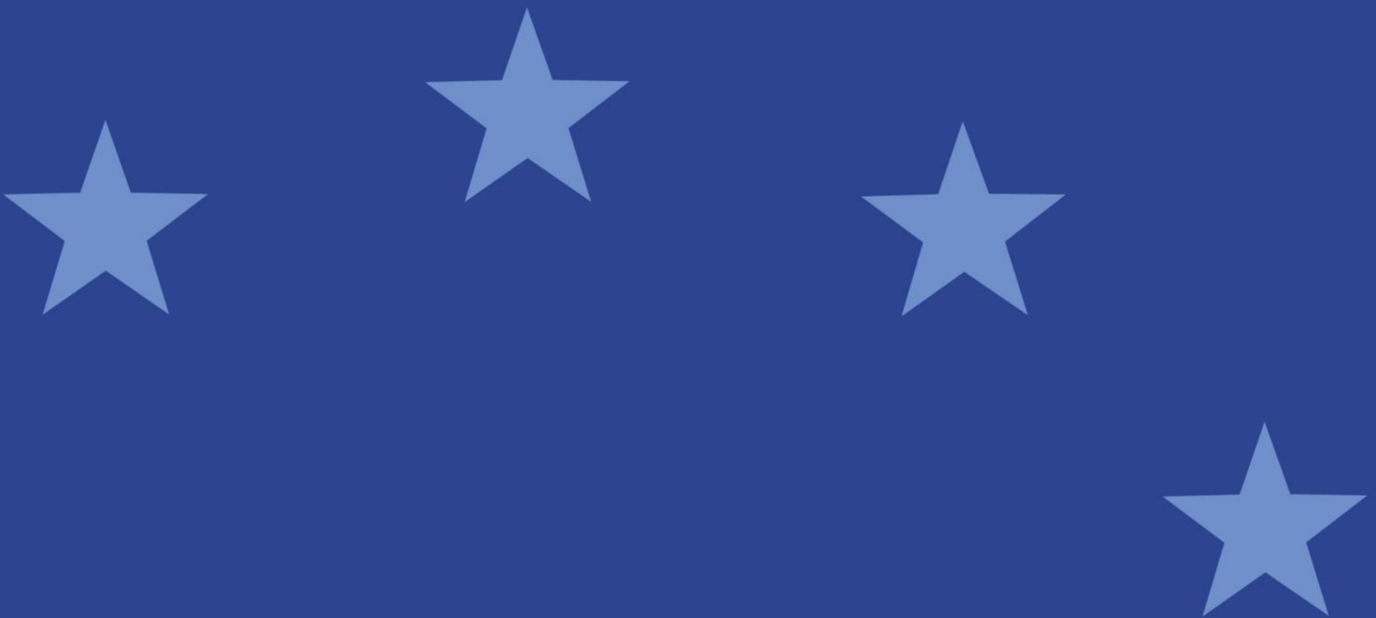
Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names



18 November 2022

esma European Securities and Markets Authority

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 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 under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	BNP PARIBAS ASSET MANAGEMENT
Activity	Investment Services
Are you representing an association?	☐
Country/Region	FRANCE

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

BNP Paribas Asset Management ('BNPP AM') is the investment arm of BNP Paribas, a leading banking group in Europe with international reach. BNPP AM aims to generate long-term sustainable investment returns for its clients, based on a unique sustainability-driven philosophy. Sustainability is embedded within BNPP AM's strategy and investment decision-making. Among the leaders in thematic investment in Europe, BNPP AM contributes to the energy transition, environmental sustainability and the promotion of equality and inclusive growth.
BNPP AM currently manages EUR 488 billion of assets (EUR 605 billion of assets under management and advisory) and benefits from the expertise of around 500 investment professionals and around 400 client servicing specialists, serving individual, corporate and institutional clients in 69 countries.

BNPP AM welcomes ESMA's proposal to introduce additional rules to fight against greenwashing and ensure that investors can select financial products in line with their own expectations. We agree that introducing thresholds for the use of ESG- and sustainable-related terms in the names of the funds could be an appropriate option to reach this goal. At the same time, clarity is still missing on structural definitions and methodologies that can be used to fill the pre-contractual template and to calculate such thresholds. In addition, new workstreams are about to be launched by the European Commission for the potential review of SFDR and for clarification of such key concepts. Accordingly, sufficient amount of time should be left to the industry to adapt to the new guidelines.

