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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 | Irish Funds |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Ireland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

The Irish Funds Industry Association (Irish Funds) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms, and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 17,000 professionals across every county in Ireland, with over 34,000 of a total employment impact right across the country and provide services to over 8,600 Irish regulated investment funds with assets of just under EUR 4 trillion.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

While we support the European Securities and Market Authority’s (ESMA) objective to introduce minimum harmonised naming criteria across the European Union (EU) for Environmental, Social, and Governance (ESG) products, we need to ensure any quantitative thresholds applied are consistent and clear. It is reasonable to expect that when naming a fund “sustainable”, or including related terms that allude to it being “sustainable” in its name, that it would cause investors to have an expectation of the fund investing sustainably.

It is clear, as supported by the European Commission’s (the Commission) clarification in its July 2021 Q&A relating to the meaning of the “promotion” of environmental and/or social characteristics”, that any fund using ESG-naming terms should be disclosing under at least Article 8 of Sustainable Finance Disclosure Regulation (SFDR). Funds disclosing under Article 9 of SFDR, must save for investment for “certain specific purpose such as hedging or liquidity”, be invested in assets which qualify as ‘sustainable investment’ as defined by point 17 of Article 2. However, the disclosure classification process has been complex and everchanging therefore, following the opening hearing, we note there may be a cohort of funds using ESG-related names that do not disclose as either Article 8 or 9 funds.

Additionally, in relation to the definition of sustainable in fund names, we believe this should be aligned with the Commission’s ultimate definition of sustainable investment under SFDR (for which clarification is [awaited](https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf)). Should the Commission interpretate this definition narrowly, this may be at odds with the average investors understanding of ESG. More generally, it is not clear that an investor can be expected to understand the nuanced distinction between the terms "ESG" and "sustainable". The outcome of the Commission’s clarification will be critical.

As a result, publishing non-exhaustive examples is of particular importance if ESMA proceeds with its proposal of having additional requirements for funds using sustainability-related terminologies in their names. It is currently unclear in which categories terms such as “Sustainable Development Goals (SDG)”, “Paris-aligned benchmark (PAB)”, and “Net-zero” would fit in and as a result it is unclear whether a fund using one of these terms in its name will need to meet both thresholds, or just the ESG-threshold.

We understand ESMA’s concerns around the publication of an exhaustive list of relevant ESG- or sustainability-related terms that could potentially result in the circumvention of the rules if fund managers choose a similar term which does not appear in the Guidelines (per ESMA’s comments at the open hearing). However, without a reference list or examples, there is a distinct lack of clarity as to how funds should ensure that they fall within the scope of the Guidelines.

Irish Funds is of the view that the failure to publish an exhaustive list of terms (or examples) falling within the scope of the Guidelines creates a significant risk that individual National Competent Authorities (NCA) could interpret the scope of the Guidelines differently, creating regulatory misalignment across EU jurisdictions and confusion in the market. Therefore, we believe it would be useful for fund managers to either be provided with examples (which are published as a non-exhaustive list) or be provided with an indicative published list of terms (starting glossary) relevant to this consultation to inform necessary remediation. Understanding that terms may change over time as the market evolves, the ESG-terms list should be considered non-exhaustive and subject to updates by ESMA at any time. This approach would allow asset managers to pre-screen in advance of fund launch and avoid any unintentional misleading of investors.

Next, we suggest the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund. As noted in the International Organization of Securities Commission (IOSCO) Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management (Final Report), a type of greenwashing that may occur at the product level is the lack of alignment between the product’s sustainability-related name and its investment objectives and/or strategies.

A harmonised naming convention across the EU for ESG-products is important in order to maintain an internal market for investment products within the EU. Yet, cross-border funds are currently struggling with the fragmentation of requirements and standards across different jurisdictions. It is our hope that these Guidelines will help to address the current fragmentation for ESG-products across the EU internal market, as well as the regulatory confusion that persists across the market. This would increase scalability and reduce costs for fund providers and to end investors by enabling ESG-funds to be distributed across the EU without having to apply overlapping and conflicting national requirements. However, to be effective and produce this benefit, it will be important that these rules promote regulatory coherence and that NCAs across the EU align any existing national rules with these new Guidelines and not apply additional “gold-plating” at the national level thereby ensuring regulatory convergence across all member states.

