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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 | Amundi Asset Management |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

Introduction - Amundi fully concurs with the objective of these guidelines to **set common rules in order to prevent greenwashing risk and enhance trust in the market, more particularly the fast evolving “ESG-funds” market**.

We therefore welcome ESMA’s consultation on Guidelines on funds’ names using ESG or sustainability-related terms considering:

* **Product names are of primary importance** to retail investors, all the more because legal documentation can be very detailed and quite complex.
* Though the principle of fair, clear and not misleading marketing communication already exist in the current regulation, we agree that **a particular attention should be given in the “ESG” space** considering the very broad definition of the “promotion of E/S characteristics” (SFDR art.8).

However, **we are really concerned that the proposed guidelines raise** **confusion and timing issues** that would lead to the opposite effect these guidelines are aiming at. Indeed:

* Convergence and clarity. First and foremost, the proposed guidelines are based on concepts that are not clearly defined and can lead to quite different interpretations and outcomes either at national or at financial market participant’s level. This is particularly important for the central concept of “sustainable investment” as per SFDR art.2 (17). **This lack of clarity amplifies the potential greenwashing risk, legal uncertainties and level playing field issues, which is the opposite effect these guidelines are aiming at.**
* Regulatory consistency within the Sustainable Finance framework. The proposed guidelines overlap with current rules (e.g. MiFID “sustainable preferences”) or planned initiatives: notably the “SFDR art.8 & 9 minimum standards”, the “EU ESG benchmark”, the review of SFDR RTS this year, the SFDR assessment announced by the Commission as well as the ESAs report on greenwashing. We are concerned **whether and how these guidelines will articulate with such initiatives, and avoid being just an additional layer** of regulation.
* Consistency across financial products and providers. To ensure consistency for indexed funds/ETFs with other retail funds, **“ESG benchmarks”** should be subject to the same naming rules.
* Fragmentation of the market. Though these guidelines set common rules, and as long as SFDR assessment is not completed, they **may not supersede national rules** (all the more when local regimes prevail for overall marketing communication, not just the fund names). This creates an additional layer of requirements for local funds and an impediment for cross border distribution.

Therefore, we urge ESMA **to release guidelines only once ESMA**, in conjunction with NCAs, other ESAs (EIOPA and EBA) and with the EU Commission, **can bring more visibility on the above matters** of regulatory consistency, fragmentation and level playing field. This is essential to ensure that naming guidelines can reach out their goal and not add more confusion for the end investors and uncertainties for the fund management and distribution market.

Against this background, our comments in subsequent responses to this consultation aim at providing further insight and some alternative proposals, notwithstanding the fact that the regulatory consistency issues pointed above are not in our hand and shall be addressed in any case.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Response to Q1 - We are convinced that proportionality should be introduced between the “marketing” disclosures of a financial product (among which the name) and the degree of ESG commitment and related impact in the financial product. Unlike some national rules (such as the French non-financial disclosure rules) or label rules in some Members States, SFDR disclosures are not dealing with this issue. In July 2021, the European Commission (EC) clarified that the definition of funds disclosing under SFDR art.8 is quite large, while the definition of funds disclosing under art.9 has been narrowed due to the “sustainable investments only” requirement. Therefore, introducing fund naming rules may allow to introduce some proportionality among the art.8 funds.

On top of introducing measurable **proportionality**, in theory, quantitative thresholds rules have the **merit to be simple**: based on pre-contractual asset allocation, simple to check (against periodic reports).

But **such apparent simplicity in using quantitative thresholds is actually bringing confusion:**

1. The most notable confusion would stem from the threshold based on **“sustainable investment” (SI)**. ESAs are fully aware that different methodologies to assess SI can lead to quite different proportions of SI for similar portfolios. To this extent, in September 2022, ESAs have officially questioned the European Commission[[1]](#footnote-2) to get more clarity on how to interpret SFDR’s SI concept (art 2(17)). In the absence of clarity, the looser the SI methodology, the less conservative the commitment, the more likely the fund name will be able to display a “sustainability-related” term to retail clients. This leads to the opposite to what the regulator is seeking.