Should the guidelines being adopted before this major step, some alternative approaches should be considered. In our view, **the most relevant option would consist in using a relative approach based on the proportion of Sustainable Investments of the fund** for the use of both ESG- and sustainable-related terms:

- to be eligible to being called "ESG", a fund would need to have an actual proportion of Sustainable Investments above the one of its benchmark;
- In case of "sustainable", a fund would need to have an actual proportion of Sustainable Investments significantly above the one of its benchmark. We propose to define "significantly" as 120% of the value calculated for the benchmark.

This relative approach would neutralize the differences in the various methodologies used by asset managers and the lack of clear Sustainable Investment definition.

Would such a relative approach prove unacceptable, we recommend that following changes should be introduced on the approach presented in the consultation paper:

- **For the "ESG" threshold, two cumulative ratios should be considered**. First a **minimum 90% ESG analysis ratio** and second **at least 70% of the portfolio should have E/S characteristics provided that the way to identify these investments has been clarified**. These two ratios should be adapted

depending on the categories of assets. Concretely, they should be respectively 75% (ESG analysis ratio) and 55% (E/S characteristics) in case of High Yield/Emerging/Small & Mid Caps (versus Investment Grade/Developed/Large Caps).

- **For the "sustainable" threshold,** asset managers should have two options: **either the relative approach** as mentioned above. **Or SI threshold of 35% and 27.5% for respectively Investment Grade/Developed/Large Caps and High Yield/Emerging/Small & Mid Cap assets** (these correspond to half of "ESG" ratios for sake of simplicity).

We are not opposed to the introduction of **minimum safeguards.** However reference to the Paris Agreement Benchmark is not appropriate and would result in the exclusion of too many investments. We consider that reference to the provisions of Article 18 under the Taxonomy Regulation (i.e. alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights) would be more relevant to address the wide range of investment strategies that can be used for Article 8 and Article 9 products.

In our view, it is quite important that the **use of derivatives for ESG investment funds** is authorized when derivatives contribute to the ESG dimension of the fund. In such cases, it should also be allowed that derivatives can be taken into account for the calculation of thresholds (as for the minimum proportion of E/S characteristics and sustainable investments), with sufficient transition period if this inclusion is mandatory. We consider that **the value that should be used is the one referring to the delta approach** which reflects the economic exposure that the derivative provides to the underlying asset(s) / companies. **Index- and structured-funds should apply the same thresholds as any other funds** for the sake of level playing field between different types of funds. However a two-year transition period after the implementation date of the guidelines should be granted to properly address the difficulties for such funds, due to the relationship with the index provider. In addition, existing structured funds should benefit from a grandfathering clause until their maturities.

Lastly we consider that **a 6-month transition period as proposed in the consultation paper is not sufficiently long** and should be extended to 12 months to let sufficient time for effective performance of all processes required in case of name's change.

<ESMA_QUESTION_FUNA_0>

Q1 : Do you agree with the need to introduce quantitative thresholds to assess funds' names?

<ESMA_QUESTION_FUNA_1>
As a general comment, we agree on the proposal to introduce some rules designed to avoid misleading information to end-investors and that contribute fighting against the risk of greenwashing. We also agree it is quite important that the names of the funds reflect the ESG and sustainable dimension of the investment policies of the funds.

However we regret that such rules are addressed at a time when still crucial definitions have not been provided and clarified in the way they can be applied from a concrete perspective. In particular, there is today no definition of what "ESG terms" means exactly and questions have been submitted by the European Supervisory Authorities (ESAs) to the European Commission on the definition of Sustainable Investment as provided under the Article 2.17 of the SFDR, with no response so far by the European Commission.

In addition there is no standardization of the calculation basis to be used for the ratios which are proposed in the consultation paper. It means concretely that both ratios of 50% and 80% can be applied very differently from one asset manager to another.

Ensuring that common interpretations are implemented is key for the information delivered to end-investors and for the possibility to make informed comparison between the available financial products. At this stage, it also appears that some national competent authorities have already adopted some rules and/or guidance at local level on how funds' names can be used depending on some specific criteria. It is key that any guidelines adopted in this area at the EU level are applied similarly in all EU jurisdictions and that they cancel and replace any existing framework that would not be aligned with main provisions of the guidelines.