Moreover, we believe it is important that the rules are appropriately calibrated to ensure that the standards do not penalise legitimate ESG-strategies in the market. Therefore, in defining these minimum standards, we would like to emphasise the importance of enhanced regulatory coherence across SFDR and Market in Financial Instruments Directive (MiFID), as well as the Benchmarks Regulation (Regulation EU 2019/2089), to ensure products adhering to these new Guidelines also meet any other necessary requirement, rather than adding an additional layer of regulation through Level 3 Guidelines. Currently, funds must adhere to a patchwork of different obligations, and we feel that these current rules could go further in seeking to foster greater coherence. We are concerned with the lack of interoperability between the proposed Guidelines and existing regulatory requirements relating to naming conventions.

There is an ongoing industry concern regarding the lack of convergence of regulation, and Irish Fund’s preference would be that these Guidelines create a harmonised rulebook which encapsulates all ESG-related regulation, to avoid the need to cross refer to other ESG-regulation (e.g., SFDR). As the Guidelines are currently drafted, we believe it is possible that a fund meeting the proposed naming Guidelines would only partially or insufficiently meet the existing legal requirements for SFDR Article 8 and 9 products. This is due to the good governance requirements not being specifically covered within these naming Guidelines. We believe the lack of convergence will both create a barrier to entry and put an onerous burden on asset managers that remain in the sector which will, in turn limit fund availability to investors (further discussed in question 3).

Additionally, the latest analysis by Morningstar on the quantitative threshold showed that just over a quarter (27%) of Article 8 products which currently include ‘sustainable’ in their names would be permitted to use the word ‘sustainable’ in their name under the proposed Guidelines. We understand ESMA’s desire to set a high standard for funds that use the word “sustainable” in their name, but we are concerned this will be at the expense of potentially undermining consumer confidence which would result from a significant number of funds changing their name because of being unable to meet the threshold.

Furthermore, it is feasible products in compliance with the proposed Guidelines would not meet the Climate Transition Benchmark (CTB) (i.e., funds likely meeting the 80% minimum investment but would not meet 50% sustainable investment or minimum exclusions) nor funds would meet the Paris-Aligned Benchmark (PAB) (i.e., funds achieving the 80% minimum investment but would not be guaranteed to achieve the 50% sustainable investments criteria). This situation could arise due to the existing regulations not considering the awaited Guidelines from the Commission regarding PAB and CTB and definition of a “sustainable investment”.

Considering the lack of interoperability between the proposed Guidelines and existing regulatory requirements, and extrapolating lessons of previous challenges arising from ESG- related regulatory requirements, we believe that any new requirements need to be flexible enough to cater to the wide range of approaches, asset classes and geographies represented by ESG-portfolios and should not discriminate against certain approaches by imposing additional conditions and constraints not relevant to others. Additionally, any requirements imposed need to be based on clear definitions and any data necessary to comply with these requirements should be readily available. There should be flexibility given for asset classes and geographies in respect of which data availability is known to be problematic, e.g., private assets, sovereigns, and emerging markets.

Finally, there should be a level playing field between different product types, and therefore the scope of these rules should ideally be expanded to unit-linked and structured products (e.g., structured products can have exposure to ESG-related indices without having to comply with the proposed ESMA Guidelines).

While in principle we agree that quantitative thresholds are helpful to ensure consistency across the market and limit room for interpretation and therefore confusion, it is essential to ensure that there remains space for pragmatic application of these rules so that they do not have unintended consequences and stifle innovation in the space of sustainable finance.