**As long as there is no precise clarification about the concept of SI**, **aligning the fund’s name to the proportion of SI in the fund may be amplifying the impact of SFDR’s current lack of clarity: market fragmentation across the EU, confusion of investors and increase in greenwashing risks.**

1. In addition, the proposed guidelines themselves require **additional clarity, notably on the threshold methodology (numerator, denominator) prior to determining the level of the thresholds.** Typically, neither the “investments used to meet the E/S characteristics of the fund” nor the SI proportion thresholds can be set “in abstracto” in the absence of a common definition and therefore in the absence of any possible comparison with the level at which the real economy stands (e.g. based on some representative indexes).
2. In terms of proportionality of disclosures, we believe that **the most relevant criteria is the significance of the binding commitment in terms of goal and strategy**, and the adherence of **the investment process to meet this objective** [ex ante and ex post].

If set too high, quantitative thresholds may exclude some strategies, asset classes or geographical areas that not only could enhance the ESG/sustainability features of the fund but more importantly are critical to finance the transition of a more sustainable economy (notably in low and middle income countries). This could lead to some **confusion in the readability of the product range** offered to clients having sustainability preferences.

1. Retail clients may all the more be confused by the **mismatch around the “sustainability” concept**. Under MiFID Delegated Regulation and Directive, clients shall express their “sustainability” preferences on the basis of three different concepts: taxonomy, SFDR’s SI, and principal adverse impacts consideration. While “sustainability” in fund names is only based on SFDR’s SI, and a minimum threshold.

Amundi therefore:

* urges ESMA to either remove the reference to an absolute SI threshold, or to put these draft guidelines on hold until sufficient guidance on key SFDR and MIFID Delegated Regulation and Directive concepts is obtained and the threshold can be revised accordingly.
* calls for more clarity in these guidelines (see next responses).
* believes there are alternative approaches and to this extent has done its best effort to propose definitions and alternatives in the subsequent answers.

<ESMA\_QUESTION\_FUNA\_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>

Response to Q2

(1) **The determination of the ESG threshold**

Though ESMA is referencing this ratio to the SFDR template’s asset allocation section, there is no clear definition of such ratio in SFDR delegated regulation.

We believe the draft guidelines should bring more clarity to (i) avoid diverging interpretations and (ii) assess whether this ratio is relevant and (iii) whether the 80% level is correctly calibrated i.e. both ambitious and realistic enough.

Our proposal for clarification of the threshold :

* Investments used to meet the E/S characteristics the fund (numerator):

The numerator would represent the “coverage” i.e. the exposure to the underlyings of the fund that have been subject to the assessment of a non-financial analysis or rating or non-financial indicator in relation with the ESG strategy of the fund. This definition has the merit to be adapted to and measurable by various ESG strategies (best in class, best in universe, thematic, …).

It shall be noted that the numerator – whatever the definition - can significantly vary depending on the type of assets and regions, and the data availability. For instance, the coverage of emerging market strategies will be less than OECD’s large caps. Or, certain diversified strategies may use more cash, or derivatives that may not be looked through in the absence of clear regulatory or market standard for ESG considerations for derivatives (see Q7 for targeted solutions) and where there is no coverage by construction.

* The denominator: ESMA said at open hearings that the net asset value (NAV) *including cash and derivatives* would be the basis, in order to be consistent with SFDR’s proportions shown in SFDR’s asset allocation section. It shall then be considered that certain strategies (multi asset …) can have relatively high proportion of cash and derivatives.

An 80% threshold can fit large caps equity funds (non-emerging) with moderate levels of cash and derivative. But in a diversified fund, cash and derivatives could reach more than 20% of the NAV, and even if they were up to 20% it would imply that 100% of the underlying issuers are “ESG” covered which could be out of reach for certain asset types (e.g. high yield or small caps) or regions (e.g. emerging).

