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| 18 November 2022 |

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| Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds’ names |
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| Date: 18 November 2022 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds’ names published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered);
* do not remove the tags of type <ESMA\_QUESTION\_FUNA\_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_CP\_FUNA\_NAMEOFCOMPANY\_REPLYFORM.

e.g. if the respondent were ABCD, the name of the reply form would be:

ESMA\_CP\_FUNA\_ABCD\_REPLYFORM

***Deadline***

Responses must reach us by 20 February 2022.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| Name of the company / organisation | European Leveraged Finance Association |
| Activity | Debt investor Trade Association |
| Are you representing an association? | ☐ Yes |
| Country/Region | UK/Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

Dear Sir/Madam,

**Response to ESMA Consultation Paper on Guidelines on funds’ names using ESG or sustainability-related terms**

The European Leveraged Finance Association (**ELFA**) welcomes the opportunity to respond to the European Securities and Markets Authority (**ESMA**) regarding the Consultation Paper on Guidelines on funds’ names using ESG or sustainability-related terms (the “**Consultation Paper**”).

ELFA is a professional trade association comprised of European leveraged finance investors from 60 institutional fixed income managers, including investment advisors, insurance companies, and pension funds. ELFA seeks to support the growth and resilience of the leveraged finance market while acting as the voice of its investor community by promoting transparency and facilitating engagement among European leveraged finance market participants.

We are very supportive of the proposed ESMA regime set out in the Consultation Paper and the goals which the regime aims to achieve. There are however some key aspects of the proposed ESMA regime where further clarification and/or amendments are required and we have set these out in our detailed response to the relevant questions.

We appreciate ESMA’s willingness to engage with us on this topic and would be happy to discuss any aspect of this submission in further detail. Please contact either myself ([sfox@elfainvestors.com](mailto:sfox@elfainvestors.com)) or Robert Bamber ([rbamber@elfainvestors.com](mailto:rbamber@elfainvestors.com)).

Yours sincerely,

**Sabrina Fox**  
Chief Executive Officer  
European Leveraged Finance Association  
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<ESMA\_QUESTION\_FUNA\_0>

1. : Do you agree with the need to introduce quantitative thresholds to assess funds’ names?

<ESMA\_QUESTION\_FUNA\_1>

We are supportive of the proposal to introduce quantitative thresholds to assess the name of a fund using ESG- or sustainability-related terms. As a general point however, we would ask that ESMA provides a more comprehensive assessment of the implementation of SFDR and EU Taxonomy. In particular, it would be useful to understand the extent to which SFDR and Taxonomy analysis could potentially be improved as a result of quantitative thresholds to assess funds’ names. We would also request a more detailed analysis of the term “ESG” and “Sustainable” so that it is clear what these terms are intended to cover in this context and how these interpretations align with or deviate from other regimes.

In addition, it is not clear whether ESMA has specifically considered how the regime will affect credit funds. We think that this is an important consideration given the specific challenges faced by the private debt sector. Funds which operate in the mid-market are faced with challenges around sourcing relevant, reliable ESG-related data and the lack of publicly available information for relevant companies. Hence obtaining specific data relating to investments to “meet the environmental or social characteristics or sustainable investment objectives” may pose difficulties to credit funds. It would be helpful therefore to have additional detail which considers and applies the regime to the private debt sector and include relevant examples. As such, ELFA welcomes the opportunity to work with ESMA to ensure that the regime is appropriately tailored to the credit markets, and would point to our ESG Disclosure Initiative as an example of data gathering and harmonising initiative bringing together credit investors, borrowers and their advisers to ensure that ESG data is flowing in the credit market.

<ESMA\_QUESTION\_FUNA\_1>

1. : Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_2>

Although we agree with the need to introduce quantitative thresholds to assess fund names, we would request additional detail as to (a) how a minimum proportion of 80% of investments referred to in paragraph 15 of the Consultation Paper is to be calculated and (b) whether the 80% and 50% thresholds are intended to be applied by reference to the value of investments made by the fund from time to time.

Whilst the Consultation Paper states that a temporary deviation from the threshold should be ‘treated as a passive breach and corrected in the best interest of the unitholders’, it is not clear to us whether the 80% threshold will need to be maintained in all times. Investment managers are likely to find this difficult to predict and undertake during the ramp up phase of a new fund and may also be affected by periodic valuation of investments. In addition, investments may become aligned with ESG considerations, even exceeding the relevant thresholds however would be prevented from referring to these terms.

