sifma | asset management group

Invested in America

August 16, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Investment Company Names
File No. S7-16-22

Dear Ms. Countryman:

The Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the "**SEC**") on the SEC's proposed rule and form amendments pertaining to fund names (the "**Proposal**").[2]

The Proposal sets forth amendments to Rule 35d-1 (the "**Names Rule**") and certain reporting requirements under the Investment Company Act of 1940 (the "**1940 Act**") that would expand the scope of the Names Rule; add prescriptive compliance, reporting, and recordkeeping requirements; and create a number of new interpretive issues for funds and the SEC Staff. While we appreciate that a fund name can be an important piece of information that investors consider when making investment decisions, we are concerned that the Proposal over-emphasizes the importance of fund names and in the process, implies that it is reasonable for investors to rely solely on the name of a fund when making an investment decision and minimizes the importance of other information available to investors, including a fund's prospectus disclosure. The Proposal includes overly prescriptive and at times arbitrary requirements, and introduces a new level of subjectivity that would likely contribute to investor confusion. We believe that the Proposal does not sufficiently articulate any extant risks to investors that would justify the sweeping and disruptive changes proposed. We also suspect that the Proposal could lead to unintended consequences that might ultimately be harmful to investors. We therefore question whether the goal of greater investor protection articulated in the Proposal would in fact be achieved. Further, we believe that the cost-benefit analysis included in the Proposal contains fundamental flaws in

---

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg. SIFMA AMG appreciates the assistance of John McGuire, Laura Flores, Amy McDonald and Court Tomplait, of Morgan, Lewis & Bockius LLP in the preparation of this response.

[2] Investment Company Names, Release No. 33-11067; 34-94981; IC-34593 (May 25, 2022), https://www.sec.gov/rules/proposed/2022/33-11067.pdf.

that it underestimates the costs associated with certain of the newly proposed requirements, and omits other costs entirely, all of which seem likely to adversely impact funds and their shareholders, with questionable associated benefit. Given that the Proposal's expansion of the scope of the Names Rule would subject a significant number of funds not currently required to comply with the Names Rule to its requirements with the effect of restricting investment flexibility with respect to 80% of each of those funds' assets, and that such a restriction could adversely affect shareholders not only during periods of persistent market underperformance, but also during bouts of day-to-day market volatility, we think the SEC's burden to demonstrate extant risks and potential shareholder harm is a high one and has not been met. At the very least, the SEC should demonstrate that the risk and potential harm to shareholders of relying on a fund name that includes a term like "value" to make their investment decision is greater than the risk and potential harm to shareholders of substantially restricting the investment flexibility of their funds' investment managers.

In this letter we provide feedback on various components of the Proposal and suggest certain alternative approaches the SEC could consider in addressing its concerns regarding potentially deceptive and misleading fund names. We urge the SEC to reconsider certain components of the Proposal, as we are concerned they would be overbroad, overly burdensome, or harmful to investors.

I. EXECUTIVE SUMMARY

The following summarizes our comments on certain components of the Proposal:

- The Proposal puts too much emphasis on a fund's name – it cannot be the case that a majority of fund names would be deceptive or misleading if they do not have an 80% investment policy, or do not comply with an 80% policy on a daily basis.

- The Proposal's expansion of the Names Rule to apply to investment strategies is unworkable. Applying the Names Rule to strategies will create arbitrary and costly compliance requirements with no proportionate benefit. This would be particularly burdensome for managers of index funds, where the manager would essentially be asked to do fundamental research on the constituents of an index to determine, each day, if the constituents remain consistent with the term used in the fund's name.

- The concerns raised by the SEC about funds using environmental, social, and governance ("**ESG**") terms in their names are more appropriately addressed in the proposed ESG-related disclosure requirements. We would, however, support the inclusion of a provision in the Names Rule stating that a fund using an ESG term in its name must comply with the ESG disclosure requirements.

- The SEC should retain the existing "under normal circumstances" standard and retain flexibility for departures from any 80% investment policy.

- The Proposal's application to Unit Investment Trusts ("**UITs**") should be reconsidered, particularly with respect to requiring UITs to detail, record, and provide shareholder notice of departures from an 80% investment policy.

- The SEC should focus on improving disclosure and require funds to describe what is meant by subjective terms used in their names, such as growth, value, and global, rather than

applying 80% investment policies to funds using such terms. The Names Rule's 80% investment policies should only apply to objectively measurable and well-defined investment attributes.

II. POLICY AND INVESTOR PROTECTION CONSIDERATIONS

The SEC's approach in the Proposal gives outsized importance to a fund's name and seems to assume that the majority of terms used in fund names have the potential to deceive or materially mislead investors absent the adoption of an 80% investment policy. Thus, the Proposal seeks to apply objective tests to subjective terms in fund names that funds would then be permitted to define differently in their registration statements. We believe that focusing on subjective terms in a fund's name, including those that describe investment strategies, and constraining investment flexibility with respect to 80% of a fund's net assets will not further investor protection or provide any material benefit to investors. In fact, certain elements of the Proposal introduce unworkable compliance requirements and unnecessarily prescriptive monitoring that have the potential to harm investors. The impact of the costs of compliance with the requirements in the Proposal would ultimately be borne by investors.

