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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 | J.P. Morgan Asset Management |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

J.P. Morgan Asset Management (JPMAM) welcomes the opportunity to comment on the European Securities and Markets Authority’s (ESMA) consultation paper (CP) on draft Guidelines on the use of ESG or sustainability related terms in funds’ names. We agree with ESMA’s statement in the CP that the name of a fund is a prominent indicator for marketing purposes and a means of communication to investors. As such, we are supportive of ESMA’s objective to develop Guidelines which facilitate informed decision-making by investors and mitigate against the risk of greenwashing.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Where proportionate and calibrated appropriately, we believe that quantitative thresholds can be a simple and highly-transparent approach to delivering on ESMA’s objective.

Notwithstanding this, we have material concerns over ESMA’s approach. Our concerns relate to the substance of the proposed Guidelines, which we expand on in our response to the subsequent questions of the CP, as well as the suggested timing and process. From a process perspective , while policymakers in the EU should be commended for the brevity in which they have sought to establish a legislative framework governing sustainable finance, it is also true that this has resulted in a complex environment that is often challenging to navigate. In light of this, it is imperative that additional regulatory initiatives – whether they be enhanced Level 2 measures, guidelines or opinions – prioritise facilitating a coherent, consistent and well-sequenced rulebook, for the ultimate benefit of end-investors.

We believe the Guidelines in their current form would fall short in this regard. In particular, we note ESMA’s statement that the Guidelines are not intended to interfere with the requirements of the EU Sustainable Finance Disclosure Regulation (SFDR or the ‘Regulation’). However, we believe the Guidelines and the Regulation are intrinsically linked and, therefore, further consideration should have been given to ensuring consistency with the requirements of the SFDR, as well as to the outstanding questions from the European Supervisory Authorities (ESAs) to the European Commission (EC) related to the interpretation of the Regulation[[1]](#footnote-2). We are also aware of the efforts of the EC to undertake a comprehensive assessment of the SFDR Level 1, as communicated by Commissioner McGuinness to the European Parliament in December 2022. Although the timing of this assessment is unclear, we understand it could lead to material changes in the Regulation.

As such, we believe it is crucial that ESMA communicate how the proposed Guidelines complement the broader assessment of the SFDR, including with regards to the efficacy of the regulation and any unintended outcomes. During the ESMA Open Hearing on 23 January 2023 (the ‘Open Hearing’), ESMA acknowledged some of the concerns raised by market participants but noted they felt compelled to act given the urgent and high risk of greenwashing. While we reiterate our support to address and mitigate this risk, we believe it is important to avoid a scenario whereby the Guidelines are introduced (and firms undertake significant effort to comply) only for the Guidelines to be subsequently revised owing to the outcome of the assessment of the SFDR. Similarly, given the far-reaching consequences of the Guidelines, we question whether certain elements would not be better addressed through the review of the SFDR Level 1 text.

<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 a threshold matter, we would welcome clarification from ESMA regarding an apparent discrepancy in the CP. We note that in Chapter 4 of the CP, ESMA states that the 80% threshold is applicable where the fund intends to use ESG-related terms, whereas in the Draft Guidelines set out in Annex III, this appears to be expanded to include ‘impact-related words’. We hope this is an oversight and not an attempt to consider these two terms as being broadly equivalent, which we do not believe to be the case. It is our view that these two terms refer to distinct investment strategies across the spectrum and should be treated as such, rather than be bucketed together, as the question and Draft Guidelines suggest. We would expect to have explicit and different asset-level criteria applicable for funds using each of these terms.

With regards to the proposed Guidelines for funds using ESG-related words, we have concerns over the level of the 80% threshold, as well as how the threshold should be calculated. During the Open Hearing, ESMA stated that the 80% is to be calculated over all assets of the fund, including cash and derivatives, regardless of why they are used. We believe this to be highly problematic. Cash is crucial for the effective management of a fund, supporting its liquidity profile for the benefit of investors. While the remaining 20% is likely to be sufficient in terms of the level ancillary cash held in the ordinary course of business, there are likely to be market conditions where this is too restrictive. Indeed, the events of the last 24 months, coupled with the current uncertain market outlook, highlight the need for funds to be flexible. This point applies to both the calculation of environmental/social characteristic investments and the 50% threshold for sustainable investments. Regarding derivatives, they are often used as a permitted efficient portfolio (EPM) technique, to reduce risk.

As such, we recommend that ESMA exclude cash, cash equivalents and derivatives used for hedging purposes from the threshold calculation. The distinction between derivatives used for investment purposes and hedging purposes is already part of the European regulatory framework – for example, the ‘Commitment Approach’ to measure a fund’s use of leverage.

