SEC Enforcement Case Summary
Misleading Statements About Consideration of ESG Factors in Investments

On November 8, 2024, the SEC charged Invesco Advisers, Inc. with violations of Rule 206(4)-1 under the Investment Advisers Act of 1940 (the ***Advertising Rule***) for making misleading statements about the percentage of company-wide assets under management (***AUM***) that integrated environmental, social, and governance (***ESG***) factors in investment decisions. The firm agreed to pay a $17.5 million civil penalty.

According to the SEC's complaint, Invesco accelerated its "ESG integration" effort when in concluded that at least $370 billion in assets under management were at risk of moving to another firm. Apparently, the Europe, Middle East, and Africa market was most affected, as revisions to the European regulatory framework would require enhanced sustainability-related disclosures for products and mandatory integration of sustainability risks in financial market participants' investment decision-making processes. Invesco received multiple requests for proposal ("***RFP***") inquiries asking about ESG integration. Accordingly Invesco made multiple representations and statements in presentations, RFP responses, and other marketing materials, touting its widespread ESG integration across investments. Invesco made claims to certain clients and potential clients about the percentage of firmwide AUM at Invesco that was "ESG integrated." Invesco also included the percentage of company-wide ESG integrated AUM in its publicly available ESG Investment Stewardship Reports, which described "ESG integration" as including "ESG considerations as an influence in investment decision making," "[b]road and systematic ESG integration taking place at a strategy level and across the process," and "[c]onsideration of financially material ESG aspects."

The claimed percentage of AUM that was ESG integrated varied from 70% to 94% during the relevant period. However, the SEC noted that these percentages included Invesco's passive ETFs (including the Invesco QQQ Trust—an index product designed to track the 100 largest non-financial companies traded on the Nasdaq exchange) as ESG integration. The SEC noted that this was misleading as many of the ETFs could not consider ESG factors in making investment decisions because they were passive strategies that did not follow an ESG-related index. Apparently certain employees recognized the potential issue with counting all ETFs as ESG integrated and proposed limiting ESG goals and statements to only pertain to actively managed strategies or ESG-specific ETFs, but the change was not made.

Invesco justified its classification of passive ETFs as ESG integrated solely on the basis of two factors: its index oversight practice and its proxy voting policy. Invesco had an index oversight process that applied to these passive ETFs, to evaluate the index provider's technological capabilities and operational resilience, including issues related to cyber security risk, key man risk, the ESG attributes and practices of the index provider, and whether the index rebalanced in a manner in line with investors' expectations. However, Invesco's approach focused on the operations of the index provider and not how it selected the underlying securities in the index in which clients' funds were being invested. The ESG team also considered Invesco's proxy voting policy, which applied to all of its strategies that held equity securities and governed how securities held in passive ETFs would be voted. Specifically, equity securities held in passive ETFs would, if the same securities were also held in an actively managed strategy, follow the voting of the active strategy. The active manager generally would apply ESG factors in voting the shares to the extent those ESG factors were financially material and would also participate in ESG-related engagements as relevant. When a given equity security was not held by an active strategy, the passively held shares were voted following Invesco's default proxy voting policy, pursuant to which there was no active consideration on a vote-by-vote basis as to whether ESG factors were financially material to the investment. This approach for the non-overlap situations was inconsistent with Invesco's disclosure in the 2021 ESG Investment Stewardship Report stating that ESG integration included "consideration of financially material ESG aspects."

The SEC further charged Invesco under Rule 206(4)-7 (the ***Compliance Rule***) with failure to maintain a comprehensive set of written policies and procedures concerning how the firm would determine the percentage of firmwide AUM that was ESG integrated. Invesco never adopted a written policy that defined "ESG integration," even though that was a term it used in public facing documents. Although Invesco stated that its ESG integrated investment strategies had a "minimal but systematic" level of ESG integration, it had an evolving internal framework and did not have written policies and procedures governing what should be considered ESG integrated. As a result, Invesco's approach to classifying strategies as ESG integrated changed throughout the relevant period. For a portion of the period, Invesco's representations regarding the percentage of its AUM that was ESG integrated were based on one employee's "heatmap," which assessed various investment teams' ESG-related practices. Based on the investment teams' responses to a set of questions, discussions with the investment teams, and the employee's understanding of the teams' practices, the employee then categorized all of the AUM managed by that team as ESG integrated or not ESG integrated, without conducting any strategy-by-strategy analysis as to whether the investment team used ESG factors in investment decision-making. Later the basis for Invesco's representations changed to a survey in which assets under management were evaluated at a strategy level.

Invesco agreed to a settled action. The SEC acknowledged Invesco's cooperation in the case, noting that Invesco voluntarily meet with SEC staff and cooperated in providing factual summaries of relevant information. The case highlights the importance of ensuring that ESG-related claims operate in parallel with internal written policies and procedures that include defined terms to be used in evaluating and supporting such claims made to existing and prospective investors.

See Summary – https://www.sec.gov/newsroom/press-releases/2024-179