So we believe that the sequencing in tackling the efficient ways of addressing properly risk of greenwashing is not correct. This point also refers to the recent announcements by the European Commission that new workstreams will be launched regarding a general assessment on how SFDR requirements are applied and how they should be revised on certain aspects. It would be quite inefficient to introduce new requirements that may become invalid in a near future following the release of new rules or guidelines.

Accordingly we recommend that any guidelines on funds' naming are synchronized with changes to SFDR and that minimum clarification is provided by the ESAs and/or the European Commission on key elements (such as definitions and calculation methodologies) before final adoption of such guidelines. **Otherwise it seems more relevant to adopt an alternative option that would be based on a relative approach and refer to the benchmark/investment universe of the fund (as detailed below).**

Indeed a **quantitative threshold must often be defined relatively to the quantitative level of the market** and not as an absolute value. For example, if a fund has a 45% sustainable investment threshold while its benchmark has 30% SI, the commitment can be seen as quite strong. But if overtime, the market capitalization of SI stocks in the benchmark increase a lot and the benchmark gets to 50% SI, then we would expect the fund to get to 75% SI and not stay at 50%. **Hence, quantitative rules should be set in prospectuses as a comparison to a benchmark or a universe and not in absolute terms**.

<ESMA_QUESTION_FUNA_1>

Q2 : 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>
No, we would prefer to define “ESG" a fund which has more Sustainable Investments than its benchmark.

Alternatively, would ESMA go for absolute thresholds, we would suggest that two levels are considered: 90% ESG analysis ratio and 70% of assets of the portfolio having E/S characteristics, provided that the way to identify these assets has been clarified (with lower levels for High Yield/Emerging/Small & Mid Cap stocks).

Detailed answer

First of all, we believe there needs to be clarity in the fund naming conventions allowed for the different categories proposed. Our recommendation is to go a step further by requiring that “ESG” and “sustaina-ble” terms are used in the fund’s name as a tool to help investors distinguishing between “light” ESG prod-ucts and “strong” ESG products. Concretely, it means that for a fund promoting E/S characteristics, the name should contain an ESG term in its wording qualifying the ESG feature of this fund (e.g. climate, bio-diversity, renewable energy). Similarly, when one fund has a sustainable investment as its main objective, it should have “sustainable” in its name plus another term qualifying this objective more precisely. **This mandatory use of “ESG” terms and “sustainability” terms would create clarity for investors and distrib-utors as opposed to ambiguity.**

These guidelines would lead to splitting Article 8 products into three sub-categories: standard Article 8 products, “ESG”-labelled Article 8 products and “Sustainable”-labelled Article 8 products. We believe that the market dearly needs simple categories as many end-investors do not have the capacity to compare SFDR disclosures. Such an approach would allow them to group products with similar demandingness into consistent categories.

To the topic of the **quantitative threshold**, we have two points to make, one on the indicator proposed (“E/S characteristics”) and one on the ratio proposed (80%).

For the first one, we believe that the use of only the “E/S characteristics”, due to the way the market has implemented its definition, will lead to products with very light requirements being labelled as “ESG” in their name within the framework of the present guidelines, thus casting confusion and doubt on the whole market.

Indeed, many market players have understood the concept of “E/S characteristics” as an attribute of un-derlying issuers relatively to the extra-financial elements of the investment strategy. As a consequence, the issuers with an “E/S characteristics” are dependent on the binding elements of each investment strat-egy. Should these binding elements be weak (e.g. baseline exclusions), then it would be quite easy for the financial product to commit to a very high threshold of “E/S characteristics” (in this example, all non-ex-cluded stock would comply). With this implementation, the weaker the binding elements promoted by the product, the easier it is to commit to high “E/S characteristic” threshold and hence the easier it is to be called “ESG”.

This approach, in our opinion, will put the Article 8 category upside down, with a greater concentration of “ESG”-labelled products among the least demanding ones.

On the contrary, should the concept of “E/S characteristic” be interpreted as an attribute of the underlying issuer in absolute (i.e. as a characteristic of the issuer itself, irrespective of the portfolios in which the issuer is considered), then reaching a higher threshold will require a greater effort and hence, the label “ESG” in this latter case would indeed reward the most demanding products. In addition, this approach, consistently with the other ratios introduced by SFDR (Sustainable Investments, etc…), would amount to filtering out the “bad guys” and bring a clearer message.

