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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 | Fidelity International |
| Activity | Asset Management |
| Are you representing an association? |  |
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

ESMA has noted the purpose of its proposed Guidelines for the use of ESG or sustainability-related terms in funds’ names (Guidelines) is to address greenwashing issues with existing fund naming procedures. We agree with the regulatory intent to address greenwashing and enhance consumer protection and choice around sustainable products. However, we are concerned ESMA’s approach will not achieve these objectives, for the following reasons:

* quantitative thresholds based on the definition of sustainable investments in the Sustainable Finance Disclosure Regulation (SFDR) are subject to a range of existing interpretations and data variances, and will therefore not provide any further clarity or comparability to investors;
* the lack of inter-operability between the Guidelines, SFDR and the Markets in Financial Instruments Directive (MiFID), as well as individual jurisdiction rules for labelling (for example in France), does not create a regulatory environment where asset managers can clearly name, disclose on and distribute ESG and sustainable funds to investors; and
* minimum standards for products need to be embedded through SFDR, and mirrored in MiFID, for these to have the most impact on greenwashing. Addressing greenwashing risk through naming rules alone is unlikely to have any substantive impact on how products are distributed within Europe, given products can still be sold to meet sustainable preferences under MiFID, regardless of the name of the product.

An example of the lack of interoperability between the Guidelines, SFDR and MIFID is set out below:

* Funds named as ‘ESG’ or ‘Sustainable’ under the Guidelines may not necessarily meet Art 8 requirements if good governance requirements are not addressed in the ESG fund, which would lead to a situation where a fund can be named ‘ESG’ without making disclosures under SFDR;
* Funds named as ‘Sustainable’ under the Guidelines may not be able to reach the higher thresholds under Art 9 SFDR and therefore would not necessarily convey whether a fund has a Sustainable Investment objective or not;
* Funds which are able to be marketed as ESG funds in France applying AMF’s specific guidelines may not be able to be named as ‘ESG’ or ‘Sustainable’ funds under the Guidelines;
* Clients indicating sustainability preferences under MiFID may be able to be provided a product that considers Principal Adverse Impacts (PAIs) to meet sustainability preferences, even though this product may not be labelled as ‘Sustainable’ under the Guidelines; and
* Clients indicating sustainability preferences under MiFID may be able to be provided a product that considers EU Taxonomy (Taxonomy) alignment to meet sustainability preferences, even though this product may not be labelled as ‘Sustainable’ under the Guidelines.

This lack of inter-operability and inconsistency between standards could be misleading for investors wanting to invest sustainably in Europe and make it challenging for asset managers, distributors and advisors to clearly explain products with sustainability features to investors. Beyond Europe, there is also lack of interoperability between other foreign requirements, for example UK Sustainability Disclosure Requirements and investment labels (SDR), which could reduce the competitiveness cross border ranges within the EU asset management industry.

We have dealt with our other key concerns in response to the remaining of ESMA’s below questions.

We strongly urge ESMA to delay the Guidelines, or instead focus on ensuring the fund name is clear and not misleading based on the objective of the fund, until these issues can be addressed so the proposed Guidelines can be used as an effective tool to address greenwashing risk in Europe. Should ESMA proceed with the Guidelines, we have set out our position on each of the proposed requirements below.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Requirements around minimum standards for ESG products in Europe would best address greenwashing if they focus on the objective and strategy of the fund, rather than fund names. Any discussion on minimum quantitative thresholds, should be made in comprehensive consultation with industry and in response to investor surveying, following the European Commission’s consultation processes. We see the review of SFDR planned for this year by the European Commission as a good opportunity to start the conversation around minimum standards for ESG products and would like to see the proposed thresholds for naming rules delayed until we have more guidance on minimum standards or potential labels for ESG and sustainable products in Europe.