Further, the SEC, as the primary regulator of investment companies, in the 21 years since the adoption of the Names Rule has rarely made a finding that a term in a fund name was materially misleading. In fact, in the Proposal, the SEC cites a single enforcement action alleging shareholder harm based, in part, on a misleading fund name.[3] Instead, the SEC offers several academic papers to justify an over-engineered solution for a problem that does not exist.[4] A review of one of these (unpublished) papers, and the return-based analyses the authors rely on therein, raises alarm that the SEC is proposing to justify applying extraordinarily disruptive 80% investment policies to terms used in fund names, based on questionable conclusions. Finally, we question whether the SEC has authority to amend the Names Rule as proposed. Congress intended for the SEC to be able to define by rule names that it finds are materially deceptive or misleading, but it did not intend for the SEC to impose significant burdens that would have material economic impact on funds and their investors. Specifically, Congress stated, "This provision should not impose any routine or general paperwork burdens and should not impose any economic impact."[5]

A. Investor Protection Justification is Flawed

The SEC is attempting to address certain "interpretive issues" surrounding the Names Rule, and gives as an example its concerns with ESG or sustainable funds, including in particular greenwashing.[6] Instead of proposing amendments to clarify interpretive issues relating specifically to ESG funds, the Proposal casts a broad net to capture any fund that uses a term in its name that indicates investment in securities, or issuers of securities, with "particular characteristics," regardless of whether a term poses any risk of deceiving or misleading investors. For example, the SEC has not articulated how "growth," "value,"

---

[3] The SEC cites In re Ambassador Capital Management, LLC, and Derek H. Oglesby, in which an advisor was found to have caused a fund to violate Section 35(d) when it used the term "money market" in the name of the fund when the fund was not complying with Rule 2a-7. Proposal at 10, n. 14. We do not believe this type of misleading fund name is justification for the Proposal, since the SEC acknowledges in the Proposal that Rule 2a-7 already contains a provision applying to use of the term "money market" in a fund name. Proposal at 180.

[4] Proposal at 115, n. 165.

[5] See S. Rep. No. 293, 104th Cong., 2d Sess. 8-9 (1996).

[6] Proposal at 14.

"income," "global," and many other terms that would be newly subject to the Names Rule have ever led to investor confusion or deception. In fact, a term indicating an investment strategy (including some ESG terms) necessitates reading a fund's strategy and risk disclosure because there is no universal way to implement an investment strategy. Not only does requiring an 80% investment policy for a name indicating an investment strategy not work, it also is not justified by the rationale that the SEC itself articulates in support of the Proposal: "Section 35(d) of the Act prohibits a registered investment company from adopting as part of its name or title any word or words that the Commission finds are materially deceptive or misleading. This section of the Act further authorizes the Commission to define such names or titles as are materially deceptive or misleading."[7] Nowhere in the Proposal does the SEC articulate how funds that use growth, value, income, or global are deceptive or misleading. We have no objection to requiring additional disclosure describing what these terms mean in the context of a particular fund, but do not believe that an 80% investment policy designed for objective terms such as "stock" and "bond" should be applied to subjective terms describing an investment strategy.

The SEC, in the Proposal, offers "reasonable investor expectations" as a justification for the proposed amendments. We generally believe that in almost all cases, a "reasonable investor" must look beyond a fund's name in order to have "reasonable expectations" and should look to a fund's registration statement. Certainly in the context of terms used in a fund's name that "may have more than one reasonable definition," this justification does not work. There are a multitude of ways to implement a given investment strategy. For example, a growth strategy could be implemented using a growth index, or by using an adviser's proprietary analysis. There are multiple ways "growth" can be defined and multiple investor expectations of how a growth strategy might be implemented that could be deemed "reasonable." Typically an investor in a growth fund would expect the fund to perform like a growth fund, not necessarily that the fund would invest a certain amount of its assets in "growth" stocks. Regardless, an investor must read a fund's registration statement to understand how the fund's strategy is executed. A singular "one size fits all" approach to investment strategy terms under the Names Rule cannot be justified by a "reasonable investor expectations" rationale.

The Proposal also offers "investors' reasonable expectations" in the context of justifying the proposed requirement to bring departures from compliance with a fund's 80% investment policy back into compliance as soon as reasonably practicable and within no more than 30 days. The Proposal ignores the fact that the "reasonable expectations" of many investors, particularly during troubled market conditions, could very well be an extended departure from a fund's 80% investment policy in response to such conditions. Especially when a return to compliance might result in negative consequences for a fund. The Proposal states: "As another example, consistency in investment companies' investments with their names and investors' reasonable expectations may be particularly important to retirement plan and other investors who place great emphasis on allocating their investment company holdings in well-defined types of investments, such as stocks, bonds, and money market instruments. As a result, consistency with the investment focus suggested by the fund's name would seem to be *a primary concern* for these investors"[8] (emphasis added). We find it troubling that the SEC is assuming that

---

[7] Proposal at 8.