Therefore, though a coverage of 80% could be an overall reasonably material level if it excludes cash and derivatives, it would need to be adjusted in order to both account for cash and derivatives in the denominator, and not unduly exclude strategies with relatively high level of cash and derivatives by construction that would have been considered otherwise. Taking the above into account, ex-ante commitments could for instance be set at:

* For large caps or sovereign from OECD’s countries, investment grade credit: 2/3 of the NAV including cash and derivatives
* For Emerging, small cap equities, high yield and diversified funds: ~55% of the NAV including cash and derivatives

As a complement, we believe that the ESG threshold requirement would be more relevant if combined with the following additional requirement:

The fund should pursue an **explicit binding and quantitative measurable objective** with relevant KPI(s) on the main objective of the fund, and consistent with the name of the fund [for ex. *CO2 intensity* or *Energy transition contribution* for “Climate”, average *ESG rating* exceeding that of the investment universe for “ESG”, etc. ]

1. **The following additional comments** should also be taken into consideration:
* Generally, and especially in the case of funds with **long investment period** (such as debt or private equity funds), it should be made clear that the ratio to be considered for the name is the committed ratio at the end of the “investment ramp up period”. It would be meaningless and burdensome to change the name of these funds once it is fully invested.
* It should be made clear that **indicators** on the basis of which the investments have been selected to meet the E/S characteristics of the fund can be **reasonably estimated** data, or based on estimated data (such as ratings)
* As per guideline § 21, it is important to clarify that the threshold would apply in “normal circumstances” and thus a “passive breach” process would be applicable otherwise. This is in line with any other regulatory ratio applicable to UCITS and AIFs.
1. In addition, guidelines should define **what an “ESG-related” name means.** To this extent, we propose the following :
* By default an “ESG-related” word would allude to any environmental and/or social and/or governance theme in the name other than “sustainable” or “impact”. The translation of “sustainable” and “impact” should be agreed upon in the different languages of Member States.
* This said, in order to avoid discrepancies between NCAs’ interpretations and to allow a level playing field in cross-border distribution, we believe that ESMA should publish a list of samples of “ESG related” terms.

<ESMA\_QUESTION\_FUNA\_2>

* : 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>

Response to Q3 - As detailed in our answer to Q1, the definition of sustainable investment (SI) is unclear and leads to quite different interpretations and outcomes in the market.

**As long as the regulator has not provided clear guidance to ensure sufficient convergence in the assessment of a SI,** **we strongly disagree to base fund naming rules on a concept subject to many interpretations, hence market fragmentation, end investors’ confusion and greenwashing risks**.

Neither do we agree with an “arbitrary” level (50%): any absolute level should be set based on (i) a common definition and (ii) a comparison with the level at which the real economy stands based on this common definition.

If ESMA still wants to proceed with a threshold methodology to distinguish “sustainable” from “ESG”, we then suggest to measure the SI proportion of the fund **relative to** the SI proportion of its benchmark or its investment universe, using the same assessment methodology. In such case:

* The word “sustainable” could be used **provided that the fund commits to have a % SI exceeding significantly the % SI of its investment universe**
* For funds without a reference benchmark/ investment universe, the fund could identify and disclose a **proxy** reference to be in line with this requirement.

In any case, we would like to insist on the importance of applying guidelines on concepts that are clearly defined.

<ESMA\_QUESTION\_FUNA\_3>

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

<ESMA\_QUESTION\_FUNA\_4>

Please refer to our answer to Q2 for the “ESG” threshold.

Please refer to our answer to Q3 for the “SI” threshold.

<ESMA\_QUESTION\_FUNA\_4>

* : 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>

Response to Q5 - It is important that any alternative approach should (i) apply proportionality (the name being granted only if there is a sufficiently significant commitment) (ii) be quantitatively measurable based on a KPI in relation to the main objective and to the name of the fund.