<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>

Should ESMA proceed with the Guidelines, we propose ESMA adopts a minimum threshold of 70% of the minimum proportion of investments for the use of any ESG, or impact-related words in the name of a fund, in line with existing market standards of the portion of holdings within a fund that should be aligned with a fund’s objective. We would also like to see ESMA clarify that, for the use of impact words, the requirement to have a minimum proportion of a product that has environmental or social characteristics, rather than introducing a new criterion for impact related words which hasn’t been identified in the Guidelines and for which no clear European standard regulatory approach has been defined. Any approach adopted by ESMA should be calculated on an entity, rather than proportionate, basis for the fund.

<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 do not support the 50% minimum proportion of ‘Sustainable Investments’ for funds using the word ‘sustainable’ at this stage. Adopting the term ‘Sustainable Investments’, as defined in SFDR, is unlikely to address greenwashing given the existing challenges posed by the term ‘Sustainable Investments’ including:

* variance in definitions of ‘Sustainable Investments’ across managers and others, ranging from managers making discretionary assessments based on views of investment teams, assessing based on revenue linked to Sustainable Development Goals (SDGs) or linking to Science Based Targets (SBTIs);
* even across managers using the same definition of ‘Sustainable Investments’, the variance in data available to assess whether investments are ‘Sustainable Investments’ creates different outcomes for what could be defined as a ‘Sustainable Investment’; and
* the definition of ‘Sustainable Investments’ could still be subject to regulatory change depending on how the European Commission responds to the ESA’s request for a standardized definition of the term ‘Sustainable Investments’.

Introducing this requirement will bring further confusion into the sustainable fund market in Europe, which we do not consider will have the effect of reducing greenwashing, by creating further categories of funds that can meet sustainable preferences under MIFID and client demand for Art 8 and Art 9 categories. By way of example of the various categories:

* No ESG or sustainable name - considers PAI, Taxonomy or less than 50% Sustainable Investments (Article 8);
* ESG funds - considers PAI, Taxonomy or less than 50% Sustainable Investments (Article 8);
* Sustainable funds - considers PAI or Taxonomy + greater than 50% Sustainable Investments (Article 8); and
* Sustainable funds - considers PAI or Taxonomy + approx. 100% Sustainable Investments (Article 9).

ESMA should also be aware that adopting quantitative and prescriptive views on what funds can be named ‘Sustainable’ in Europe may impact sustainable fund ranges in Europe in such a way that investors wishing to invest sustainably may not be able to invest in certain asset classes, or geographies with a risk of undue focus on large cap developed issuers which are aligned with the Sustainable Development Goals. It could also have the consequence of disincentivize products aligned with the Taxonomy. We see the potential for this to restrict Europe’s ability to direct financing to help meet Net Zero targets and deliver real world sustainable outcomes.

<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>

Instead of introducing quantitative thresholds to assess fund names, ESMA should focus on ensuring the consumers understand there are a range of products that can sit underneath the umbrella of sustainability, from best-in-class, thematic, impact funds, ETF trackers, and that the name of a product aligns with its investment objective or strategy. This would support IOSCO’s Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management which note greenwashing may occur at the product level due to lack of alignment between product’s name and its investment objective or strategy.

<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>

We consider any minimum standards should be embedded into SFDR and MIFID, rather than addressed through these Guidelines. However, should ESMA proceed with setting minimum standards, we propose including exclusions matching some existing sustainable requirements in the European market which could include a combination of unabated thermal coal power generation, controversial weapons, tobacco and norms-based exclusions (United Nations Global Compact, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles for Business and Human Rights, Responsible Business Conduct and International Labour Organization (ILO) Conventions). To support transition opportunities, there should be an exception permitted for thermal coal activities if the issuer’s share of revenue from renewables exceeds the share from thermal coal activities or has made an effective commitment to a Paris aligned objective based on Science Based Targets.