[8] Proposal at 37. We note that the SEC cites its own release adopting the Names Rule, where the SEC stated that "the need for investment companies to invest in a manner consistent with their names is particularly important to retirement plan and other investors who place great emphasis on allocating their investment company holdings in **well-defined types of investments**, such as stocks, bonds, and money market instruments" (emphasis added). We have no objection

retirement investors, on a frequent enough basis to support justifying this aspect of the Proposal, would place compliance with an 80% investment policy *above* the preservation of retirement savings from forced sales of securities or sub-optimal deployment of cash into additional investments. We disagree with this presumption.

B. The Proposal Introduces Arbitrary and Unnecessary Subjectivity

Instead of introducing clarity and predictability to Names Rule compliance, the Proposal introduces additional areas for interpretive questions and subjectivity. If the amendments are adopted as proposed, this lack of clarity and subjectivity could result in unintended, and potentially harmful, impacts on investors. Many funds will likely be incentivized to migrate to less descriptive fund names that are not subject to the Names Rule, which would not be a positive result for either the funds or their investors (e.g., would provide investors less information). Funds may also be inclined to avoid regulatory scrutiny and the risks associated with being second-guessed by the SEC. Ultimately this could lead to actively managed funds becoming less differentiated in their holdings in order to comply with the Proposal's arbitrary requirements.

C. Shareholder Harm

As discussed further below, the proposed compliance requirements associated with the 80% investment policy requirements have the potential to materially harm fund shareholders. Combined with the proposed expansion of scope in the Proposal, this harm could potentially be wide sweeping across the industry. Investment managers have a fiduciary duty to fund shareholders to act in the best interests of shareholders in every aspect of fund management. Requiring a fund to limit non-compliance with an 80% investment policy to no more than 30 days under nearly all circumstances could be disruptive and detrimental to shareholders. In some cases, the proposed 180-day-ramp-up period would be insufficient and inconsistent with prudent fund management. In addition to investment losses associated with forced selling and/or buying to gain or regain compliance within the arbitrary time frames, there could be associated tax efficiency implications, impacts to diversification, and additional transaction costs, among other concerns. With this proposed requirement the SEC would be forcing investment managers of all fund types, strategies, and asset classes to place the Names Rule's 80% investment policy compliance above all other aspects of a fund's investment strategy under all, and potentially unforeseen, market conditions and circumstances. The SEC acknowledges this in the Proposal, stating: "We recognize that some investors may prefer for a fund to be permitted to depart from its investment focus for longer than 30 days to avoid any losses that the fund may incur to come back into compliance within that time period."[9] We think this position is held by more than *some* investors. The SEC does not articulate a basis for its belief or what benefit this rigid requirement would bring to funds or investors outside of citing once again "investor expectations" surrounding a fund's name.[10]

---

to the SEC applying an 80% investment policy to funds that use terms in their names that suggest "well-defined types of investments."

[9] Proposal at 37.

[10] Proposal at 38.

D. Costs

The Proposal would create a costly compliance burden for funds that would ultimately impact shareholders, with little if any associated benefits. We are concerned that the SEC has not considered all of the potential costs the Proposal would trigger, and has underestimated the magnitude of both the financial costs and the operational burdens associated with compliance with the Proposal. We discuss our concerns in section XII. of this letter.

III. EXPANSION OF SCOPE OF THE NAMES RULE

The Proposal would expand the scope of the Names Rule to apply to funds whose names include terms suggesting a focus in investments that have, or whose issuers have, "particular characteristics." Examples provided include names with terms such as "growth," "value" and ESG-related terms. A Fund subject to the amended rule would be required to adopt a policy to invest 80% of its assets in accordance with the terms used in its name. We generally appreciate and support the SEC's efforts to prevent the use of deceptive and misleading fund names, but the proposed new category is overbroad and its application promises to be problematic for the SEC Staff and funds alike. Not only is the proposed new category overbroad in that any number of terms could suggest "particular characteristics," and thus require compliance with the Names Rule, but it eliminates the established distinction between investment type and investment strategy, thereby also requiring funds with names referencing investment strategies to comply with the Names Rule. The effect of the new category, therefore, would be to significantly restrict the investment flexibility of a substantial number of funds. The serious nature of this result demands that the expansion of the Names Rule be justified by the mitigation of an equally consequential risk or shareholder harm. The Proposal falls short of evidencing such risk or shareholder harm. We therefore believe that the proposed expansion of the scope of the Names Rule is unwarranted.

We further believe that the application of the proposed new category will give rise not only to questions about whether a term is suggestive of particular characteristics of an investment or issuer, but also the appropriate formulation of an 80% investment policy for funds with names that reference an investment strategy. This point is particularly relevant given that the SEC cites the toll on SEC resources of interpretive questions focused on distinguishing whether a term connotes a "strategy" versus a "type of investment" as a justification for the proposed new category. The vague reference to "particular characteristics" and ill-fitting application of the 80% investment policy requirement to funds with names referencing investment strategies also invites subjectivity, which will inevitably lead to many interpretive issues as well as investor confusion. We discuss each of these concerns in turn, as well as those terms for which an 80% investment policy is inappropriate and alternative approaches to address the SEC's concern regarding the prevention of misleading and deceptive fund names.

