acting SEC Chairman Lee called attention to the fiduciary duties of mutual funds and their investment advisers regarding "involvement in corporate governance and consideration of shareholder proposals."[29] She stated that "the act of voting is itself a critical part of funds' and advisers' fiduciary obligations."[30]

The Book's data on proxy voting provides meaningful context for the foregoing substantive issues that the SEC is facing.

Investment companies hold 30 percent of US-issued equities outstanding, which has been the case for the last several years.[31]

During proxy year 2017 (the 12 months ending June 30, 2017), shareholders of the 3,000 largest public companies considered 25,045 proposals.[32] Management proposed 98 percent (24,580), and shareholders proposed 2 percent (465).[33] Investment companies cast more than 7.6 million votes on the proposals, and each investment company voted, on average, on about 1,500 proposals.[34] Also, investment companies voted in favor of management proposals 94.0 percent of the time and shareholder proposals 34.6 percent of the time.[35]

The Book attributes the strong support of investment companies for management proposals to the fact that the "vast majority of them were not controversial."[36] Indeed, 70.7 percent of the votes cast by investment companies related to uncontested elections of directors, 13.2 percent to management proposals regarding management compensation, and 9.3 percent to ratification of outside auditors.[37]

Of all of the votes cast by investment companies, 4.1 percent involved 465 shareholder proposals.[38] About 50 percent of the shareholder proposals were related to social and environmental matters, about 25 percent to board structures and elections, and about 25 percent to shareholder rights and antitakeover issues, compensation matters, and miscellaneous issues.[39]

Fund Price Competition

The SEC has proposed[40] changes to shareholder reports, prospectus disclosures, and fund advertisements[41] that could enhance price competition among funds. The SEC has stated that these changes "would enable investors to compare fees and expenses and other information more easily across funds, and between funds and other financial products" and "could affect competition among funds by making it easier for lower-fee funds to distinguish themselves from other funds."[42] This, the SEC says, "could lead investors to shift their assets from higher-fee funds to lower-fee funds," "could lead funds, in anticipation of this, to lower their fees or otherwise take steps to draw investor flows away from competing funds or avoid outflows to competing funds," "could lead funds to exit that are not as easily able to compete on the basis of fees and expenses," and could lead "other funds to enter and compete for investor assets more efficiently than would currently occur."[43]

The SEC's proposal can be read to reflect the SEC's long-held view that the mutual fund industry lacks sufficient price competition.

In 1966, for example, an SEC study stated that "[f]aced with the choice of appealing to price-conscious investors or to compensation-conscious fund retailers, most load fund underwriters have followed the latter course."[44] A 1974 SEC Staff study stated that "[g]reater investor understanding and more meaningful comparisons of past investment returns, risks, and costs, and their effect upon investment returns could lead to greater competition to improve the features which make up the mutual fund package—by improving management services, reducing costs, and offering additional ancillary services."[45]

A 1992 SEC Staff study focused on "eliminating impediments to vigorous price competition"[46] and recommended that "the Commission pursue several legislative and rulemaking proposals designed to enhance competition and improve investor understanding of investment costs."[47] A 2000 Staff study explored various steps that the SEC could take to "promote additional competition among funds on the basis of fees."[48]

Against this background, the Book states that "[o]n an asset-weighted basis, average expense ratios incurred by mutual fund investors have fallen substantially"[49] over the last 20 years, as follows:

> In 2000, equity mutual fund investors incurred expense ratios of 0.99 percent, on average, or 99 cents for every $100 invested. By 2020, that average had fallen to 0.50 percent, a 49 percent decline. Hybrid and bond mutual fund expense ratios also have declined. The average hybrid mutual fund expense ratio fell from 0.89 percent in 2000 to 0.59 percent in 2020, a reduction of 34 percent. In addition, the average bond mutual fund expense ratio fell from 0.76 percent in 2000 to 0.42 percent in 2020, a decline of 45 percent.[50]

The Book explains that "[s]everal factors help account for the steep drop in mutual fund expense ratios,"[51] including "competition among existing mutual fund sponsors."[52] The Book provides data showing "the tendency for investors to gravitate to lower-cost funds,"[53] as follows:

> At year-end 2020, equity mutual funds with expense ratios in the lowest quartile held 76 percent of equity mutual funds' total net assets, while those with expense ratios in the upper three quartiles held only 24 percent . . . . This pattern holds for both actively managed and index equity mutual funds. Actively managed equity mutual funds with expense ratios in the lowest quartile held 69 percent of actively managed equity mutual funds' net assets at year-end 2020, and lower-cost index equity mutual funds held 82 percent of index equity mutual funds' net assets.[54]

SEC Budget Request

The SEC has submitted a budget request[55] to Congress for fiscal year 2022, beginning October 1, 2021. The budget request informs Congress that "[a]s of October 1, 2020, over 14,000 SEC-registered funds held more than $27 trillion in assets."[56] In oral testimony before a Congressional subcommittee, Chairman Gensler commented that "[t]otal assets invested in registered investment companies have grown by more than two-thirds since 2015."[57]

In light of the industry's size and growth, the SEC's budget request asks for five additional positions in the Division of Investment Management, as follows:

> The demand for real-time market monitoring and risk evaluation of the fund industry has become more acute, especially given recent market volatility. Evaluation of these issues will increasingly depend on detailed analyses of industry and other market data. The Division of Investment Management has successfully established an industry

> specialist function that provides thought leadership and important market engagement to help guide this work. The FY 2022 request would provide five new positions to bolster our data analytics capabilities to provide timely analyses of market and regulatory data, and assist with disclosure reviews and examinations.[58]

The following Book data are relevant to the SEC's budget request.

Total Fund Net Assets Are Up

Total US-registered investment company net assets have reached an all-time high ($29.7 trillion).[59] Fund net assets have also reached an all-time high ($23.9 trillion).[60]

Of the total fund net assets, domestic equity funds (investing primarily in US corporations) hold the most (43 percent), followed by:

- bond funds (21 percent),
- money market funds (15 percent),
- world equity funds (investing significantly in non-US corporations) (14 percent), and
- hybrid funds (investing primarily in non-US corporations) and other funds (investing primarily in commodities, currencies, and futures) (6 percent).[61]

So, *equity* funds, both domestic and world, represent most of total fund net assets (57 percent).

Net Inflow Is Positive but Down

Investor demand for funds in the aggregate is down. On the positive side, funds have aggregate net new inflows ($205 billion).[62] However, on the negative side, the inflows are down from the previous year ($454 billion) and represent only 1 percent of year-end 2019 total net assets.[63]

Equity and hybrid funds are losers ($486 billion in net *out*flows).[64] Equity funds have outflows ($646 billion in 2020 following $362 billion in 2019).[65] Most of the outflows from equity funds are in domestic equity funds.[66]

The Book attributes net outflows from domestic equity funds to both "an ongoing shift to index-based products and redemptions to keep equity allocations at their portfolio targets in response to substantial gains in US stock prices during the year."[67]

Winners are money market funds ($691 billion in net inflows)[68] and ETFs ($501 billion in net inflows).[69] The Book attributes inflows to government money market funds to investors' seeking "to preserve and build liquidity."[70]

Bond funds are also winners.[71] The Book attributes net inflows to investor desire "to keep fixed-income allocations at their portfolio targets" and the "aging of the US population."[72]

Number of Funds Is Generally Down

The number of investment companies being offered is down for all types (16,663 at the start of 2020 and 16,127 at the end), except ETFs.[73] The number of ETFs is up (2,176 at the start of 2020 and 2,296 at the end).[74] The number of funds is down (9,414 at the start of 2020 to 9,027 at the end).[75]

The Book attributes this decline in the number of funds to two developments. Launches of domestic and world equity funds are down, and mergers and liquidations of funds are up. Indeed, the number of mergers and liquidations has increased (27 percent to 644 funds) to the highest level since 2009.[76] The Book attributes this increase to sponsor elimination or consolidation of funds of funds.[77] A total of 268 funds opened in 2020.[78]

Number of Fund Sponsors Is Down

The vast majority of fund sponsors are independent advisers (81 percent) managing most of investment company assets (71 percent), followed by:

- non-US advisers (8 percent),
- insurance companies (5 percent),
- banks or thrifts (4 percent), and
- brokerage firms (2 percent).[79]