Alternatively, should ESMA wish to continue with its suggestion that cash and derivatives (used for hedging purposes) should be included, we would suggest they adopt a materially lower threshold. In addition, we would welcome the inclusion of a “corrective” period in the event of a breach of the threshold, regardless of the level set.

<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>

Regarding the 50% threshold itself, in addition to our remarks above on the inclusion of cash and derivatives used for hedging purposes, we believe it is difficult at this stage to definitively comment on whether it is set at an appropriate level, given the continued uncertainty on appropriate asset-level definitions and methodologies. In particular, we would highlight the questions put to the EC by the ESAs on the definition of sustainable investments under the EU SFDR. Should the EC opt for a narrow interpretation of what constitutes a sustainable investment, the 50% threshold is likely to be a significant challenge to achieve in practice, thereby significantly limiting the number of funds that are eligible to use such terms in their names. Should ESMA be minded to continue with setting a secondary threshold in its Guidelines, in light of the uncertainty and the outstanding action on the part of the EC, we again recommend this should be set at a lower level, at least initially. Should the evidence suggest this is too low, ESMA can subsequently revise this upwards.

Separately, we believe ESMA should clarify the Guidelines with respect to how the 50% threshold is to be calculated. The current drafting states:

*17. If an investment fund has the word “sustainable” or any other term derived from the word “sustainable” it should allocate within the 80% of investments to “meet the environmental or social characteristics or sustainable investment objectives” under paragraph 16 above at least 50% of minimum proportion of sustainable investments as defined by Article 2(17) of SFDR, which is also disclosed in Annexes II and III of Commission Delegated Regulation (EU) 2022/1288.[[2]](#footnote-3)*

The cross-reference to the first 80% threshold – and in particular, the inclusion of the word “within” – has caused a high-degree of confusion amongst industry participants. For example, some initially interpreted this to mean 40% (i.e. 50% of the first threshold). During the Open Hearing, ESMA sought to address the concerns of industry on this point by stating that the 50% should be applied across all investments of the fund. We believe the drafting should be amended to reflect this and avoid any ambiguity.

<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>

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<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>

We broadly agree with ESMA’s proposal to establish minimum safeguards where funds use ESG or sustainability related terms in their name, which we believe will help to provide investors with additional certainty. However, we question the appropriateness of using the exclusion criteria set out under Article 12 of the Benchmark Delegated Regulation and applicable to Paris-aligned Benchmarks (PAB). Our understanding is that the PAB exclusions criteria were intentionally calibrated towards promoting those companies most-aligned to driving carbon emission reductions and removing those causing most environmental harm. While we agree that sustainable funds should avoid such companies in principle, it is our concern that these broad-based exclusions would result in omitting some investee companies which are providing sustainable solutions that are critical for the long-term transition.

As an alternative suggestion, we consider that a more appropriate baseline to encompass a broader range of sustainable funds/objectives to be the minimum safeguards outlined within the Climate Transition Benchmarks criteria, with additional partial and full values-based exclusions that could address environmental harm in a less restrictive manner.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

Yes, JPMAM supports specific provisions related to the use of “impact” or impact-related related terms in funds names. We believe that ESMA should avoid an overly-restrictive approach and consider aligning with existing industry-wide standards, such as the Global Impact Investing Network (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>

Yes. JPMAM considers transition funds to be a key component of the sustainable fund universe and investment options provided to investors. This category of funds should be identifiable and recognised by consumers as distinct and separate from other types of sustainable funds.

<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>

While we agree with the need for a transitional period, we believe 6 months is too short. Given the approvals process required to incorporate the Guidelines and the aforementioned uncertainty over outstanding elements of the SFDR regime to be addressed by the EC, we believe a 12-month transitional period would be more appropriate.

<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>

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<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

As noted previously, we are supportive of well-calibrated and proportionate Guidelines regarding the use of ESG or sustainability-related terms in fund names, which can provide further clarity and act as an additional layer of protection for investors.However, standalone Guidelines that do not support the development of a coherent and consistent regulatory framework, as it pertains to sustainable finance, risks complicating further an already patchwork environment that is often difficult to navigate. This may hinder the development of the EU as a global sustainable finance hub and, more importantly, be detrimental for end-investors.

<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>

1. See: https://www.esma.europa.eu/sites/default/files/library/jc\_2022\_47\_-\_union\_law\_interpretation\_questions\_under\_sfdr.pdf [↑](#footnote-ref-2)
2. See p.22 of the CP, available at: <https://www.esma.europa.eu/sites/default/files/library/esma34-472-373_guidelines_on_funds_names.pdf> [↑](#footnote-ref-3)