Our preference is for harmonisation - i.e., for the Guidelines to mirror the existing supervisory guidance in ensuring that ESG-related terms should only be used when supported in a material way by evidence of sustainability characteristics, themes or objectives that are reflected fairly and consistently in the fund’s investment objective, policy and strategy as described in the relevant fund documentation.

<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>

We agree with the objective to ensure that the funds with ESG-names or impact-related words primarily invest in assets that meet the ESG- or impact-characteristics promoted by the product. We would caution that any quantitative thresholds set for promotion of environmental or social characteristics should consider the different objectives and strategies that a fund employs (e.g., where fund objectives are to reduce carbon emissions intensity, it should not be expected that all the assets meet a certain threshold). Hence, we propose the following:

**Alternative proposal**

We believe, however, that imposing a threshold of 70% of the minimum proportion of investment for the use of any ESG-or impact-related words in the name, rather than 80% would be preferable as it would be is in accordance with established practice for portfolio diversification for funds already in operation. This would also have the added benefit of retaining more asset managers and their products within the ESG-fund arena allowing for investors to identify ESG-related products more clearly. Further, we would suggest that quantitative thresholds should be based on the ability to assess an asset in respect of the specific objective.

We would like to ensure that any Guidelines do not discriminate against certain types of products and investment styles and therefore the application of this principle warrants further work. We would highlight the following cases:

1. **Synthetically-replicated passive funds**: for such funds, we believe that it should be made clear that the focus should be on the exposure of the fund, rather than solely on its actual investments.
2. **Closed-ended funds**: closed-ended funds primarily invested in private markets, have encountered challenges as a result of the SFDR disclosures because the rules require the disclosure of the minimum proportion of investments to be met at all times based on the net asset value of the fund. These funds, however, will typically undertake an initial fund-raising round and thereafter hold a significant amount of cash before deploying the capital. Therefore, we would recommend that the 80% threshold either be calculated based on the total investments (excluding cash) or be applied pragmatically for such funds during their scaling-up phase until such time as they are fully invested. If necessary, investors could be clearly informed through a prominent statement in the offering documentation, that the targeted allocation can only apply when the portfolio has been built. Otherwise, the fund could not use ESG-related terms in its name during the scaling up period and would only be in a position to include ESG-related terms in its name post scaling up. At this point, the naming of the fund would give rise to additional cost and potentially create confusion for existing investors who would in turn, bear the costs of this name change.
3. **Private side funds**: for such funds, there are no standard metrics for private investments. Thus, there will need to be guidance on how to determine E/S characteristics for certain asset classes.

Please also refer to Question 16 in relation to costs associated with application of the threshold and impact on investors.

<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>

At time of responding to this consultation, there is no universally agreed upon definition of a “sustainable investment”, and in coming to a common definition, there should be alignment with the Commission’s forthcoming definition of “sustainable investment”.

Regulation or delegated acts to date do not provide a clear definition which makes comparison of “sustainable investments” challenging and which is exacerbated by inconsistent and unavailable data. This is further aggravated by the fact that asset managers, in good faith, must apply their own interpretations of the definition of “sustainable investment” based on the guidelines available.

We are concerned by the lack of a definitive term may dissuade investors from following sustainable strategies due to evolving standards and complexity, and potentially reduces investment choices by taking ESG-products off the market. In the worst case, this could undermine sustainable finance by facilitating greenwashing.

Sustainable investment should consist of diverse themes and perspectives as there is a multitude of ways to define what constitutes “sustainable”. It important to note, however, that the sustainable finance regime is still relatively nascent, and codifying a definition for a sustainable investment in regulation rather than being encompassed within the broader ESG-term, runs multiple risks including being quicky outdated and raises the following concerns in relation to the proposed approach:

1. We would question why there is a need to differentiate between the use of the term “sustainable” as opposed to other ESG-related terms. All ESG-related terms should be broadly encompassed within the 80% (or similar) threshold referenced in the draft Guidelines.
2. There is a lack of clarity in the market with regards to what exactly qualifies as a “sustainable investment” under SFDR, and approaches vary significantly. We therefore consider that setting a quantitative threshold where the underlying definition is unclear will not lead to a level playing field across products and providers. This could prove particularly challenging for certain asset classes (e.g., sovereigns and passive products) who are reliant on benchmark providers, who are out of scope of these rules.
   * Considering the Commission’s impending response to ESA regarding operationalisation of the definition of sustainable investments under SFDR, we are concerned this is an inopportune point to impose any parameters regarding the use of ‘sustainable’ in a fund name as it pre-empts the Commission’s response.
   * There is a concern in industry that if the Commission adopts a very restrictive interpretation of the definition of sustainable investments, then the 50% threshold that has been proposed will be unrealistic to achieve. A very restrictive interpretation will have the following unintended consequences:
     1. pushing sustainable funds into a narrow universe of assets that may miss evolving opportunities and challenges;
     2. stipulating a threshold and then giving financial market participants (FMP) discretion to decide on what constitutes a sustainable investment dilutes comparability and could dissuade investors from following sustainable strategies due to evolving standards and complexity and;
     3. creating greater reliance on third-party data providers whose data at best may be backward looking and at worst is very poor quality.

Ultimately, the above unintended consequences will remove the fund manager’s agency and may force managers currently adopting an ‘active’ strategy to a more ‘passive’ one, which in turn will limit consumer choice as all sustainable funds will become thematic funds.

* + Due to of the uncertainty regarding how to define “sustainable investments”, it would seem that the 50% threshold is not an appropriate approach. Based on preliminary evidence from SFDR disclosure, we believe that the market standard that seems to be emerging for Article 8 products that commit to sustainable investments is between 0% to 20%, with over 35% of Article 8 products committing between 0% to 10% according to the latest Morningstar review. ESMA’s December 2022 Trends, Risks & Vulnerability (TRV) EU Ecolabel analysis concur with these statistics. However, even these levels could be ambitious should the Commission provide guidance that significantly narrows down the approaches that can be used to define sustainable investments. For example, should the Commission decide, that funds must employ a narrow definition using pro-rated revenues for activities contributing to an environmental or social goal, our data suggests that only 137 stocks out of the entire universe of the MSCI ACWI have 50% aligned revenues, or less than 5% of the entire index. This would therefore make a 50% threshold very challenging to meet, potentially leading to significant concentration risk in a small number of eligible investments.
  + A separate threshold for the use of the word “sustainable” or any other term derived from it will be more problematic for funds that invest in sovereign bonds given that currently there is no appropriate methodology to assess the Taxonomy-alignment of these assets. Whilst there are firms that have classified sovereign green, social and sustainable bonds as sustainable investments, the market for these labelled sovereign bonds, although growing, remains relatively modest in size. Imposing a strict threshold at this stage could undermine efforts to grow this market. This could also lead to unintended market risk consequences – if trends of greater flows into sustainable products continues there could be a preference for corporate over sovereign holdings by asset allocators.

1. Finally, data challenges may cause volatility in whether a security is considered a “sustainable investment”. This could create a disadvantage for concentrated portfolios where they may have invested in a small number of securities which may no longer meet the “sustainable investment” definition and which have a large impact on the overall proportions of sustainable investments of a fund. Furthermore, due to data challenges, there is concern regarding meeting the Do No Significant Harm (DNSH) test underpinning the definition of “sustainable investment” under SFDR, which could also change following the planned review of SFDR by the Commission this year.

Should a percentage threshold remain, it should be clearly outlined and there would need to be clear guidance on what constitutes a “sustainable investment”.

One of the key goals of a sustainable finance agenda is to guide capital toward transition and support companies’ transformation. Therefore, a definition of sustainable investment would need to also consider transitional elements adding increased complexity.

**Alternative Proposal**

We believe that if asset managers are using sustainable terms, then they should set out their plans for adherence to these terms in the investment objectives and policies of their funds. This should not be any different from a fund that uses “Paris-aligned” or “Net-zero” in their names wherein it can reasonably be expected that Paris-alignment or net-zero commitments are reflected in the investment objective.