The total number of fund sponsors is down (from a peak of 877 at 2015 year-end to 804 at 2020 year-end).[80] Prior to 2015, the total number of fund sponsors was up (from 707 at 2010 year-end to 877 at 2015 year-end).[81]

The Book attributes the decline in the number of fund sponsors to "a variety of business decisions, including larger fund sponsors acquiring smaller ones, fund sponsors liquidating funds and leaving the business, or larger sponsors selling their advisory businesses."[82]

Sponsor Concentration of Fund and ETF Assets Is Up

Fund and ETF assets managed by the largest fund sponsors are up. Market share is up from 2005 year-end to 2020 year-end for:

- the five largest sponsors (35 percent to 53 percent);
- the 10 largest sponsors (46 percent to 64 percent); and
- the 25 largest sponsors (67 percent to 81 percent).[83]

The largest fund sponsors have taken some market share from sponsors ranked from 11 to 25 (whose market share fell from 21 percent to 17 percent during the same period).[84]

Conclusion

The Book presents data that illuminates current issues facing the SEC. Some data can be read to support SEC focus, such as ESG funds. However, other data can be read to at least question SEC concern, such as lack of sufficient price competition among funds.

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NOTES

1 Investment Company Institute, 2021 Investment Company FACT BOOK, A Review of Trends and Activities in the Investment Company Industry (2021) [hereinafter Book], available at *https://www.ici.org/system/files/2021-05/2021_factbook.pdf.* The Book presents data for 2020 and previous years. The data cited in this article are as of the end of 2020 unless otherwise indicated. The Book opens with a letter from the Investment Company Institute's (hereinafter ICI) Chief Economist, Sean Collins, who recognizes the work of: Rochelle (Shelly) Antoniewicz, Senior Director of Industry and Financial Analysis; Sarah Holden, Senior Director of Retirement and Investor Research; and Judy Steenstra, Senior Director of Statistical Research. *Id*. at ix. The ICI's Privacy & Cookie Policy, available at *dataprivacy@ici.org*, states, under "Copyright and Linking Policies": "The Investment Company Institute makes the information on its website available to anyone . . . . You may cite or refer to the information in this site in any media provided you include proper attribution indicating Investment Company Institute as the source and *http://www.ici.org* as the URL." The author received emailed authorization to use the Book's information for this article from Douglas Richardson, ICI Senior Member Relations Specialist / SOC 2 Compliance Analyst, on July 21, 2021. The author has represented the ICI as a client.

2 This article speaks as of July 2, 2021.

3 For recent examples, *see Good Faith Determinations of Fair Value*, SEC Release No. IC-34128, at 6 n.7 and 126 n.507 (Dec. 3, 2020)(adopting Rule 2a-5), available at *https://www.sec.gov/rules/final/2020/ic-34128.pdf,* and *Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements,* SEC Release Nos. 33-10814, 34-89478, and IC-33963, at 13 n.12 and 350 nn.706 and 707 (Aug. 5, 2020)[hereinafter SEC Modernized Fund Disclosure Proposal](proposing rule and form revisions), available at *https://www.sec.gov/rules/proposed/2020/33-10814.pdf.*

4 For a recent example, *see* Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee, 112th Cong., 2nd Sess. at text accompanying n.3 (May 26, 2021) [hereinafter SEC Chairman Gensler Testimony] (statement of Gary Gensler, Chairman of the SEC), available at *https://www.sec.gov/news/testimony/gensler-2021-05-26#_ftnref3*.

5 Press Release, SEC, Allison Herren Lee Named Acting Chair of the SEC (Jan. 21, 2021) ("During my time as Commissioner, I have focused on climate and sustainability, and those issues will continue to be a priority for me"), available at *https://www.sec.gov/news/press-release/2021-13.*

6 Allison Herren Lee, SEC Acting Chairman, Remarks at the 2021 ICI Mutual Funds and Investment Management Conference, Every Vote Counts: The Importance of Fund Voting and Disclosure, at "CONCLUSION" (Mar. 17, 2021)[hereinafter Acting Chairman Lee Speech], available at *https://www.sec.gov/news/speech/lee-every-vote-counts.*

7 Book, *supra* n.1, at viii.

8 *Id*.