For instance :

* As per our response in Q2, a “coverage” threshold could be combined with a binding and measurable objective.
* Strategies that are compliant with the approaches proposed by the French Market Authorities (AMF) in its doctrine could be considered as alternative to the threshold mechanisms. “Selectivity” i.e. exclusion of at least 20% of the worst ESG performers in a universe definition, or “rating upgrade” approach, after eliminating at least 20% of the worst ESG performers in a universe definition could be used. The same with an ESG KPI minimum level strategy.

<ESMA\_QUESTION\_FUNA\_5>

* : 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>

 Response to Q6 - As a general comment, we believe that exclusions are not appropriate as minimum safeguards for investment funds.

In addition, exclusions generally do not recognize firms that are making efforts to transition.

We fully disagree with using Paris Aligned Benchmark (PAB)’s exclusions listed in art 12(1) and 12(2) of the BMR delegated regulation 2020/1818 for the following reasons:

1. SFDR art. 8 funds already have some “good governance practices” safeguards as a minimum standard.
2. The PAB is a label dedicated to Paris aligned targets- PAB exclusion criteria are mainly climate focused and specifically fitting this label. It is not suitable for other labels nor for strategies which are not fully climate oriented.
3. The notion of DNSH introduced in art 12(2) is not clearly defined and, in SFDR, such notion applies to “sustainable investments”.

**In the current transitioning state of the real economy, applying the PAB min. standards of art 12(1) and 12(2) to all the investments of a fund would be disproportionate and exceed the notion of “minimum” safeguards.**

In order to enhance the minimum standards of art.8 funds qualifying for an ESG-related name in a proportionate manner, our alternative proposal is the following:

1. No investment can be made in the production of weapons prohibited by the Oslo Convention on Cluster Munitions and the Ottawa Treaty on Anti-Personnel Mines.
2. **The product considers the SFDR mandatory PAIs (16) in a quantitative or qualitative manner** wherever applicable. This also has the merit to connect with MiFID sustainability preferences.

<ESMA\_QUESTION\_FUNA\_6>

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

<ESMA\_QUESTION\_FUNA\_7>

 Response to Q7 - There is currently no regulatory or market standard as to how derivatives shall be taken into account for commitments to E/S characteristics or sustainable investments.

We believe the consideration of derivatives in a look through approach should be subject to **certain conditions**:

1. As a general principle, derivatives should be taken into account as in other investment ratios.

However, for ESG consideration, they could be disregarded – i.e. excluded from numerator and denominator - if:

* they are used for temporary and/or the efficient management techniques purposes; for example tactical derivatives for temporary market (beta) hedging/exposure purposes, duration purpose, or to manage subscriptions/redemptions flows;
* they relate to currency management [e.g. FX hedging] and interest rate [e.g. interest rate swaps].

(2) Index/basket derivatives : as a result of the look through of an underlying index/basket, the prospectus should mention there could be an **indirect exposure** to assets that are contrary to the ESG characteristics of the fund; it is intended to be a negligible proportion of the assets of the fund;

(3) **The approach for ESG/sustainability considerations goes beyond the sole fund naming ratios**. It also relates to SFDR disclosure in general; a common approach would need to be discussed/elaborated with the industry to clearly fix the treatment of the look-through in the numerator and denominator, the treatment of the derivatives that would be disregarded, of the collateral, the necessary tolerance for indirect exposures ,…

**We therefore believe the consideration of derivatives should be subject to a taskforce with the marketplace, to be set up at EU level, in order to come up with a clear methodology before it is incorporated in the fund naming guidelines.**

<ESMA\_QUESTION\_FUNA\_7>

* 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>

Response to Q7(a) - We suggest the use of the exposure value i.e. the delta approach to calculate the equivalent exposure to the underlying asset of the derivative in a “look through” approach

<ESMA\_QUESTION\_FUNA\_1>

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

<ESMA\_QUESTION\_FUNA\_2>

Response to Q7(b) - See above – We believe there should be a taskforce with the marketplace so that a common approach is determined, consistently across the financial sector. And that sufficient time is granted to gradually align.

