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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 | Netherlands Advisory Board on impact investing |
| Activity | Ecosystem representation |
| Are you representing an association? |  |
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

The Netherlands Advisory Board on impact investing (NAB) represents a community of 28 Dutch stakeholders actively involved in the impact investing ecosystem. The NAB welcomes the opportunity to respond to the consultation on Guidelines on funds’ names using ESG or sustainability-related terms as published by ESMA on 18 November 2022.

The NAB agrees that funds and other financial products should not mislead investors by misrepresenting sustainability-related practices or features of a product. We recognize the significant impact fund names can have on investment decisions, particular by retail investors.

In summary:

* we find that the market would benefit from a clearer definition of what ESG-related terms are
* we agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-related terms. However it should exclude (reasonable) cash and derivatives, and not be applied in the investment and divestment period of the fund.
* a distinct category for transition-related investments could be added.
* we find that the 50% minimum proportion of sustainable investments applied to a 80% threshold (net, 40%) for the use of any sustainability-related terms is low. In addition, it is still unclear how the 50% is going to be assessed based on the definition.
* the use of any impact-related terms in the fund’s name should be the most stringent: since an impact fund has the intention to generate a positive impact, it should also not cause any significant harm.
* concerning the definition of ‘impact funds’, ESMA should better align it to GIIN notions and industry standards. ESMA should not just require that the fund, in addition to meeting the thresholds, invests with the intention to generate positive and measurable impact, but also that (i) there is a clear theory of change formulated in the investment strategy, (ii) investor contribution and additionality are clearly outlined, and (iii) appropriate impact measurement and management is into place.

We remain at your disposal for any clarification or question. Contact Laure Wessemius-Chibrac, Managing Director of the NAB at Laure@nabimpactinvesting.nl.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Impact investors see some value in having rules on funds names. The timing is not ideal as the Commission will be soon starting a consultation on a SFDR revision that will affect the subject of ESMA’s proposal, but it must be recognised that:

* + i) this proposal is within ESMA’s mandate,
  + ii) national supervisors are already taking their own approaches (for example on minimum percentages in Art. 8 funds), which is undesirable and
  + iii) realistically it will take at least 4 years to have an SFDR 2.0 into force.

<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 find the term “ESG-related words” to be ambiguous, it would be beneficial to add a clarification of this definition. In addition, a fund with a “sustainability-related word” in its name should be an art. 9 fund according to the SFDR definition, which means a fund with clear sustainable objectives.

The use of the word “impact” should not fall under “ESG-related words” but under “sustainability-related words”. To be clear, the use of “impact” should be applied in the strictest of the 3 definitions (ESG/Sustainable/Impact).

The 80% threshold is acceptable but should exclude (reasonable) cash and derivatives, and not be applied in the investment and divestment period of the fund.

There are also quite some concerns that passive breaches may occur where, due to market fluctuations or other circumstances, the thresholds are temporarily not met. ESMA should clarify that these passive breaches will not lead to sanctions. For funds in the ramp-up phase (especially for close-ended impact funds) it should also be expressly permissible to use ESG and sustainability-related terms where the percentages are not yet met, but the fund manager is in the process of allocating capital and investment.

<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>

Our constituents find that the 50% threshold applied to a 80% threshold (net, 40%) is too low. However we do realise that the low threshold might be related to the lack of quality of available data. In addition, it is still unclear how the 50% is going to be assessed based on the definition.

<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>

TYPE YOUR TEXT HERE

<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>

The list of exclusions is generally welcome and much needed, but the exclusions currently refer to those in the Climate Targets and Paris-aligned benchmarks, which have a strong carbon bias but do not tackle other environmental, social or governance aspects/harms. Broader exclusions should be determined.

<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>

ESMA clarified that the rules apply mostly to Art 8 funds. For Art. 9 the 2021 Q&A applies, i.e. Art 9 must consist exclusively of sustainable investment (excluding cash). Most of the market is asking for clarity on the role of cash and derivatives in these calculations. In particular, where 80% of the assets in an Art. 8 fund must be devoted to investment with E&S characteristics, that should exclude cash and derivatives from the calculation to allow for flexibility.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we 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>

TYPE YOUR TEXT HERE

<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>

* In certain parts of the Guidelines, it seems as if ‘impact’ has less stringent criteria than ‘sustainability’ related names. For an impact fund 80% of its assets must contribute to the impact objectives. For sustainable funds 80% must contribute to ESG objectives and 50% of those 80% must comply with SFDR definition of sustainable investments.
* If you consider the SFDR definition of sustainable (footnote 17 on p9), an investment can only be sustainable if it does not cause any significant harm to any sustainable objectives. We consider that since an impact fund has the intention to generate a positive impact, it should also not cause any significant harm. An impact fund should comply with the highest criteria in the market and not be ‘lighter’ than sustainable funds.
* Concerning the definition of ‘impact funds’, ESMA should better align it to GIIN notions and industry standards. ESMA should not just require that the fund, in addition to meeting the thresholds, invests with the intention to generate positive and measurable impact, but also that (i) there is a clear theory of change formulated in the investment strategy, (ii) investor contribution and additionality are clearly outlined, and (iii) appropriate impact measurement and management is into place.

<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>

Yes, we fully support having a distinct (to avoid confusion with strategies contributing to solutions) section for transition, offering the same 80% threshold as the ESG-related and 50% if the transition fund also has a sustainable-related word in its name.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

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<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>

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<ESMA\_QUESTION\_FUNA\_16>