9 This subject is discussed *infra* nn.44-48 and accompanying text. For a comprehensive discussion of the substantive ESG issues raised, *see* Jennifer L. Klass, Amy J. Greer, and Jonathan E. Hoffman, "ESG Investing Faces Changing Regulatory Landscape," *The Investment Lawyer,* Vol. 28, No. 3 at 7 (Mar. 2021).

10 SEC, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, View Rule, RIN 3025-AW96 (Spring 2021), available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM96*. The SEC designates the priority of the proposed rule as "Substantive, Nonsignificant" and the ranking as "Major: Undetermined." *Id*.

11 Book, *supra* n.1, at 60.

12 For a detailed profile of the SEC's Investor Advisory Committee and the SEC's Asset Management Advisory Committee, their overlap, and their relationship to the SEC's Investor Advocate, *see* Gary O. Cohen, "SEC's Fledgling Asset Management Advisory Committee Begins to Spread its [sic] Wings," *The Investment Lawyer*, Vol. 28, No. 5 at 12 (May 2021).

13 The SEC lists the recommendations of the Investor Advisory Committee on its website at *Spotlight on the Investor Advisory Committee*, available at *https://www.sec.gov/spotlight/investor-advisory-committee.shtml.* The SEC lists the recommendations of the Asset Management Advisory Committee on its website at *Spotlight on the Asset Management Advisory Committee*, available at *https://www.sec.gov/spotlight/investor-advisory-committee.shtml.*

14 SEC, Office of the Investor Advocate, Report on Activities Fiscal Year 2020 at 9 [hereinafter Investor Advocate 2020 Report], available at *https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2020.pdf.* For a discussion of the Investor Advocate 2020 Report regarding mutual funds, *see* Gary O. Cohen, "Investor Advocate Rebukes SEC, Calls for Rule Reversals and Legislation," *The Investment Lawyer*, Vol. 28, No. 6 at 31 (June 2021).

15 Press Release, SEC, Satyam Khanna Named Senior Policy Advisor for Climate and ESG (Feb. 1, 2021), available at *https://www.sec.gov/news/press-release/2021-20?utm_medium=email&utm_source=govdelivery.*

16 Press Release, SEC, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues (Mar. 4, 2021), available at *https://www.sec.gov/news/press-release/2021-42*. The Commission explains that "the task force will be led by Kelly L. Gibson, the Acting Deputy Director of Enforcement, who will oversee a Division-wide effort, with 22 members drawn from the SEC's headquarters, regional offices, and Enforcement specialized units." *Id.*

17 Allison Herron Lee, Acting SEC Chairman, Public Statement, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021)("In light of demand for climate change information and questions about whether current disclosures adequately inform investors, public input is requested from investors, registrants, and other market participants on climate change disclosure"), available at *https://www.sec.gov/news/public-statement/lee-climate-change-disclosure*. The SEC received 5,781 comments, and individual Commissioners or Staff members met with 50 organizations.

18 Hester M. Peirce, SEC Commissioner, Public Statement, Rethinking Global ESG Metrics (Apr. 14, 2021), available at *https://www.sec.gov/news/public-statement/rethinking-global-esg-metrics*.

19 Book, *supra* n.1, at 62.

20 *Id.*

21 *Id*. at 63.

22 *See Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC Release No. 34-89964 (Nov. 4, 2020) (adopting release), available at *https://www.federalregister.gov/documents/2020/11/04/2020-21580/procedural-requirements-and-resubmission-thresholds-under-exchange-act-rule-14a-8*.

23 Investor Advocate 2020 Report, *supra* n.14, at 3.

24 *Id.*

25 *Id.*

26 *Id*. at 3.

27 SEC, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, View Rule, RIN 3235-AM91 (Spring 2021), available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM91*. The SEC designates the priority of the proposed rule as "Substantive, Nonsignificant" and the ranking as "Major: Undetermined." *Id*.

28 Elad L. Roisman and Hester M. Peirce, SEC Commissioners, Public Statement, Moving Forward or Falling Back? Statement on Chair Gensler's Regulatory Agenda (June 14, 2021), available at *https://www.sec.gov/news/public-statement/moving-forward-or-falling-back-statement-chair-genslers-regulatory-agenda*.