<ESMA\_QUESTION\_FUNA\_2>

* : 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>

Response to Q8 - For consistency purposes, more particularly towards retail investors, we would like to apply the same naming requirements to index funds. But due to a regulatory mismatch we are currently not in a position to do so. Indeed :

* The proposed guidelines refer to SFDR’s pre-contractual disclosures. But Index providers are not in SFDR’s scope. They are covered by the BMR regulation and – apart from the PAB and CTB - the BMR regulation currently imposes some lighter transparency requirements, which are not fully aligned with the SFDR disclosure requirements applying to the funds.
* The proposed guidelines apply to funds and fund managers, but neither to indexes nor benchmark administrators.
* Index funds/ ETFs as well as structured funds have particular features which exacerbate this issue :

**Index fund:** ETF/index fund managers are obliged under index licensing terms to use the name of the index in the fund name, implying no flexibility by fund managers on the choice of the name of their fund. This makes it very difficult for the asset manager to change the name of a product… especially if the index is managed by a non-European entity or an index provider (for ex a stock exchange) for which delta one products are not considered as strategic products. In other words, index providers (being a global entity or not) are not bound (nor always interested from a business point a view) to comply with European regulations and there is little incentive to change the index name according to European constraints.

**Structured funds:** When a formula fund offers indexation to an underlying index, the name of the fund must be able to reflect the reality and the theme of this exposure, otherwise the investor may be misled as to the economic exposure to which the fund is committed.

As a consequence of the above:

We call for the regulator to **urgently consider aligning the requirements** set in the proposed guidelines and SFDR’s requirement thereof **to index providers**

**Until then**, index and structured funds should for the time being be granted a **temporary exemption** to apply the proposed guidelines. It is indeed not imaginable that all index providers will apply strictly and voluntarily the naming rules to their products.

**Existing structured funds** should benefit from a **grandfathering** clause as they are closed to subscriptions and changing the name before the maturity could be very confusing to the end investor.

Last but not least, EMSA should ensure with the other ESAs that there is **level playing field** with other index or formula-based products that are not funds and that also target retail investors.

<ESMA\_QUESTION\_FUNA\_8>

* : 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>

Response to Q9 - For funds replicating an “ESG” index/ reference benchmark with derivatives instruments (for instance through total return swaps), we consider that such synthetic “indirect” replication has the same effects, in terms of exposure, as the physical “direct” replication. In the synthetic replication, the portfolio held by the fund is swapped against the exposure of the portfolio held by the counterparty and unitholders bear the risk and opportunities linked to the exposure portfolio (i.e. the index), not the portfolio held by the fund.

The portfolio held by the fund is improperly called “collateral” (the fund is the direct owner of these assets, so there is no notion of collateral applicable in this case). This so-called “collateral” follows the asset managers’ Responsible Investment policy (the policy may include different elements as legal exclusions, constraints on coal and fossil fuels linked to the asset manager’s policy, sometimes minimal ESG ratings).

<ESMA\_QUESTION\_FUNA\_9>

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

<ESMA\_QUESTION\_FUNA\_10>

Response to Q10 - Yes. On top of the naming rule prevailing for ESG and sustainable-related names, we suggest referring to the 3 following pillars: intentionality, additionality and measurability.

<ESMA\_QUESTION\_FUNA\_10>

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

<ESMA\_QUESTION\_FUNA\_11>

Response to Q11 - No. We believe that “transition-related” names should be covered by the same rules as “ESG-related” names.

<ESMA\_QUESTION\_FUNA\_11>

* : 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>

Response to Q12 - As a general principle and for level playing field purposes, we believe that guidelines addressing investor protection and greenwashing issues should relate only to publicly offered financial products and instruments (green bonds, notes, derivatives, …). However:

* As long as these guidelines are not substantially amended in line with our comments and proposals, it is essential to conduct a proper impact assessment before any extension to other products or instruments.
* In addition, we do not foresee how certain principles of these guidelines could be easily extended to products/instruments subject to different regulations and contractual documentation. For instance, how can PAB exclusions properly apply to a gas company issuing a bond to finance solar plants?
* It should be clarified that investment funds / products / instruments dedicated to professional investors upon their request and preferences should be out of scope of these guidelines.