As to the second point, it logically follows from the first one that **we cannot advise on any absolute ratio before a common understanding of the indicator proposed is a prerequisite**, so as to make the threshold consistent with the selectivity of the indicator.

Extra-financial indicators are indeed very often skewed, which is why the performance of a fund against an indicator is always measured against a relevant benchmark. We believe that setting a single percentage would punish funds investing in certain market segments, like High Yield, Emerging Markets or Small and Mid Caps – the latter being particularly counterproductive as pure players on Environmental themes are often found there.

As a consequence of these two points, we would propose an **alternative approach** to the one presented in the consultation paper and which is our preferred option. This is a **relative approach based on Sustainable Investments: to be eligible to being called "ESG", a fund would need to have an actual proportion of Sustainable Investments above the one of its benchmark**. With this approach:

- We rely on an indicator understood by the market as identifying the "good" companies;
- We neutralize the effects of both the choice of the investment universe and the differences in methodologies as the "effort" required to be named "ESG" would be the same any asset manager irrespective of its "Sustainable Investments" definition and irrespective of the strategy of the fund (large vs small caps, developed vs emerging, etc.).

In addition, we would strongly advise to differentiate the thresholds depending on the type of investment universe, with a lower threshold in case of investments in High Yield, Emerging / Small & Mid Caps.

Would such a relative approach prove unacceptable, we recommend that following changes should be introduced on the approach presented in the consultation paper:

- **Two cumulative conditions should apply** for the use of the ESG-related terms in the names of the fund instead of the 80% ratio proposed in the consultation paper.
- First, one should be that **a minimum 90% ESG analysis coverage** of the investment portfolio is applied to make sure that a sufficient proportion of the portfolio is reviewed from an ESG perspective. Coverage ratio measures assets and underlying of the fund that are subject to the assessment of a non-financial analysis or rating or ESG indicator in line with the strategy of the fund. **For specific asset classes** where ESG data is less available such as Emerging markets, High Yield or Small & Mid Cap universes, **the minimum coverage could be set at 75%.**
- Second, as ESG coverage is agnostic so as to the intrinsic ESG quality of the issuers, while E/S characteristics / SI implies a positive notion so as to the characteristic attributed to the issuer, **we recommend that an additional threshold is required for the ESG category**. This ratio should be **based on the proportion of assets with E/S characteristics in the portfolio, provided that the way to identify these assets has been clarified. This threshold should also be adapted depending on the categories of assets**. Concretely, our proposal is:
    - **In case of Investment Grade/Developed/Large Caps**, a 70% threshold would allow for a pocket of 30% of cash, derivatives, non-rated stocks, stocks that do not reach the positive E/S characteristic criteria but are not necessarily "bad" ones and lastly weakly rated stocks following an engagement pathway
    - **In case of High Yield/Emerging/Small & Mid Caps**, this threshold should be 55%. This 55% threshold would allow for a pocket of 45% of all assets mentioned previously.

We consider that the combination of these two metrics is the best way to properly determine which funds should use ESG-related terms in their names. Referring only to the coverage ratio would not be satisfactory as it would not guarantee that the intrinsic ESG quality of issuers is effectively part of the fund's investment policy.

<ESMA_QUESTION_FUNA_2>

Q3 : 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 would prefer that "sustainable funds" have 20 percentage points more Sustainable Investments than their benchmark. Alternatively, if ESMA decides for an absolute value, we would suggest 35% Sustainable Investments for Investment Grade/Developed /Large Caps and 27.5% for High Yield/Emerging/Small Caps.

Detailed answer

As mentioned before we propose for this category to exclusively use the reference to "sustainable" or "sustainability" in the fund's name in order to create clarity for investors.

For the same reasons as the one mentioned in response to Q2, we would propose an **alternative approach** which is our preferred one as it would better reflect the "sustainable" dimension of funds that are using "sustainable" terms in their names. This relative approach is based on Sustainable Investments: to be eligible to being called "Sustainable**", a fund would need to have an actual proportion of Sustainable Investments significantly above the one of its benchmar**k. We would propose to define "significantly" as 120% of the value calculated for the benchmark. With this approach:

- We rely on an indicator understood by the market as identifying the "good" companies;
- We neutralize the effects of both the choice of the investment universe and the differences in methodologies as the "effort" required to be named "ESG" would be the same for any asset manager, irrespective of its "Sustainable Investments" definition and irrespective of the strategy of the fund (large vs small caps, developed vs emerging, etc.).