A. The Expansion of Scope is Unwarranted

Investors' access to information about funds' strategies, risks, fees, performance, and holdings, is exponentially more convenient today than when the Names Rule was adopted in 2001. This proliferation of available information, internet access, and more robust fund websites supports a proposition that any protections offered by the Names Rule are *less* necessary for retail investors now than when the Names Rule was adopted.

The Names Rule was adopted “to address certain investment company names that are likely to mislead an investor about a company’s investment emphasis.”[11] With respect to the inclusion of investment strategies within the ambit of the Names Rule, in particular, the SEC has not put forth any meaningful evidence that shareholders have in fact been deceived or misled by fund names referencing investment strategies or that funds regularly reference a strategy in their names but pursue a completely different strategy in practice. The Proposal explains that the authors of one of the few working papers the SEC cites as evidence of the latter practice concluded “that a significant fraction of US equity mutual funds provides inaccurate naming information: 33% of US equity mutual funds have, at least once in their life-cycle, an inaccurate name.”[12] It is not clear how a “life cycle” is defined, but the statement on its face does not suggest that there is a pervasive problem with misleading fund names. Moreover, even the more restrictive proposed temporary departure criteria would permit funds to depart from their 80% investment policy on different occasions in their life cycle. The SEC also has not demonstrated how requiring a fund to adopt an 80% investment policy for a strategy would protect investors or that the adverse consequences of restricting such a fund’s investment flexibility with respect to 80% of its net assets are outweighed by the supposed prophylactic benefits of an 80% investment policy. We do not believe such adverse consequences would be outweighed by the benefits of imposing an 80% investment policy, nor do we believe that shareholders would prefer to tie the hands of their funds’ portfolio management in response to, for example, unexpected or unforeseen market events that adversely affect 80% of a fund’s net assets.

Further, many strategies do not lend themselves to applying specific objective criteria in the investment selection process. For example, a portfolio manager may select an investment because they expect it to perform a certain way over time – and that time frame may be more than 30 days. This investment selection, as part of implementing a strategy, should not be considered harmful to investors in the fund, especially if the selection process is disclosed in the fund’s strategy and risks. Of course, a portfolio manager’s expectations may ultimately prove wrong in implementing the investment process. A portfolio security may not provide the growth, the value, or the sustainability that the portfolio manager sought, but that does not make the term “growth,” “value,” or “sustainability” materially misleading. That is simply the risk of investing.

Expanding the reach of the Names Rule to cover investment strategies is overreaching with respect to the intent of Section 35(d), will not benefit shareholders due to the subjectivity with which funds could define their investment focus and 80% investment policy, and will unnecessarily constrain funds’ investment flexibility, which could adversely affect shareholders. The goal of Section 35(d) and the Names Rule is to prevent the use of misleading fund names by requiring funds to invest in the well-defined types of investments indicated in a fund’s name, not to protect investors who rely on the name of a fund because it includes a term that could describe a “particular characteristic.”[13]

Requiring new or revised 80% investment policies could reduce portfolio managers’ flexibility to optimally manage portfolios, pushing funds towards homogenization and reducing portfolio managers’ ability to adjust portfolios in response to changing market conditions to the detriment of the fund and shareholders. The Proposal could also lead to funds changing their names to avoid having to adopt 80%

---

[11] Final Rule: Investment Company Names, Release No. IC-24828, Section I (Jan. 17, 2001) (the “Rule 35d-1 Adopting Release”) at https://www.sec.gov/rules/final/ic-24828.htm.
[12] Proposal at 115, n. 165.
[13] See the Proposal at 19, n. 33.

investment policies, resulting in more frequent use of generic terms that would be out of scope of the Names Rule and lead to less information being provided to investors about fund strategies through fund names.

B. The Expansion of Scope Increases Subjectivity and Would Create Investor Confusion

We acknowledge that a fund's name may convey certain information about a fund's investments and that investors, when reading a fund's name, may form certain expectations about the way the fund will invest its assets. We agree that a fund name indicating an investment type, generally, should be significantly invested in the investment type indicated by its name. However, the "one size fits all" approach that the SEC proposes in expanding the reach of the 80% investment policy requirement is inapt and inappropriate given the manner in which investment strategies are implemented, necessarily involving significant variation and subjectivity. In the Proposal the SEC states that the current scope of the Names Rule has created interpretive issues,[14] but what has been proposed would introduce additional subjectivity, and ultimately create more interpretive issues with no material benefit to investors.