We would like to see these Guidelines create greater convergence with existing regulation (e.g., MiFID sustainability preference requirements). Under the existing MiFID II rules, investors are required to express their “sustainability preferences”. In our view, investment funds using sustainability-related terms in their names should have the option of meeting one or a combination of the MiFID sustainability preference criteria to use an ESG-related term in their fund name. For example, this could take the form of the following:

1. Consideration of one of more Principal Adverse Impacts (PAI), through the use of exclusions, controversies or engagements, as per ESMA’s Guidelines.
2. A minimum commitment to a level of sustainable investments with the level to be reviewed on an on-going basis as the sustainable investment market evolves and matures. If ESMA’s preference is to set a numerical threshold, we believe that this should not be set well above what current market standard is (as per the Morningstar analysis mentioned above) and would be reviewed considering any relevant updates from the European Commission.
3. A minimum commitment to a level of EU Taxonomy alignment, with the level to be reviewed on an on-going basis as the sustainable investment market evolves and matures with similar threshold measures to point 2 above.

There are further nuances to be considered. Assessing adherence at a portfolio level is also important. A fund could have an overarching sustainability goal and not necessarily hold a majority sustainable investment (e.g., a fund may use term “sustainable” or “low carbon” and target a lower carbon intensity than a reference benchmark). Sustainability should also therefore be assessed on the aggregate level.

Additional clarity around what should be included in the "Other" category in the asset allocation table contained in the SFDR Level 2-prescribed pre-contractual disclosures annexes would also be welcomed as there are differing interpretations across NCAs.

Sustainability claims must be clear, transparent, and substantiated and be a binding element of a fund’s investment policy/strategy. Given the challenges outlined above, a more principles-based approach rooted in disclosure may be best.

<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>

We believe that a 70% threshold will maximise retention of asset managers and investor choice in terms of variety of ESG-products available.

However, in determining the calculation methodology, cash, and derivative assets for hedging and/or efficient portfolio management purposes (e.g., FX, IRS) should be deemed out of scope when calculating the threshold. For avoidance of doubt, derivative assets that are used for investment purposes should be considered in-scope when calculating the threshold.

<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>

Our preference is for the Guidelines to mirror the supervisory guidance ensuring ESG-related terms should only be used when supported in a material way by evidence of sustainability characteristics, themes, or objectives that are reflected fairly and consistently in the fund’s investment objective, policies and strategy as described in the relevant fund documentation.

We suggest it is more proportionate to require funds that use “sustainable” or any other related term to reflect sustainability in their investment objectives as this is consistent with IOSCO’s Good Sustainable Finance Practices regarding naming. This should not be any different from a fund that uses “Paris-aligned” or “Net-zero” in its names wherein it can reasonably be expected that Paris-alignment or net-zero commitments are reflected in the investment objective and align to the intentionality in the design of the product.

We believe that investors will better understand intentionality of the product rather than percentages based on subjective characteristics and a definition of sustainable investment which still lacks clarity. In paragraph 20 of the draft Guidelines, ESMA caters for “intentionality” and proposes that to use the word “impact” or “impact investing” in its name, a fund “should meet the proposed thresholds and additionally make investments with the intention to generate positive and measurable social or environmental impact alongside a financial return”. We believe that focusing on “intentionality” of investment objectives would be more appropriate than quantitative thresholds.

<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 support ESMA’s proposal to include minimum safeguards for ESG-products. We acknowledge the importance of ensuring that minimum safeguards are in place for investment funds with an ESG- or sustainability-related term in their name. However, the minimum safeguards should apply consistently with those prescribed in SFDR, rather than introduce further complexity.

Firstly, the minimum exclusions under the PAB were designed before application was considered, and therefore, they are very ambitious climate products and not suitable for the broad universe of ESG-products, including socially focused funds, as they would not be applicable to:

1. funds with social objectives or promoting social characteristics,
2. certain asset classes (e.g., sovereigns, real estate) or
3. funds that are not aiming to be Paris-aligned.