We are also concerned as to how the regime will affect credit funds that do not, for a number of possible reasons, qualify for the 80% proposed threshold of minimum proportion of investments yet integrate ESG factors across their credit and investment process and we request that ESMA considers the specific challenges of this sector.

<ESMA\_QUESTION\_FUNA\_2>

1. : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_3>

We are supportive of having an additional threshold for sustainable-related terms however would request that our comments to Q2 are also considered in this context.

<ESMA\_QUESTION\_FUNA\_3>

1. : Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.

<ESMA\_QUESTION\_FUNA\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_4>

1. : Do you think that there are other ways than the proposed thresholds to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives? If yes, please explain your alternative proposal. If yes, please explain your alternative proposal.

<ESMA\_QUESTION\_FUNA\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_5>

1. : Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_6>

There has been a divergence of opinion amongst our members regarding the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name. Some of our members express concerns in relation to challenges faced by many funds around sourcing relevant, reliable ESG-related data and the lack of publicly available information for relevant companies, particularly in the private debt sector. As mentioned previously, this poses difficulties for investment managers to obtain the required information necessary to perform the analysis. As such, we question the need of imposing this additional regulatory requirement since investment funds are already regulated by the SFDR in general and this additional requirement does not align with the SFDR.

Whilst other members agree with the need for imposing minimum safeguards, we seek further clarification in relation to the application of exclusion criteria and its impact on funds that are transitioning existing assets.

<ESMA\_QUESTION\_FUNA\_6>

1. : Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?

<ESMA\_QUESTION\_FUNA\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_7>

1. Would you suggest the use of the notional value or the market value for the purpose of the calculation of the minimum proportion of investment?

<ESMA\_QUESTION\_FUNA\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_1>

1. Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?

<ESMA\_QUESTION\_FUNA\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_2>

1. : Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds’ names as any other fund? If not, explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_8>

1. : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

<ESMA\_QUESTION\_FUNA\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_9>

1. : Do you agree of having specific provisions for “impact” or impact-related names in these Guidelines?

<ESMA\_QUESTION\_FUNA\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_10>

1. : Should there be specific provisions for “transition” or transition-related names in these Guidelines? If yes, what should they be?

<ESMA\_QUESTION\_FUNA\_11>

We acknowledge that many of the most impactful funds are those transitioning existing assets as opposed to creating new businesses, for example, funds investing in SMEs or credit funds with a lot of mid-market clients. We express our concerns in relation to funds incorporating ESG and sustainability features in their investment objectives which would not qualify under the proposed fund naming regime. This may pose a risk of preference for new ‘ESG-related funds’ over those which are transitioning existing businesses.

Therefore, we request that ESMA carefully considers and analyses whether the potential regime on ESG and sustainability-related terms in fund names could disincentivise investments in the transition of existing assets.

<ESMA\_QUESTION\_FUNA\_11>

1. : The proposals in this consultation paper relates to investment funds’ names in light of specific sectoral concerns. However, considering the SFDR disclosures apply also to other sectors, do you think that these proposals may have implications for other sectors and, if so, would you see merit in having similar guidance for other financial products?

<ESMA\_QUESTION\_FUNA\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_12>

1. : Do you agree with having a transitional period of 6 months from the date of the application of the Guidelines for existing funds? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_13>

We are supportive of the transitional period of 6 months from the date of the application of the Guidelines for existing funds given that there are no other provisions expected to be met.

<ESMA\_QUESTION\_FUNA\_13>

1. : Should the naming-related provisions be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines? If not, please explain your answer.

<ESMA\_QUESTION\_FUNA\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_14>

1. : What is the anticipated impact from the introduction of the proposed Guidelines?

<ESMA\_QUESTION\_FUNA\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_15>

1. : What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA\_QUESTION\_FUNA\_16>

We are appreciative of ESMA for taking into account the diverse industries and allow for a degree of flexibility in the disclosure of costs and benefits. However, we are unable to assess additional costs as of now due to the differences in nature of businesses, trading strategies and disclosure frameworks of individual funds.

<ESMA\_QUESTION\_FUNA\_16>