29 Acting Chairman Lee Speech, *supra* n.6.

30 *Id*.

31 Book, *supra* n.1, at 58.

32 *Id*.

33 *Id*.

34 *Id*.

35 *Id*.

36 *Id*.

37 *Id*.

38 *Id*.

39 *Id*.

40 SEC Modernized Fund Disclosure Proposal, *supra* n.3.

41 For a summary and discussion of the proposed changes, *see* Gary O. Cohen, "SEC Proposes Big Changes to Mutual Fund Disclosure Framework," *The Investment Lawyer,* Vol. 27, No. 11 at 1 (Nov. 2020).

42 SEC Modernized Fund Disclosure Proposal, *supra* n.3, at 419.

43 *Id.*

44 SEC, Report on Public Implications of Investment Company Growth, Report of the Committee on Interstate and Foreign Commerce Pursuant to Section 136 of the Legislative Reorganization Act of 1946, Public Law 601, 79th Congress, and House Resolution 35, 89th Congress, 2d Sess. 209 (1966)(footnote omitted), available at *http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.*

cf1.rackcdn.com/collection/papers/1960/1966_InvCoGrowth_CH5A.PDF.

45 SEC Division of Investment Management Regulation, Mutual Fund Distribution and Section 22(d) of the Investment Company Act of 1940 at 86 (1974) [hereinafter SEC Staff Section 22(d) Study], available at *https://www.sec.gov/divisions/investment/report-mutual-fund-distribution-22d.pdf* .

46 SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation 297 (May 1992)("Two years ago, with the approach of the fiftieth anniversary of the Investment Company Act of 1940, [the Chairman] asked the Division to take a fresh look at the regulation of investment companies to determine whether existing regulation imposed unnecessary constraints on investment companies or the provision of other financial services and whether there were gaps in investor protection" at v), available at *https://www.sec.gov/divisions/investment/guidance/icreg50-92.pdf.*

47 *Id.* at 345.

48 SEC Division of Investment Management, Report on Mutual Fund Fees and Expenses I.A, (Dec. 2000), available at *https://www.sec.gov/news/studies/feestudy.htm.*

49 Book, *supra* n.1, at 132 (footnote omitted).

50 *Id.*

51 *Id.* at 134.

52 *Id.* at 135.

53 *Id.* at 136.

54 *Id.*

55 SEC, Fiscal Year 2022 Congressional Budget Justification [and] Annual Performance Plan (2021) [hereinafter SEC Budget Request], available at *https://www.sec.gov/files/FY%202022%20Congressional%20Budget%20Justification%20Annual%20Performance%20Plan_FINAL.pdf.*

56 *Id.* at 33.

57 SEC Chairman Gensler Testimony, *supra* n.4, at text accompanying n.3.

58 SEC Budget Request, *supra* n.55, at 6.

59 Book, *supra* n.1, at 41.

60 *Id.*

61 *Id.* at 42.

62 *Id.* at 69. The Book defines "new net inflows" as consisting of new fund sales less redemptions, plus net exchanges." *Id.* The Book explains:

> A variety of factors influence investor demand for mutual funds, such as funds' ability to assist investors in achieving their investment objectives. For example, US households rely on equity, bond, and hybrid mutual funds to meet long-term personal financial objectives, such as preparing for retirement, saving for education, purchasing a house, or preparing for emergencies. US households, as well as businesses and other institutional investors, use money market funds as cash management tools because they provide a high degree of liquidity and competitive short-term yields. *Id.* at 66.

63 *Id.* at 69.

64 *Id.*

65 *Id.* at 72.

66 *Id.*

67 *Id.* at 67.

68 *Id.* at 69.

69 *Id.* at 42.

70 *Id.*

71 *Id.* at 67.

72 *Id.*

73 *Id.* at 40.

74 *Id.*

75 *Id.*

76 *Id.* at 67.

77 *Id.*

78 *Id.*

79 *Id.* at 53.

80 *Id.* at 54.

81 *Id.*

82 *Id.*

83 *Id.* at 56.

84 *Id.*

Wolters Kluwer