Secondly, we believe that the Guidelines were drafted solely with equity/corporate portfolios in mind. Therefore, details of the exclusions proposed by ESMA need to be refined and recalibrated and give clear direction on where they are to be applied (e.g., asset not used to promote environmental and/or social characteristics or entire investments) and what safeguards, if any, are to be applied on other asset classes.

We further note that both categories of benchmarks are required, under Article 12(2) of Commission Delegated Regulation (EU) 2020/1818, to exclude “*any companies that are found or estimated by them or by external data providers to significantly harm one or more of the environmental objectives referred to in Article 9 of the Taxonomy Regulation”*. The application of such a requirement would introduce a significant element of subjectivity for fund management companies which is likely to result in an inconsistent application of the exclusion criteria across the funds industry and consequently give rise to confusion as well as opportunities for regulatory arbitrage.

Therefore, we are of the view that the criteria set down in Article 12(2) of Commission Delegated Regulation (EU) 2020/1818 should be disapplied in full if ESMA proceeds with basing exclusion criteria on those that are set down in the Commission Delegated Regulation.

Given our belief that the proposed exclusions related solely to corporates, it is therefore our understanding that there are no prescribed exclusions for asset classes and that fund manufacturers can choose (or not to) apply exclusions to such asset classes provided that those exclusions are appropriately disclosed. If, however, ESMA intends to expand the safeguards to other asset classes (e.g., sovereigns, private assets, real estate, emerging markets, etc.), we have included below our preference.

**Preferred Approach**

Alignment of the minimum safeguards with the set of minimum exclusions proposed for CTB, namely tobacco, controversial weapons, and UN Global Compact violators, plus the addition of coal, which would align with the current market standard. However, as noted above, we are of the view that the requirements set down should be disapplied.

For sovereigns, our preference is for the minimum safeguards to be based on Governments that:

1. are subject to UN sanctions under Article 12(2) of Commission Delegated Regulation (EU) 2020/1818,
2. are included in OECD blacklist and/or,
3. have not ratified the Paris Climate Agreement.

Any minimum safeguards should consider the evolving regulatory landscape including the expected ESA review regarding the indicators for principal adverse impact (PAI). If minimum safeguards were to be prescribed prior to the conclusion of this review, this could lead to confusion and unnecessary rework for industry.

Whilst proposing use of CTB over PAB, it is important to note that even the CTB exclusions are predicated on corporate investment whereas ESG-products can invest in a range of asset classes, including sovereigns, real estate, derivatives, etc. See also comments with regards to derivatives look through under question 7.

<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 agree that for the purpose of the proposed Guidelines, derivatives should be subject to specific provisions for calculating the threshold. Derivative exposure calculations are different to those which apply for long positions and as a result, the look through approach should be applied, and the asset allocation based on the underlying securities. However, we caution that in applying the look through approach as it may not be appropriate to an index derivative.

We would also recommend that use of derivatives for hedging and efficient portfolio management (EPM) be excluded from the denominator for the purposes of any calculation of thresholds versus use of derivatives for investment purposes which should be included in the denominator for the purposes of any calculation. However, there are certain types of derivatives that cannot be assessed from an ESG-perspective, i.e., FXs and Interest Rate Swaps (IRS), therefore these should also be excluded.

Further, we recommend that clarification is provided regarding which derivatives should be included in calculating thresholds. Our preference is that is only those derivatives that reference a ‘portfolio company’ should be included. It is important to recognise that exposure to ESG-assets in systematic funds may vary over time, and it could be challenging for such funds to always meet the thresholds.

<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>

We recommend that for derivatives, the calculation of value is aligned to the UCITS global exposure mechanism (see ESMA 'Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS' of 14/04/2011).

<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>

We recommend that for derivatives, the calculation of the minimum proportion of investments aligns the ESG-related assets exposure to the UCITS global exposure mechanism (see ESMA 'Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS' of 14/04/2011).