The 80% investment policy requirement is a tool that works effectively with objective terms such as "equity" or "bond." A fund with "equity" in its name today triggers a requirement for the fund to adopt a policy to invest, under normal circumstances, 80% of the fund's assets in equity securities. *Any* fund with "equity" in its name will have an almost identical 80% policy. This requirement in the current Names Rule creates a consistent and predictable approach. Investors who purchase a fund with "equity" in the fund's name will be invested in a fund with the same, or nearly the same, 80% investment policy in place. Will all funds that include equity in their name hold the same portfolio of securities? Of course not. Compare this example to a fund with "growth" in its name. It is unclear what this fund's 80% investment policy might say. An investor would be required to read the fund's disclosure to understand how the fund executes its growth strategy. Does the fund invest only in securities in a given growth index? Does the fund take a more active approach to investment decisions? And, under what circumstances does the fund sell a portfolio position? An investor could not know the answers to these important questions without reading the fund's disclosure, regardless of the inclusion of an 80% investment policy. It is not clear what the SEC is attempting to protect investors from by requiring investment strategies to include 80% investment policies.

C. An 80% Investment Policy Requirement Should Not Apply to Investment Strategies

We do not believe the 80% investment policy requirement of the Names Rule should apply to strategies such as growth, value, income and global, or to ESG funds when the ESG term used in the fund's name refers to a strategy rather than an investment type. The 80% investment policy requirement is intended to require that 80% of a fund's portfolio is invested in the "type" of security indicated by the fund's name.[15]

---

[14] Some would argue that the SEC Staff has itself created these interpretive issues by seeking to apply the current Names Rule to terms that are not well defined and/or cannot be objectively measured. We do not believe that an 80% investment policy can be applied effectively to terms that can reasonably have more than one definition and cannot be objectively measured. For funds using such terms in their names, we believe reasonable investor expectations must be based on the disclosure in the funds' registration statements.
[15] Rule 35d-1 Adopting Release at Section I.

There is not a singular way to define growth or value characteristics applicable to investments or issuers and an investor would *always* need to read the disclosure beyond the name, and beyond an 80% investment policy, to fully understand a fund's strategy. Hence, it would not benefit investors to require an 80% investment policy for terms in a fund's name indicating an investment strategy.

In addition to the investor protection and investor confusion rationales that support not expanding the Names Rule to apply to investment strategies, there are significant operational issues that should be considered. For example, compliance monitoring and recordkeeping would be operationally challenging for funds if an 80% investment policy were required as proposed. Substantial compliance systems modifications would be necessary to enable funds to test and monitor as contemplated by the Proposal. For example, a fund's 80% "growth" investment policy might look to issuers that demonstrate measurable progress over time based on the portfolio management team's fundamental research and not any third-party source. Because this does not lend itself to automated compliance monitoring, a manual process would need to be built out to tag each such investment and feed it into the compliance system to ensure the 80% compliance test is being met. The costs associated with systems modifications and associated manual processes would be significant. Manual processes also introduce operational risk into the investment and compliance processes.

To build scalable compliance monitoring systems, our members frequently rely on reference data from third-party data providers (e.g., to tag holdings as stocks, bonds). Reference data from these vendors is not available for terms like "growth" and "value." Even if this reference data did become available, various data providers will likely have different definitions and/or use different criteria than fund managers. These inconsistencies will not add value but will create compliance complexities and likely require portfolio managers to divert time and attention away from managing funds to defending fund holdings' compliance classifications. This becomes even more complex in the case of a manager of managers structure, where two or more investment managers are each executing the same strategy, but because of different definitions, criteria, and/or data, reach different conclusions on the classification of the same investment. Similarly, a fund complex may include multiple funds that use the same term in their names, but which implement investment strategies that manifest that term in very different ways and thus, it would be appropriate to classify each fund's portfolio holdings differently.

D. <u>Requiring an 80% Investment Policy of Certain Terms in a Fund's Name Would Be Inappropriate</u>

(i) Value, Growth, Income

Funds that include terms such as "value," "growth," and "income" should not be subject to an 80% investment policy. These and similar strategies are applied during the investment selection process. Each individual investment does not necessarily meet specific objective criteria that are codable for compliance purposes, making compliance with an 80% test unfeasible. A particular investment selected for a portfolio may not perform as it was expected to at the time of purchase over days, weeks, or even months. Nonetheless, that does not mean it should be sold within any particular time frame, as could be the outcome under the Proposal. Rather, that decision is best made by the fund's portfolio manager after considering a multitude of factors, including how that position affects the remainder of the portfolio, the fund's ability to achieve its investment objective, and whether the disposition of the holding at a particular time is in the best interest of the fund and its shareholders.

An investment decision that applies a particular investment strategy is not always a black-and-white determination. Further, the assessment of an investment over time may change as markets change due to any number of factors, many of which are asset-class specific. The SEC is asking for an objective test for a frequently subjective determination.

For example, a growth fund might invest in companies that are expected, at the time of investment, to grow by a certain percentage threshold from year to year. If a particular company does not meet this threshold from year to year, the Proposal seems to imply that the investment could no longer count towards the fund's 80% investment policy. To the extent this holding would cause the fund to be out of compliance with its 80% investment policy, under the Proposal the fund would have up to 30 days to get back into compliance. There are multiple reasons that a holding may not grow from year to year, and many reasons why a portfolio manager may want to continue to hold a particular investment regardless of its recent performance. Applying an 80% investment policy requirement to these (and other) strategies would put unnecessary, rigid parameters around the investment process.