In addition**, we would strongly advise to differentiate the thresholds depending on the type of investment universe**, with a lower threshold in case of investments in High Yield/ Emerging / Small & Mid Caps.

Should such a relative approach prove unacceptable, we recommend that the approach proposed in the consultation paper is amended as follows as long as a common definition of sustainable investment is not available:

Asset managers should have the choice between two options:

- **Option 1** would consist in a **"relative approach"** applied according to the individual methodology used by each asset manager. We propose that the ratio should be higher than 1.2x the benchmark / investment universe for the Sustainable Investment level.
- **Option 2** would consist of imposing that **a minimum proportion of the funds is invested in Sustainable Investments** (i.e. with an absolute figure). Our recommendation is to make again a distinction between Investment Grade/Developed/Large Caps on one side and High Yield/Emerging/Small & Mid Caps on the other hand with respectively 35% and 27.5 % ratios. These figures of

Sustainable Investment threshold correspond to half of the E/S threshold, which drives a simple message to investors.

<ESMA_QUESTION_FUNA_3>

Q4 : Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.

<ESMA_QUESTION_FUNA_4>
In summary our proposal is as follows:

Category	Fund name must include	Option1 – Relative Min requirements	Option 2 – Absolute Min requirements	Minimum safeguards
Article 8	N/A	N/A	N/A	Reference to Art 18 under the Taxonomy Regulation, i.e. OECD guidelines and UN Guiding Principles on Business and Human Rights
Article 8 – ESG category	ESG	SI greater than benchmark or investible universe	70% / 55% E&S characteristics (*) (**) 90% / 75% ESG analysis ratio (*)	
Article 8 – Sustainable category	Sustainable	Greater than 1.2x benchmark or investible universe	35% / 27.5% SI (*)	Principles on Business and Human Rights
Article 9	N/A	100% SI	100% SI	

(*) lower ratios are for Investment Grade/Developed/ Large Caps versus High Yield/Emerging/Small Caps

(**) Please refer to our answer to Q.2 for E&S

As mentioned previously, it is crucial that for both use of ESG- and sustainability-related terms in the name of the fund final guidelines are applied in a similar way in all EU jurisdictions. It should be clearly specified that these guidelines would cancel and replace any existing national frameworks that would have not been developed around the same philosophy. The guidelines should not create any additional complexity for both financial market participants and end-investors.
<ESMA_QUESTION_FUNA_4>

Q5 : 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>
Please see our responses to Q.2, Q.3 and Q4.

<ESMA_QUESTION_FUNA_5>

Q6 : 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 with the principle to have minimum safeguards for investment funds with an ESG or sustainability-related term in their name. However retaining the criteria used for the Paris Agreement Benchmark under the Benchmark Regulation is not the right approach in our view as it would be much constraining and would significantly reduce the investments' universe for these funds.

Alternative proposal is to make reference to the provisions of Article 18 under the Taxonomy regulation, i.e. alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

<ESMA_QUESTION_FUNA_6>

Q7 : Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?

<ESMA_QUESTION_FUNA_7>

In our view, derivatives are essential tools in the investment policies of investment funds. Derivatives can be used to get exposure to equities or bonds or hedge various types of risks. Accordingly, it is important that their use remains authorized and that they can be taken into account for the calculation of the minimum proportion of investments used to meet the E/S characteristics or Sustainable Investment objectives.

More precisely, we are of the view that asset managers should be allowed to take derivatives into account in the thresholds mentioned in this consultation paper as for any other investment ratios when these derivatives are linked to companies' debt or equity instruments and meant to contribute to the attainment the ESG investment objectives of the fund. Derivatives linked to other underlying or/and when used for instance for market hedging/market exposure tactical should be disregarded for the purpose of threshold computation (for instance when used for FX or duration management purpose).

Should the contribution of derivatives to the thresholds' calculation be mandatory for rather than optional, we would recommend a long transition period (at least 2 years) as long as the use of derivative do not go against the ESG objectives of the fund.

