

Legal Update

ESMA Final Report on Fund ESG Names

The European Securities and Markets Authority (“ESMA”), the lead regulatory authority in the European Union, has recently published its final report containing guidelines on funds’ names using ESG or sustainability-related terms (the “Final Report”). The objective of the Final Report is to ensure that investors are not misled by unsubstantiated or exaggerated sustainability claims in fund names. It provides asset managers with clear and measurable criteria to determine where it is appropriate to use ESG or sustainability-related terms in fund names.

Background

ESG has been a key focus of ESMA in recent years in particular following the adoption of related legislation such as the Sustainable Finance Disclosures Regulation (“SFDR”). However, financial services firms creating new fund products to meet perceived investor demand for more environmentally conscious and sustainable investments raised concerns relating to “green washing”. Accordingly, on 18 November 2022 ESMA launched a consultation on fund names using ESG or sustainability terms and then issued a public statement on its findings in December 2023, following which it has now issued the Final Report.

New Requirements

The Final Report provides that to be able to use certain key terms, a minimum threshold of 80% of investments must meet environmental, social characteristics or sustainable investment objectives. The Final Report also provides for exclusion criteria based on relevant benchmarks for specific terms used in fund names, e.g.:

- “Environmental”, “Impact” and “sustainability”-related terms:
- “Transition, “Social” and “Governance”-related terms:

Next Steps

The Final Report will be translated into all EU languages and subsequently be published on ESMA’s website. Its terms will start applying three months after that publication date.

The transitional period for compliance by funds existing before the application date will be six months after that date. Any new funds created after the application date should comply with the terms of the Final Report immediately upon authorisation.

How Clerkin Lynch Can Help

Clerkin Lynch’s asset management team have a keen focus on ESG related topics pertaining to the funds industry and are well placed to advise on related compliance, including in relation to the Final Report. Contact us for more information.



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