As a conclusion, and as long as the current provisions of the guidelines remain unchanged, we do not think it is appropriate to extend them as they stand.

<ESMA\_QUESTION\_FUNA\_12>

* : 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>

Response to Q13 - A 6-month transitional period is too short and **should be extended to at least one year, ideally 18 months**.

6 months do not take into account the fundamental nature of the reshaping that may need to occur for an impacted fund.

As an illustration: this could involve a name change or a product redesign, portfolio restructuring, adjusting the strategy, incl. the distribution strategy for the fund, etc .After this reshaping has been done, it will need filing and approval with the local NCA. In the case of umbrella funds, this may only be possible as part of a scheduled refiling of the whole umbrella – otherwise investors may be exposed to unreasonable costs. Such re-filings typically only occur at scheduled frequencies – ad hoc filings increase cost – further lengthening the timeline for the introduction of these types of fundamental change. Then, depending on the countries of registration of the fund (outside the EU), registrations extend the timeline for the introduction of material changes/EGM’s/unitholder notice requirements,… The overall timeline can easily extend to one year.

Also, should the EC clarify “sustainable investment”, it could involve additional implementation time by the industry and/or bottleneck situations which would advocate for an additional extension of the period of application.

Lastly, on top of the above mentioned process, funds using ESG benchmarks would be subject to an additional step: the adaptation of the ESG index at the index provider level (this can add several months based on our experience).

<ESMA\_QUESTION\_FUNA\_13>

* : 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>

Response to Q14 - We understand from ESMA’s open hearing held on January 23rd that the question is relative to funds closed for subscriptions.

In such a case, it is not necessary to extend these naming-related provisions as there will be no new subscriptions. The name of the fund is no longer used for “marketing or promotion” communication. Changing the name would be costly and useless.

This would also be in line with the May 2022 SFDR Q&A from the European Commission that indicates that “where a financial product is no longer made available to end investors”, such products must comply with requirements regarding “periodic report” and “websites disclosure” but not with pre-contractual requirements.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

Response to Q15 - The laudable intention of these guidelines is to set common rules across the EU to protect retail investors from misleading information/greenwashing and ensure trust in the market and drive capital flows to a more sustainable economy.

However, if these guidelines are adopted as such, and until the lack of clarity and the inconsistencies in light of SFDR’s review and other regulatory initiatives are not addressed, we fear they could have the opposite effect:

* amplified greenwashing risks and legal uncertainties due to the lack of clarity and definitions
* important level playing field / market fragmentation issues
* **inapplicability to retail ETF/Index fund** naming considering benchmark administrators are not covered by SFDR and the guidelines
* due to the unstable context and SFDR’s review to come, NCAs may continue to **apply local rules in parallel to ESMA guidelines**
* **inappropriate calibrations** (e.g. PAB minimum safeguards, lack of definition resulting in thresholds which can be disconnected from the real economy,…) penalise legitimate strategies
* lack of regulatory consistency (“cart before the horse” effect) **with increased confusion at end investors if current initiatives to assess SFDR finally lead to different rules than the guidelines, with a second batch of changes in fund names and strategies on the market (and associated costs)**
* risk of confusion of the end investor around the **“sustainable concept**” (mismatch between MiFID preferences and the fund naming rule)

<ESMA\_QUESTION\_FUNA\_15>

* : 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>

Response to Q16 - Costs and benefits are very dependent upon how the alternative proposals and the factors detailed in our response to Q13 and Q15 will be addressed in establishing final guidelines.

**The regulatory consistency and timing issues raised by the guidelines, if not solved ahead of their publication, could have very detrimental impacts**, not only by adding costs linked to overlapping layers of regulations, but also confusion and risks that would be counterproductive.

<ESMA\_QUESTION\_FUNA\_16>

1. ESA’s list of additional SFDR queries requiring the interpretation of Union law – 9 September 2022 [↑](#footnote-ref-2)