In case of a single-underlying derivatives, the approach and use are the same as described above.

<ESMA_QUESTION_FUNA_7>

a) 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 consider that the value that should be used is the one referring to the delta approach which reflects the economic exposure that the derivative provides to the underlying asset(s) / companies.

The delta of the derivative is the equivalent cash amount that would be invested in companies debt or equities that would lead to similar price signal on the considered company financial instruments.

The details of the methodological aspects would have to be discussed and determined in subsequent industry consultations and potentially in the context of the work of the new ad hoc expert group on derivatives that we expect the PSF to launch in the near future.

It should be noted that there might be other good manners to take properly into account the derivative position on ESG stand point without having to do transparency. Indeed, it should be clarified that transparency proposal makes sense but is not going to be easy and achievable every time because for instance access to granular data is limited and/or very expensive and would require specific management and IT tools to manage exclusions in particular. This is even more applicable on non-European exposure indices, owners of local stock exchanges on which asset managers do not have access to the exact composition.
<ESMA_QUESTION_FUNA_1>

b) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?

<ESMA_QUESTION_FUNA_2>
We suggest that the following principle should be respected: derivatives should not be used in contradiction with the ESG objective or the main ESG features of the fund.

In addition, we suggest that for OTC derivatives asset managers apply ESG guidance in their counterparties' selection process.

<ESMA_QUESTION_FUNA_2>

Q8 : 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 believe that index funds or ETFs should follow the same rules (but should have more time to adapt) as mutual funds to create clarity to investors. In case an index doesn't reach the minimum standards that will be decided regarding funds' naming, it will be the responsibility of the ETF/index fund asset manager either to remove the ESG references from its product name or to choose another index.

It should also be clear that regarding recent European clarifications, ESG applicable methodologies should be the one of the asset manager. **We strongly believe that it is crucial that ETFs and index funds follow the same rules as any other funds, knowing that these thresholds should only apply at the time the new index composition of the index is defined (index compositions are determined a few days before the implementation date of the reshuffles).** As the indices are rule-based, the thresholds might not be attained between two reshuffles and clients do expect index portfolio managers to replicate the index at any time. In addition ETFs will need 2 years to adapt because changing the name or the construction of the index is much more difficult for existing funds.

Regarding structured funds (like formula funds), we are of the view that the common usual rules should be adapted to the required management techniques in a sense that only the risky part at inception should follow the same rules as mutual funds to create clarity to investors. Indeed, when a formula fund offers indexation to an underlying index, the name of the fund must be able to reflect the reality and the theme

of this exposure, otherwise the investor may be misled as to the economic exposure to which the fund is committed.

At the very least, it is essential that existing structured funds (and in particular formula funds) benefit from a grandfather clause until their maturity, because:

- These funds are closed to marketing: they are therefore no longer subject to new investments,
- The financial conditions have been set for the entire life of the fund on the basis of the regulations applicable at their launch. Changing the terms of structuring is therefore impossible without calling into question the terms of the fund. A change of name would risk casting illegitimate suspicion on the world of management and reliability of offers, and generating confusion of requests for redemptions before maturity which, given market conditions, could be made to the detriment of investors, at levels significantly below the protection level.

ESMA should also ensure with the other ESAs that other index or formula-based products that are not funds and that also target retail like notes, EMTNs, etc…, for instance follow similar rules.

<ESMA_QUESTION_FUNA_8>

Q9 : 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. Indirect (TRS) based replication means in terms of exposure the same effects as the direct replication of the index. The portfolio held by the fund is swapped against the exposure of the portfolio held by the counterparty and unitholders bears the risk and opportunities linked to the exposure portfolio, not the portfolio held by the fund.

Nevertheless, the portfolio held by the fund (which is called "substitute basket" or improperly "collateral" as these assets are held by the fund, i.e. they are fully funded, so there is no notion of collateral applicable in this case) has some ESG constraints such as at least the minimum safeguards stated above and for instance following the asset managers' ESG global policy (minimal ESG rating, legal exclusions, constraints on coal and fossil fuels linked to the asset manager's policy).

In France, AFG has issued guidance on these two issues to help asset managers to build their policies: AFG Guide to Developing a Coal Strategy for Asset Management Companies and AFG Guide to Developing a Fossil Fuel Energy Strategy (Excluding Coal and Including Non Conventional Fossil Fuel Energies).