<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>

We do consider there should be further guidance on the treatment of derivatives but would expect this guidance to come from the European Commission in consultation with industry given the issue on treatment of derivatives covers a span of regulations in Europe, including SFDR and the Taxonomy, rather than included in a naming requirement. In the interim, transparency is essential - derivatives should be able to be used within calculations, or removed from calculation ratios, providing, investors clearly disclose how they are being used - this disclosure requirement is already embedded in SFDR which requires disclosures on how derivatives are used for the attainment of fund objectives etc.

<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>

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<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>

We are supportive of applying consistency between active and index funds, to the extent practicable, to ensure all funds are marketed to retail investors using a similar naming convention in Europe. However, for this to be feasible, the Guidelines need to be extended to reference benchmarks so managers can be satisfied the underlying benchmark meets the Guidelines. Until the Guidelines are extended to cover benchmark providers, it would be challenging for passive funds to meet the Guidelines.

<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>

Our view is that physical and synthetic replication of an index should be treated equally given exposure remains consistent for both physical and synthetic indexes.

<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>

We agree with having specific provisions for “impact” or “impact” related names, at a threshold of 70% as set out in response to Q2.

We agree there needs to be scope across the European Union’s approach on sustainable funds to incorporate impact products. However, given there is no existing regulatory standards for impact products in the European Union, we consider any discussion on minimum thresholds for the proportion of investments for impact funds, should be made in comprehensive consultation with industry and investor surveying, following the European Commission’s consultation processes. Should ESMA wish to proceed with setting specific thresholds for impact funds, ESMA should focus on ensuring the impact fund has an investment objective which matches the name of the fund, and 70% of the fund is focused on achieving this objective. Any specific measurements for this 70% threshold should draw on existing international standards for impact funds, such as the principles of the Global Impact Investing Network (GIIN), rather than attempting to embed existing SFDR and MIFID concepts of environmental and social characteristics or sustainable investments.

<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 agree there needs to be scope across the European Union’s approach on sustainable funds to incorporate transition products and investments in issuers which are moving towards being more sustainable. However, given there is no existing regulatory standards for transition products in the European Union, we consider any discussion on minimum thresholds for the proportion of investments for transition funds, should be made in comprehensive consultation with industry and investor surveying, following the European Commission’s consultation processes. Should ESMA wish to proceed with setting specific thresholds for “transition” related names, at a minimum, ESMA would need to remove fossil fuel related minimum exclusions.

<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>

We see merit in Guidelines applying across financial products, and reference benchmark providers, to provide a consistent approach for investors.

<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 do not agree with the proposed transitional period of 6 months. It is not sufficient time to complete the regulatory approval process with our relevant National Competent Authority to rename funds which may not meet the Guidelines. We would propose a minimum of 12 months for implementation from the date of application of the Guidelines.

<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>

We propose the naming rules are not extended to close-ended funds. However, to provide investor protection for investors within these close-ended funds, we propose a disclosure statement is including in marketing materials advising investors that the fund is not subject to the Guidelines.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

If the proposed Guidelines are implemented without substantial changes, we see the potential impact as creating further confusion for investors in Europe on which products deliver sustainable outcomes given the inter-operability issues, without providing any meaningful reduction in greenwashing risk in Europe. As we’ve mentioned in our response, we consider ESMA is best placed to delay the Guidelines until such time as there is more clarity on the definition of ‘Sustainable Investments’ and the inter-operability concerns with other core pieces of European legislation are resolved.

<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>

It is challenging to quantify the costs of compliance with the Guidelines. Implementing the Guidelines would require review, and potentially revision, to our existing ESG and Sustainable Fund portfolio. Our costs would include internal resource, external counsel costs (in multiple jurisdictions), 3rd party production and translation costs and costs of updating fund materials, including marketing materials.

In terms of benefits, as set out, given the interoperability issues with existing regulations, it’s not clear how beneficial the introduction of these Guidelines will be.

<ESMA\_QUESTION\_FUNA\_16>