<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>

There are potential challenges when it comes to applying these requirements to Exchange-Traded Funds (ETFs) and other index tracking strategies. The market convention for naming ETFs is that they include the name of the benchmark. Since these naming requirements will not apply to benchmark providers, ETF providers may find themselves in a difficult situation in that a benchmark provider includes ESG-related terms in the name, but the fund provider is not allowed to reference this. This would be particularly difficult regarding the 50% sustainable investments requirement.

To ensure consistency where funds designate a reference index, we believe it is essential benchmark providers should fall under the same requirements as the SFDR and/or Taxonomy. We believe that the ESG-benchmark requirements need to be reviewed to better align them with SFDR and the Taxonomy, since the disclosure requirements applied to benchmark providers differ significantly from these two pieces of regulation. As part of this review, consideration should be given as to whether to introduce minimum requirements for ESG-benchmarks that would align with the minimum requirements proposed by ESMA for funds.

However, pending any such review, we believe that it would be disproportionate to require fund managers to police the benchmark market for ESG-fund terms and therefore, should be able to continue to use the benchmark name, including any ESG-related term that it might contain in its fund name to maintain clarity in the market.

<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>

We would caution against drawing a strong distinction between physical and synthetic replication, since in practice many physically replicated funds will undertake securities lending and therefore questions regarding any collateral held will be common to both approaches.

Additionally, collateral held should be “neutral” or it should not breach the fund's exclusions. However, there should not be a requirement for the collateral to meet the E/S characteristics or be classed as sustainable investments.

<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 the proposal for the word ‘impact’ or ‘impact investing’ or any other impact-related term to only be used by funds whose investments are made with the intention of generating positive, measurable social or environmental impact alongside a financial return given this is consistent with Global Impact Investing Network’s (GIIN) definition of impact investing. Furthermore, it would be beneficial to define scope of impact for clarity for investors and fund managers alike whilst avoiding being overly prescriptive.

<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>

It is difficult to answer this question in the absence of clarification under SFDR and definitive provisions provided in this consultation paper.

Generally, we would support a framework that is agnostic about the approach taken and can be equally applied to climate, environmental, social, and other approaches rather that creating additional layers of regulation that will add to, rather than reduce, the confusion in the market and for investors. In addition, we would highlight that there are myriad approaches to transition and defining a clear and unambiguous standard could be challenging.

That said, the proposals above regarding minimum safeguards could, in particular, be challenging for transition strategies and which is why we strongly believe that a set of minimum exclusions based on the CTB requirements would be more appropriate (provided that the criteria set down in Article 12(2) of the relevant Commission regulation is disapplied). Furthermore, it remains unclear at the current time where transition strategies sit within SFDR and whether transition strategies can be included under Article 9 can be considered as sustainable investments. Should the Commission define “sustainable investments” narrowly, and therefore such strategies no longer be considered to fall under Article 9, it could be helpful to introduce provisions regarding transition to ensure that such strategies remain visible to investors.

<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 believe that it is important that other investment products, including unit-linked and structured products (and potentially also pension products), should be subject to similar requirements to ensure a level playing field. Additionally, this will make sure consumers are not confused by differing requirements.

<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 would agree with a transitional period and that it should be no shorter than 6 months, but suggest it would ideally be 12 months for existing products and would recommend that this is also aligned for new products also. Developing new products can take many months and we therefore believe that 3 months is too short for products that may be advanced in their development to comply with, and such a short period. This could, therefore, have a limiting effect on new product development and innovation. For existing funds, this 6-to-12-month period would allow for potential changes to the investment strategy, governance around changing names, downstream activities (e.g., shareholder notices, marketing updates including translation), and for the regulators to approve (as we would expect a large volume of prospectus filings across the market, within the same timeframe). We would prefer a 12-month time frame and if there are future regulatory changes to the sustainable investment definition, such changes should be considered for the far-reaching impact. It is relevant to note that for global asset managers, the same strategies are offered in multiple regions and as a result, the necessary time to perform a global assessment of the final Guidelines before implementing will be required.

