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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 | Union Asset Management Holding AG |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

In general we support the idea of setting minimum standards in order to protect investors, avoid greenwashing and enable more transparency. However, it seems important not to forget the overarching goal of Sustainable Finance: the green transition towards a sustainable economy. If we focus only on the greenest companies that are already completely sustainable, the investment universe is very limited. Sustainability is a process and it is crucial to invest in companies that are not yet green, but that have credibly set out on the path towards it. Therefore it is key that the ESMA “Guidelines for the use of ESG or sustainability-related terms in funds’ names” set out feasible criteria. In our view, the proposed rules need to be revised in the consultation process to make them workable for financial markets in order to support investments in a sustainable future.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

In general we agree with the requirement that a fund name should represent the purpose of a fund. Therefore, the majority (more than 50%) of the NAV should be invested in assets that correspond to the name of the fund.

<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>

As mentioned in our answer to Q1, we agree that the relevant assets in the fund should represent the fund name. However, we consider a minimum proportion of 80% to be too high.

Based on national regulations in Germany, for example the guideline on the definition of fund categories issued by the Federal Financial Supervisory Authority BaFin, it is required that more than 50% of the value of the investment fund must be invested in the asset denoting the fund category. Accordingly, an equity fund must invest more than 50% in equities.

With a quota of 80%, funds that have ESG-related words in their name are disadvantaged. This can lead to a lack of diversification, higher volatility, a smaller investment universe and, in the end, less performance. ESG-related funds are thus deprived of some investment opportunities to manage portfolios and contribute to the transition of the economy.

In flexible multi-asset products, for example, part of the portfolio is used for liquidity management, hedging and diversification reasons. This part may be not sustainable, for example cash. Sustainable flexible multi-asset products would no longer be manageable with 80% ESG-related investments and thus not suitable for distribution.

The aim of the EU Action Plan and the Renewed Sustainable Finance Strategy to reorient capital flows towards a more sustainable economy would thus be missed.

Regarding the threshold. we propose a minimum proportion of ESG-related investments of over 50% (majority).

<ESMA\_QUESTION\_FUNA\_2>

1. : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_3>

We do not agree that a fund which uses the word "sustainable" should have a minimum proportion of 50% sustainable investments. This is an unrealistically high value, which ensures that only the most sustainable of sustainable stocks could be invested in with a such a portfolio. The reason for this is a lack of specifications on how these investments are calculated, a lack of data and a regional restriction to the EU/Europe. We expect a clarification on the calculation method of sustainable investments (according to Art. 2 para. 7 of the SFDR) in the answers of the EU Commission to the questions of ESMA in the near future. A missing calculation method leads to the fact that investors cannot meaningfully compare the quotas of different asset managers. This may mislead investors.

Example:

Asset manager A assesses sustainable investments at the level of economic activities (revenue share from sustainable economic activities), asset managers B and C assess the entire investment as sustainable, whereby asset manager B considers a revenue share of 20% and asset manager C a revenue share of 50% sufficient for this.

In the case of an investment in a company that generates 25% of its revenue from a sustainable economic activity, asset manager A would assess 25 % of the investment as sustainable, asset manager B 100% and asset manager C 0%.

With an original investment universe of 20,000 issuers, only 1,500 issuers would remain to realise such a quota. These companies would be predominantly from the health and pharmaceutical sectors and would further increase the problem of portfolio concentration.

Overall, 50% sustainable investments are not feasible for a diversified portfolio. A broad investment universe as well as transition would no longer be possible and the performance would thus be jeopardised.

As an alternative, we propose to base the designation of sustainable funds on the existing regulation on the assessment of sustainability preferences (MiFID II). According to this, a fund can only be offered to an investor with sustainability preferences if the fund either takes into account the Principal Adverse Impact of investment decisions on sustainability factors or makes sustainable investments within the meaning of Article 2(17) of the SFDR ((EU) 2019/2088) or makes environmentally sustainable investments within the meaning of Article 2(1) of the Taxonomy Regulation ((EU) 2020/852), in each case without a specified minimum quota.

<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>

See the answer to question 3. Existing rules for the assessment of sustainability preferences (MiFID II) as a basis: PAI, sustainable investments (SFDR) or taxonomy

<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>

No, we do not agree for the following reasons:

- There will still be assets that can never become sustainable (e.g. cash)

- There will still be assets that cannot be valued (e.g. gold).

- Extensive exclusion criteria mean that remainder investments could also be described as sustainable.

- Analysis on Paris-Aligned Benchmark (PAB) criteria for funds:

o Are partly very imprecise

o Would have to be applied to the entire portfolio - further exclusions in an already strict process

o The impact of the application on the entire portfolio is in part enormous

<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>

No

<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>

TYPE YOUR TEXT HERE

<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>

No. "Impact" is an overarching topic for which there is no established market standard and no clear definition yet. Such provisions should therefore be developed at the political level (e.g. SFDR review) and not within the framework of ESMA guidelines for fund names.

<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>

No. The green transition of the economy is extremely important, but this aspect is already covered by the provisions for the term "ESG-related". Additional or separate provisions are not needed and would create unnecessary complexity.

<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>

In order to have a level playing field, the same rules should apply for all sectors.

<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 transitional period should be much longer than six months. Clients have to be informed in writing in the case of existing funds. In addition, national supervisory authorities have to "translate" the guidelines into national law, which requires more time. Alternative proposal: 12 months.

<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. These funds cannot take into account a subsequently agreed regulation, as they have already made all investments. This means that these funds can no comply with the quotas.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_16>