Importantly, investors who choose growth, value, income and many other investment strategies are often seeking active management and place value on a portfolio manager having the flexibility to use her expertise in the execution of a fund's investment strategy. The ability of a portfolio manager to identify the "winners" is, for many investors, what makes active management valuable and what makes stock selection a viable industry. The Proposal would unnecessarily restrict this critical flexibility to the detriment of investors.

(ii) Global and International Funds

Funds that use the terms "global" and "international" should not be subject to the Names Rule. Just as was reasoned in connection with the proposal and adoption of the Names Rule in 1997 and 2001, respectively:

> "[a] reasonable investor could conclude that these names suggest more than one investment focus. For example, while an investment company with a name that includes the words "international" or "global" generally suggests that the company invests in more than one country, these terms may describe a number of investment companies that have significantly different investment portfolios. Among other things, the number of countries in which an "international" or "global" investment company may invest at any one time may appropriately differ from company to company."[16]

With the increasing globalization of industries and markets, the meanings of these terms have only proliferated since the Names Rule was adopted. As a result, if the SEC were to subject these terms to the Names Rule and impose the 80% investment policy requirement, funds' 80% investment policies would very likely differ significantly from fund to fund producing little comparative benefit for shareholders and restricting funds' ability to exercise investment discretion and react to market conditions when determining not only a portfolio's appropriate country exposure, but also its appropriate mix of investments.

---

[16] Investment Company Names, Release No. IC-22530 (Feb. 27, 1997) ("Rule 35d-1 Proposing Release") at https://www.sec.gov/rules/proposed/ic-22530.txt.

We therefore believe that the SEC's original conclusion in 2001 was correct. Furthermore, we believe that the commitment the SEC articulated, in the initial Names Rule proposing and adopting releases, to continue to scrutinize fund names not covered by the Names Rule is the most effective way to address the SEC's concerns about the use of misleading and deceptive fund names.

Historically, the SEC Staff generally required a global fund to invest in the securities of at least three different countries, which could include the United States, and an international fund to invest in the securities of at least three countries not including the United States.[17] The Staff subsequently stated that it no longer distinguishes between the two terms.[18] Following the adoption of the Names Rule, the SEC Staff followed through on its commitment to consider the use of these terms, and through the registration statement review process, communicated its view that a fund name that includes either global or international would not be viewed as misleading or deceptive if it disclosed it would invest at least 40% (30% during unfavorable market conditions) of its assets outside the United States and in the securities of issuers located in at least three countries. While variations of this guidance may still be communicated through the registration statement review process, in its apparent recognition that a one-size-fits-all solution is not necessary or desirable, the SEC Staff clarified that its approach was not the only way in which a fund could demonstrate that the inclusion of "global" or "international" in its name is not misleading or deceptive.[19]

Whether in response to the SEC Staff review and comment process applicable to registration statements or of their own volition, we believe most funds that include one of these terms or a similar term in their names currently disclose what makes the fund a global or international fund in a manner that is tailored to the fund's investment strategy and thus most informative for a shareholder. Additionally, global and international funds often include targeted risk disclosure in their prospectuses and disclose their country allocations on their websites and in shareholder reports, providing shareholders with appropriate insight into the global or international nature of the fund. This is further evidence that the approach the SEC determined to take in 2001 with respect to these terms remains effective in preventing the use of misleading and deceptive fund names. We therefore do not believe it is prudent to abandon the Staff's current approach in favor of a prescriptive rule that will provide little if any benefit to shareholders and hamper investment managers' ability to respond to ever-changing market conditions and manage a fund in the best interests of its shareholders consistent with its fiduciary duty.

(iii) ESG Strategies

We appreciate the SEC's concern that certain ESG funds may overstate their investment focus on ESG, i.e., engage in "greenwashing." In addition, we agree that the Proposal is an appropriate place for the SEC to clarify that a fund with one or more ESG terms in its name suggesting an area of investment focus in certain types of investments that can reasonably be objectively classified and monitored is required to adopt an 80% investment policy. However, requiring all funds with one or more ESG terms

---

[17] Rule 35d-1 Proposing Release ("In the past, the Division distinguished "global" and "international" investment companies by suggesting that an investment company with "global" in its name invest in securities of at least 3 different countries (which may include the United States) and that an investment company with "international" in its name invest in securities of at least 3 countries outside the United States. Letter to Registrants at II.A.2 (Jan. 3, 1991). The Division no longer distinguishes the terms "global" and "international."")

[18] *Id.*

[19] Memorandum from Investment Company Institute to SEC Rules Members No. 47-12 et al. (June 4, 2012), http://ici.org/my_ici/memorandum/ci.memo26215.print.

in their name, even those whose ESG investment approach is best characterized as an investment strategy, rather than an investment type, to adopt an 80% investment policy goes too far to achieve the SEC's objective of protecting investors from misleading ESG fund names. ESG is already a subjective investment area. Requiring an 80% investment policy for ESG strategies accomplishes nothing to reduce subjectivity. The SEC should instead continue to focus on the integrity of ESG funds' disclosures.[20] We discuss our views further in section VIII. of this letter.