<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>

No, we believe that closed-ended funds that have terminated their subscription period should not be subject to these new requirements. Since the legal basis is to ensure that communications are “fair, clear and not misleading”, any closed-ended fund that has terminated subscriptions would no longer be undertaking any marketing and therefore applying these rules would be tantamount to retrospective application. Furthermore, if the funds are no longer available to new investors, there would be limited benefit in changing the name, or how the fund is managed, to align to updated Guidelines; this is consistent with the application of SFDR to closed-ended funds.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

It is our hope that these Guidelines will address the current fragmentation for ESG-products across the EU internal market. This would increase scalability and therefore reduce costs for fund providers and to end investors by enabling ESG-funds to be distributed across the EU without having to apply overlapping and potentially conflicting national requirements.

While it is important that a fund's name be accurate and not misleading, the name of a fund is not the sole determinant of whether an investor will select a fund for investment. More broadly, for example, investors will have access to (and it is expected will perform due diligence on) the significant level of disclosure regarding an Article 8 or 9 fund's E/S characteristics/objectives, contained in the mandatory SFDR Level 2 pre-contractual documents annex appended to the fund prospectus document. Also, relevant investors will be asked to indicate their sustainability preference in line with MiFID rules. As such, it is arguable that the Guidelines over-emphasise the importance of fund names in influencing investors.

Setting a numerical threshold on “sustainable investment” level pre-empts discussion on sustainability preferences because a fund that uses the word “sustainable” would already be expected under the Guidelines to have 50% of sustainable investments and could automatically require investors to adopt their sustainability preferences, particularly if an investor’s preference on sustainable investments commitment is below the 50% requirement.

Fund name changes may also have the unintentional consequence of adding to investor confusion as the new fund name may not be congruent with the underlying portfolio and the investment strategy employed which may have some sustainable objectives, but not yet meet the thresholds.

As noted in response to Question 1, given that only 27% of Article 8 products with ‘sustainable’ in fund names will meet the threshold, we are concerned that funds changing their names could lead to undermining consumer confidence particularly if these changes will be characterised incorrectly by the media as “greenwashing”.

Concentration risk may also arise due to the timing of ramping up investment or divestment by a fund to meet the relevant quantitative thresholds imposed by the Guidelines given the limited availability in the market of suitable sustainable securities.

<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>

In terms of additional costs, the following need to be considered.

* + For those funds whose portfolios may not currently meet the quantitative thresholds set out in the Guidelines but who wish to retain their names by working to meet the thresholds, they may experience portfolio churn to ramp up quickly to meet the thresholds. This in turn may give rise to higher purchasing costs where the availability of qualifying securities is (as in the case of sustainable investments) limited.
  + Additionally, for funds that rename, there will be the cost of updating official fund documents, translating fund documents (where necessary), convening boards, and communicating with shareholders.
  + It is worth noting that the SEC in the United States performed a similar review of fund names and estimated the costs to make similar amendments to ESMA’s proposal could be in the region of $50,000 to $500,000 per fund, depending on the particular facts and circumstances of the fund. These estimated costs are broadly attributable to reviewing the proposed rule’s requirements, developing and implementing new (or modifying existing) practices, reporting, and recordkeeping requirements to align with the requirements of the proposed rule. Additionally, new training materials would need to be developed and delivered by asset managers.
  + Given there will likely not be sufficient time to conduct a detailed cost analysis prior to the proposed implementation of the new Guidelines, an impact assessment covering the costs of lost opportunities arising because of implementing the Guidelines would be welcomed. If such cost were found to be equivalent even to the lower end costs estimated by the SEC (per the bullet immediately above) this may prove prohibitive for smaller fund managers who may consequently exit the ESG-fund arena thereby reducing the availability of ESG-products for investors.

<ESMA\_QUESTION\_FUNA\_16>