<ESMA_QUESTION_FUNA_9>

Q10 : Do you agree of having specific provisions for "impact" or impact-related names in these Guidelines?

<ESMA_QUESTION_FUNA_10>
We are of the view that ESMA Guidelines should not integrate specific provisions for "impact" or impact-related terms because of the reasons stated below.

1. The definition of / criteria for impact investment are not addressed in any of the recent sustainable finance regulations (SFDR, EU Taxonomy, MiFID II); thus, addressing impact investing only through naming guidelines may create unnecessary confusion on the market.

2. The definition of impact investment provided by Operating Principles for Impact Management (global initiative led by IFC and the World Bank) and Global Impact Investing Network (GIIN) and broadly used by the financial market participants and investors is based on the principles of intentionality, additionality (investee or investor level) and impact measurement rather than on quantitative or issuer-based thresholds. Many other global/local initiatives focusing on impact investing follow this principle-based approach.

3. Furthermore, many existing "pure" impact funds built on the above-mentioned principles and generating positive, measurable social and environmental impacts, cannot be qualified as funds invested in "Sustainable Investments" as defined by Article 2 (17) of the SFDR very often due to DNSH criteria and, namely, recently defined 14 mandatory principal adverse indicators. Therefore, these funds may be forced to delete term "impact" from their names if quantitative thresholds are introduced, despite generated significant positive environmental and social impacts.

<ESMA_QUESTION_FUNA_10>

Q11 : Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?

<ESMA_QUESTION_FUNA_11>
It is quite difficult to answer this question at this stage as the response depends on the final guidelines adopted on other aspects, notably the thresholds for use of ESG- and sustainable-related terms. This being said, we consider that no specific provisions should be introduced for use of "transition" or "transition-related" terms if principles retained for introduction of thresholds are properly determined.

<ESMA_QUESTION_FUNA_11>

Q12 : 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>
Yes, the aim should be to protect investors and avoid greenwashing. So the aim should be to have all financial products apply the same principles, including on product's naming. The scope should be wider than financial products submitted to SFDR and include any financial product being presented as an ESG or sustainable product.

This is also key from level playing field and competitiveness perspective. ESMA should liaise with the EBA and EIOPA to develop similar guidelines for other products.

<ESMA_QUESTION_FUNA_12>

Q13 : 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>

Would ESMA decide to introduce the guidelines in the near future without addressing clarification and consistency issues mentioned previously, the transition period should be of at least 12 months instead of 6. Changing the name of a fund requires reviewing a lot of internal and external processes (including with national competent authorities) and would be both time- and resource-consuming in case of significant volumes.

<ESMA_QUESTION_FUNA_13>

Q14 : 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>
In our view, this extension is not necessary simply because no further subscriptions shall be operated in these funds. Imposing such rules would have no added-value for end investors.

<ESMA_QUESTION_FUNA_14>

Q15 : What is the anticipated impact from the introduction of the proposed Guidelines?

<ESMA_QUESTION_FUNA_15>
The impact of these guidelines will depend on the timing of the introduction of these guidelines and the approach retained by ESMA in the end. Premature introduction could have strong unintended effects and would not contribute to the objective of mitigating the risk of greenwashing. It would increase the current fragmentation issues resulting from lack of common principles and different interpretations by national competent authorities.

It would also create additional confusion and over-complexity for end-investors as there is no inter-operability between these guidelines and other pieces of sustainable finance, notably SFDR and MIFID ESG preferences which are built around other criteria.

Lastly, as mentioned previously, maintaining existing national frameworks with adoption of these new guidelines would represent excessive burden and cost for the asset management industry. Once again, end-investors would support the consequences of the co-existence of diverging sets of rules.

Such negative impacts would amplified in case of revision of existing rules that would make the guidelines no more applicable.

<ESMA_QUESTION_FUNA_15>

Q16 : 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 benefits of introducing such guidelines would be harmonization of rules for funds' naming if underlying principles are properly defined.

In terms of costs, significant additional costs may be anticipated first for the compliance of prospectuses. In addition, front office tools would have to be adjusted and asset managers trained. Control costs to ensure that guidelines are properly implemented should not be underestimated.

This would also mean additional discussions with distributors and end clients that would need to be informed properly.
<ESMA_QUESTION_FUNA_16>

Q17