(iv) Certain Bond Funds

Bond funds that use terms such as "short," "intermediate," and "long" should not be subject to a specific maturity-related 80% investment policy. The Proposal contemplates that terms indicating the maturity of a bond in a fund's name would necessitate a specific bond maturity-related 80% investment policy, while also suggesting that the concept of duration would not trigger an 80% investment policy requirement. As we believe the SEC is aware, bond funds that seek to achieve a certain duration or maturity oftentimes use a portfolio weighted average to calculate these metrics. Further, the terms used in the name of a fund do not always indicate whether "intermediate" (or similar term) refers to a measure of maturity or duration. We believe that it would be inappropriate to require an 80% investment policy of a bond fund that may use a portfolio-level measure to achieve its stated objective. We agree that it is not unreasonable for a fund with "bond" in its name to be required to adopt an 80% investment policy with respect to bonds and other fixed-income investments, but we oppose extending this requirement to a fund with a maturity or duration measure indicated in its name.

(v) Descriptive Terminology

The proposed expansion of scope of the 80% investment policy requirement should not extend to terms such as "aggressive" or "conservative" or other subjective terms that describe the overall portfolio characteristics. These and similar terms are often coupled with other terms, such as "growth," and could compound the complexity of an 80% investment policy or multiple 80% investment policies. Such terms would be more appropriately described in a fund's investment strategy disclosure and risk disclosure rather than captured and constrained in a mandatory 80% investment policy.

Other terms should similarly not be subject to 80% investment policies such as "core," "plus," "volatility," "alternatives," "contrarian," "strategic," "select," "unconstrained," and "managed" (and combinations of such terms). These and similar terms are frequently used to provide an indication of how a fund's strategy is implemented and/or to refer to the goal or characteristics of a fund's overall portfolio rather than characteristics of individual investments in a fund.

E. <u>Alternative Approaches</u>

(i) Enhanced Disclosure Requirements

Instead of casting a broad net with the proposed amended Names Rule to scope in investment strategies to the 80% investment policy requirement, the SEC could amend funds' registration statement forms to

---

[20] *See generally*, Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. IA-6034 (May 25, 2022) (the "ESG Rule Proposal") at https://www.sec.gov/rules/proposed/2022/ia-6034.pdf.

require funds with terms indicating investment strategies in their names to include disclosure explaining the strategy. Funds could also be required to state whether there are certain investment types that the strategy does not apply to.

When a fund includes a strategy in its name, the risk to investors is that they do not understand the strategy—but, as the SEC recognized in the Proposal,[21] the *only* way for investors to understand a strategy is by reading the fund's disclosure. The best way to protect investors and avoid investor confusion is to require funds to include clear disclosure on how their strategies are implemented.

(ii) Defining Terms Used in Fund Names

As proposed, a fund that is required to adopt an 80% investment policy would be required to include prospectus disclosure defining the terms used in the fund's name, along with the specific criteria the fund uses to select investments associated with the term(s). Requiring funds to define terms used in their names seems reasonable, and is in all cases a more appropriate way to approach fund names that refer to investment strategies. The SEC could expand this requirement in the Proposal to include funds that use terms in their names that indicate a particular investment strategy, rather than subjecting funds using those terms to an 80% investment policy requirement.

(iii) ESG Funds

To the extent a fund with ESG terms in its name considers ESG an investment strategy, the fund should not be required to adopt an 80% investment policy under the Names Rule. Requiring an ESG fund to comply with enhanced disclosure requirements would protect investors from being misled by an investment in a fund with an ESG term in its name. If an ESG fund, however, considers ESG as an objectively measurable investment type, the 80% investment policy requirement could apply, as it does to other investment types. We discuss our views further in section VIII. of this letter.

IV. INDUSTRY DETERMINATIONS

A. Revenue Tests

(i) Limitations of Revenue Tests

We agree with the statement in the Proposal that a 50% revenue test will not always be the most appropriate way to determine whether a particular company is part of a given industry.[22] This is especially true in new and emerging industries where future leaders in a developing industry may have other established business lines and activities that account for a substantial portion of their revenue. The term "industry" is itself subject to different definitions and standards. Whether a particular company is assigned to one industry or another can be a subjective decision, and information about company revenue is not always published along industry lines.

When established classification systems do not fit a fund's investment focus area because the industry it invests in is new, emerging, and/or developing, the determination of industry for a particular company is

---

[21] Proposal at 72.
[22] Proposal at 27.

potentially even more subjective and a 50% (or any minimum level) revenue test might not be appropriate. We note that these same issues also apply to many established industries and sectors where there may be a number of different reasonable (and sometimes subjective) approaches to classification. Forward looking assessments of potential revenue or other factors are frequently used by indexes and funds to capture drivers of future economic growth and opportunity. Locking funds in to backward-looking classification systems based on past revenue or other historical factors, or setting arbitrary thresholds based on percentage of revenue from subjective industry or other classification systems, limits investment options and potentially deprives investors of ways to take advantage of developing market opportunities. In choosing to invest in a particular industry through a fund, an investor can inform themself of how the fund classifies its investment universe through reading the fund's prospectus disclosure. This holds true for new and developing industries (e.g., metaverse), as well as for established, but sometimes subjective, industries (e.g., biotech). Funds that offer investors access to these industries are important investment tools for retail investors to gain access to developing technologies and industries through a liquid vehicle.

