

## ESMA Consults on ESG Related Fund Names

Investor demand for investment funds that incorporate environmental, social and governance (“ESG”) factors has been growing. The European Securities and Markets Authority (“ESMA”) are concerned that this growing demand will lead to funds being named green or socially sustainable when this may be misleading to investors so new rules on related naming conventions are being considered.

### Background

Key pieces of legislation relating to ESG include the SFDR which imposes disclosure obligations and the EU Taxonomy Regulation which sets out relevant criteria for sustainability.

ESMA have already published a supervisory briefing which contains some principles-based guidance to national competent authorities on the issue of misleading names (“ESMA34-45-1427”). ESMA’s consultation is now seeking the views of external stakeholders on developing more specific Guidelines. These Guidelines will propose quantitative thresholds as criteria.

### Basis of the Guidelines

Provisions contained in Directive 2009/65/EC (“UCITS Directive”) and Directive 2011/61/EU (“AIFM Directive”) require that management companies act honestly and fairly in their business activities. In addition, the Regulation (EU) 2019/1156 on cross border distribution of funds requires marketing communications to be fair, clear, and not misleading. The proposed Guidelines are intended to apply these requirements in practice.

### Proposed Guidelines

Fund names should not be misleading. Reference of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund. The use of this terminology in fund names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in the fund’s investment objectives and policy.

The more specific Guidelines proposed by ESMA include:

- If a fund has any ESG-related words in its name, a minimum proportion of at least 80% of its investments should be used to meet relevant objectives;
- If a fund has the word “sustainable” or a similar term in its name, it should allocate within the 80% of investments referred to above, at least 50% to sustainable investments as defined under the SFDR;
- Minimum safeguards consisting of exclusion criteria would be applied to all investments of the funds using such terms;
- Funds designating an index as a reference benchmark could use ESG- and sustainability-related words in their name only if the relevant thresholds proposed are met by the fund; and
- Funds using the word “impact” or “impact investing” or similar terms in their name should meet the proposed thresholds and additionally make investments with the intention to generate positive and measurable social or environmental impact as well as financial returns.

### Next Steps

ESMA will consider the feedback it receives to this consultation after it closes on 20 February 2023 and expects to issue the final Guidelines by Q2/Q3 2023, becoming applicable 3 months later. A transitional period of 6 months is proposed for existing funds.

The asset management team of Clerkin Lynch LLP have recently published two legal updates which detail increased regulatory focus on greenwashing.



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