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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 | The Swedish Consumer Agency |
| Activity | Government, Regulatory and Enforcement |
| Are you representing an association? |  |
| Country/Region | Sweden |

# 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>

From a Swedish perspective, the Agency does not consider it necessary to introduce any thresholds, as current EU legislation already place very high requirements regarding marketing with various types of sustainability claims (in which fund names are included). The assessment of all types of sustainability claims in marketing is based on the Directive 2005/29/EC on unfair commercial practices (UCPD). The Agency is generally setting higher requirements when enforcing current legislation on sustainability claims than the proposed threshold values.

However, from a comparability perspective at EU level, thresholds could be of value. However, if such an initiative should be introduced, a pre-requisite is to ensure that very high requirements are placed on the funds that want to use ESG or sustainability-related terms, so that consumers are not misled regarding the sustainability work of the funds and to prevent greenwashing.

<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>

When assessing sustainability claims in marketing according to the UCPD, the starting point must be how an average consumer perceives a sustainability claim. In these cases, the Swedish Consumer Agency's general assessment of the average consumer's perception of the term "sustainable" is that 100% of the product in question must meet the requirements set for it to be considered sustainable. In the case of funds, the assessment is different, as the fund's total balance also consists of uninvested assets (liquid assets).

Since it can be assumed that the proportion of liquid assets can vary between different funds, a threshold does not necessarily give a clear and fair result. If 20% of a company's total assets consists of uninvested assets (cash or assets that do not constitute any form of financial instrument with underlying assets) and the remaining 80% is placed in investments that meet the requirements of being a "sustainable" investment, this company can still (as far as the Agency understands it) appear as a less "sustainable" option than a company that has 0% of its assets in cash, 90% in "sustainable" investments and 10% in "non-sustainable" investments. Taking this into account, the Swedish Consumer Agency questions the appropriateness of the proposed use of thresholds.

Should thresholds nevertheless be introduced, it is, according to the Agency, very important that the thresholds are set as high as possible. In that case, a threshold of 80% investments to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy, as disclosed in Annexes II and III of SFDR Delegated Regulation should be an absolute minimum.

<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>

The Swedish Consumer Agency finds it difficult to understand the purpose of a division into different thresholds between the different categories and advocates for an identical approach regarding the requirements for fund names, whether they contain ESG or sustainability-related terms. According to the Agency, it is also difficult to see how the various requirements will differ in practice.

Since the Agency advocates that the thresholds should be as high as possible, it should be considered most appropriate that all funds, regardless of which category they belong to, must meet both the requirements placed on funds with ESG terms in its name and those with sustainability-related terms.

If a division into the various categories is made, the Agency agrees that the sustainability-related terms should be prioritized, as they are common in greenwashing.

The Swedish Consumer Agency questions the division between environmental and sustainability-related terms. The Agency considers that these terms should fall under the same threshold, as they are very difficult to differentiate. Environment-related terms, such as "environmentally friendly", "climate-smart" or "green" can give an average consumer a similar impression as if a sustainability-related term were used.

Finally, it should once again be pointed out that whatever possible thresholds are finally adopted, it is very important that these are set high.

<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>

As previously mentioned, the Swedish Consumer Agency believes that there are already sufficient supervisory possibilities at hand with existing legislation, but if comparability is what is sought, some form of threshold may be a solution.

<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>

According to the Agency, there is already a functioning legislation that can be used to address these issues, the consumer protection legislation based on the UCPD. This is also a Union-wide legal act and therefore all Member States should have the opportunity to apply these rules on sustainability claims in fund names.

<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>

It is of utmost importance that consumers are not misled about the sustainability work of funds, this to ensure that the products meet their expectations and to minimize the risks of greenwashing. It is difficult to assess whether safeguards based on the exclusion criteria as stated above is the most appropriate way to go.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<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>

If thresholds would be introduced within the Union, the Swedish Consumer Agency consider it appropriate that index funds are also included in these to enable easier comparability between funds' sustainability work.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<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>

As previously mentioned, the Agency considers that there are already sufficient tools at hand to assess the potential misleading of fund names, but if the thresholds were to be used, the same rules should apply also for funds with names containing "impact" or impact-related terms. Otherwise, the Swedish Consumer Agency fears that there is a risk that companies may use this alternative to avoid the high thresholds.

<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>

As previously mentioned, the Agency considers that there are already sufficient tools at hand to assess the potential misleading of fund names, but if the thresholds were to be used, the same rules should apply also for funds with names containing "transistion" or transition-related terms. Otherwise, the Swedish Consumer Agency fears that there is a risk that companies may use this alternative to avoid the high thresholds.

<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>

It is difficult to assess how suitable the proposed rules are for other types of financial instruments. It could be positive from a comparability perspective, but the Swedish Consumer Agency cannot, on the basis of the current information, assess whether the rules are otherwise suitable for this.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<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>

The Swedish Consumer Agency has no opinion on this matter.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

It is difficult to determine, at this point in time, but as previously mentioned, the Swedish Consumer Agency does not consider that there is any need for these thresholds.

<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>

The Swedish Consumer Agency has no comments on this matter.

<ESMA\_QUESTION\_FUNA\_16>