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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 | Insight Investment Europe |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Ireland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Yes, we support the application of quantitative thresholds to help address any potential greenwashing risk and make labelling clear for investors.

We request that ESMA aligns with other international rules being worked on with regard to labelling regimes. We note that the Financial Conduct Authority in the UK has recently consulted on the same topic, and the US is also considering ESG labelling.

We are aware that the European Commission (EC) is looking to review SFDR this year, and we request that ESMA works closely with the EC to ensure that these rules are compatible with the EC’s proposals.

<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 broadly agree with the 80% threshold calculation as long as the below points are supported to ensure that the full range of funds with environmental or social characteristics or objectives are allowed to use ESG-related terms in the fund name.

* The 80% threshold should be calculated on the non-cash assets of the portfolio.
* There needs to be a clear distinction between how this calculation is applied to funds that set key performance indicators (KPIs) at an asset level versus funds that set KPIs at a portfolio level.

We believe that a fund setting KPIs at an asset level (for example this could be a fund that requires assets to be below a given carbon intensity or above a certain ESG score) should ensure that 80% of their non-cash assets meet this requirement.

However, for funds setting KPIs at the portfolio level (for example a fund that targets carbon intensity to be below the benchmark, or that the ESG score is above a benchmark), 100% of the non-cash assets should be considered as meeting the threshold (and therefore meeting the 80% threshold test) as long as the fund itself is meeting these overall portfolio targets.

Finally, ESMA should clearly define what is meant by ESG- or impact-related terms. The ESMA supervisory briefing (link [here](https://www.esma.europa.eu/sites/default/files/library/esma34-45-1427_supervisory_briefing_on_sustainability_risks_and_disclosures.pdf)) provides a list of terms that are likely to be included, but it also has a catch-all “any other ESG-related terms” which should be defined.

<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>

While we broadly support the idea of a more stringent threshold for funds having a sustainability-related label, it is difficult for us to comment on what the threshold should be while we are still waiting for the “sustainability investment” definition to be clarified by the European Commission.

We are concerned that firms have spent considerable amount of time and resources on implementing SFDR and launching products based on each firm’s own interpretation, and any new definition might not align with this. Ultimately, the final sustainable investment definition will drive firms views on the appropriate threshold here.

We request that ESMA defines what is meant by “sustainability-related terms”. Can an ESG-related term be also considered as a sustainability-related term?

ESMA should also clarify whether the use of the sustainability-related terms is purely restricted in the name of the fund or elsewhere in marketing and other material. We support the restriction applying only to the name of the fund.

<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 the proposed threshold approach is sensible as long as it takes into account the different treatment for funds that set KPIs at asset level versus fund level as explained in our answer to question 2.

<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>

We believe the proposed threshold approach is sensible so long as it takes into account the different treatment for funds that set KPIs at asset level versus fund level, as explained in our answer to question 2.

We need a common definition of sustainable investments for the proposed approach to work.

<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 agree that there should be minimum standards but do not agree that the Paris Alignment Benchmark (PAB) exclusions are the correct ones to use here.

The PAB exclusions were created for a specific focus of climate related products and should not apply to all ESG- or sustainable-related funds with broader characteristics, including socially focused funds as well.

The PAB exclusions are overly restrictive and, for example, would exclude the energy sector. Outright exclusion of this sector would prohibit funds from supporting climate transitions. We believe the PAB exclusions are more appropriate for SFDR Article 9(3) funds but should not be expanded to all ESG- or sustainability-related funds.

We believe the minimum standards should align with the minimum exclusions proposed for Climate Transition Benchmarks, namely tobacco, controversial weapons and UN Global Compact violators, plus the addition of coal, which would align with the current market standard.

We believe that the minimum safeguards should apply to non-cash assets only. For derivatives, we believe it is appropriate for it to apply to single name derivatives, or derivatives with a basket of names up to ten, but we do not believe it should apply to derivatives with single names over ten, broad market indices or macro derivatives (e.g. interest rate and currencies).

Finally, the minimum standards are only applicable to corporate holdings (equity or debt) and it is not clear how these would work for non-corporate holdings. Further thought and considerations will be needed on this front.

<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>

*Minimum safeguards*

We believe that the minimum standards should apply for long positions in single name derivatives and derivatives with baskets up to ten single names. We believe that short positions that fail to meet the minimum safeguards should be permitted for single name derivatives and baskets with up to ten single names.

We do not believe that the minimum safeguards should be considered for baskets of single names over ten and broad market index-derivatives as well as macro derivatives (e.g. interest rates, currencies etc).

*Threshold calculations*

For the threshold calculations, it might make sense for ESMA to adopt a flexible approach and allow managers to develop a methodology so that industry can create a sensible approach here. Application of thresholds for derivatives is quite complex and needs deeper analysis and further thinking from industry. We would be keen to support the development of international standards here, and we would be keen to ensure that ESMA is in line with other international regimes.

If, however, a detailed approach is required at this stage, we would put forward our current thinking below, although as mentioned above more time to develop this further with the industry would be welcomed:

* Threshold calculations should be passed at both (i) physical assets level only and (ii) combined physical assets and derivatives. This is to ensure that derivatives are not used as a way to bypass the intended goal.
* The derivatives that we believe should be included in the above calculations are single name derivatives and basket of derivatives up to ten single names only. Long positions in these names meeting the ESG-related criteria would count as positive contribution towards the threshold, and short positions in these names would count as a negative contribution towards the threshold.
* Any other derivatives, including baskets with over ten single names, broad market indices, and macro derivatives (e.g. interest rates, currencies etc) should not be considered towards the threshold calculations.
* Either long or short positions in single names or baskets up to ten single names, of issuers that do not meet the ESG-criteria would not provide any contribution towards the threshold calculations, either positive or negative.
* In calculating the thresholds for derivatives, we believe the delta amounts, rather than the notional amounts, should be used. The delta amount represents the economic capital at risk and can be the same as the notional amounts for vanilla products but will differ from the notional amount for more complex products such as options. The denominator of the formula should be the fund's net asset value. This does mean that is possible for the numerator to be greater than the denominator and the threshold calculation with derivatives to be greater than one. This should be expected as derivatives do introduce leverage. However, the suggestion earlier to ensure that the threshold must also be met on the physical asset level only ensures that the leverage is not used to bypass the intentions of 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 believe delta value, not the notional value should be used. Please see our response to question 7 above which elaborates on this further.

<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>

Please see our response to question 7 above which elaborates on this.

<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>

Agree

<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>

No comment.

<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 requiring impact or impact-related names to be subject to the proposed thresholds as well as require that they make “investments with the intention to generate positive and measurable social or environmental impact alongside a financial return.”

We note that in line with the Global Impact Investing Network (GIIN) guidelines, it is important the ESMA does not interpret this in a narrow way to include only “additionality” but permits re-financing too, as per the GIIN principles.

<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 believe the guidelines should permit and support transition activities by ensuring that the minimum safeguard provisions are not too narrow. However, we do not believe a separate transition-related fund name is required.

<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>

No comment

<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 recommend a longer time period than 6 months as considerable work may be needed to either change the way funds are managed or re-naming them, which can require regulator approval and shareholder votes where sufficient time is needed.

We are also aware that the industry may need to make further changes to funds following the SFDR review by the European Commission. We, therefore, request that the ESMA aligns the timing of their proposals with any further adjustments needed from SFDR review to minimise the number changes required.

We also believe that a 3 months' time frame will be too short for new funds that are already in the advanced stages of development and therefore could negatively impact product development and innovation.

<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 comment

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

No comment

<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>

No comment

<ESMA\_QUESTION\_FUNA\_16>