(ii) Alternatives to a 50% Revenue Test

To indicate to an investor that a fund considers, for a substantial portion of its investments, potential future revenue of a company in determining whether to include the company in the fund's portfolio, the fund could be required to indicate this in its name. The fund could be required to use a term such as "emergent" or "future" to indicate that it uses forward looking analysis in the execution of its investment strategy. To the extent a level less than 50% of revenue is used to classify a security, other objective criteria could be required. For example, a total revenue tied to a particular industry test, or a well-defined measure of market leadership in a particular industry. A fund could be required to set a minimum revenue percentage for application of any additional criteria for industry classification purposes.

B. Natural Language Processing

In the Proposal, the SEC cautions against relying on text analysis to determine whether a company is in a given industry.[23] While we recognize that this is a relatively new approach and are sympathetic to some of the SEC concerns in this area, we disagree with this conclusion. We believe that natural language processing ("**NLP**") and text analysis has become an important tool for funds and index providers, particularly when classifying companies in new and emerging industries. Using NLP facilitates forward-looking analyses and helps provide retail investors opportunities to invest in innovative and cutting-edge companies and industries.

In the index fund context, NLP might be used to identify potential index constituents when traditional industry classification systems such as Global Industry Classification Standard, or "GICS," are backward-looking and therefore of potentially limited utility for determining classifications in developing and emerging industries. Traditional industry classification systems are also largely structured around companies' largest legacy business lines. For example, a company may be categorized in only one sector even if it operates multiple business lines in multiple sectors (and no single business line produces a majority of such company's revenue). As a result, companies with multiple business lines, as well as companies with innovative products, technologies, or business models, may not fit into

[23] Proposal at 27-28.

traditional classification systems in a manner that adequately reflects such companies' actual business operations, future plans, and potential for future growth. Bucketing such companies into traditional and potentially dated categories can yield imprecise classification results, and inappropriately exclude companies from a fund's investment universe. NLP can identify a set of companies with significant operations in new and innovative areas long before they are accurately captured in a traditional classification system based on historical revenue. This process allows for construction of indexes that track a particular set of innovative companies in new and developing areas of the economy. Further, mandating a revenue test for a new and innovative business line could potentially deprive retail investors of an opportunity to gain exposure to a new area prior to that area gaining traction and becoming a more significant portion of a company's business.

V. TEMPORARY DEPARTURES FROM A FUND'S 80% INVESTMENT POLICY

The Proposal provides that a fund would only be permitted to temporarily depart from its 80% investment policy under four specific circumstances: (1) newly launched funds where a fund may not be able to meet its 80% investment objective immediately upon launch; (2) departures resulting from market movements or other circumstances where the departure is not caused by the fund's purchase or sale of a security; (3) unusually large cash inflows or outflows; or (4) in connection with fund reorganizations. In each case, the fund must bring its portfolio investments back into compliance as soon as reasonably practicable. Further, the maximum amount of time for the departure would be 30 consecutive days, other than in the case of a fund launch (which would be limited to 180 consecutive days starting on the day the fund launches) or fund reorganizations (which does not specify a required time frame).

We strongly oppose seeking to specify the circumstances in which a fund may depart from its 80% investment policy and adding arbitrary time frames in which funds must come back into compliance. Instead, we support the existing principles-based approach currently in the Names Rule. We believe that the SEC should retain the "under normal circumstances" clause used today in funds' 80% investment policies and refrain from introducing these new prescriptive compliance requirements that would be disruptive to portfolio management and cause needless harm to shareholders. Additionally, funds should have flexibility in monitoring and testing 80% investment policy compliance.

A. Temporary Departures Should Not Be Limited as Proposed

Funds need flexibility in managing portfolios through all market cycles, foreseeable or not. Different market events will impact different asset classes and investment strategies in sometimes unpredictable ways. We are concerned that including a list of specific circumstances when a fund can depart from its 80% investment policy is too limiting and will not account for the myriad circumstances under which a fund might reasonably depart from its 80% investment policy on a temporary basis. For example, "ABC Bond Fund" may undergo a change in investment policy to increase its ability to invest in emerging markets debt and below-investment-grade debt without a change in name or change in its policy to invest at least 80% of net assets in bonds. Repositioning the portfolio to the new strategy may result in the fund falling below the 80%-in-bonds requirement on a temporary basis. Other examples that could be problematic in this area include (i) a portfolio manager change where the strategy isn't changing but the new portfolio manager's implementation of the strategy results in portfolio repositioning and (ii) a benchmark change where the fund's portfolio securities are repositioned relative to the new benchmark. Beyond these examples, neither we nor the SEC can anticipate all the potential scenarios that could reasonably cause a fund to fall below its 80% investment requirement. Even deploying a large influx of

cash into certain investment strategies could reasonable take longer than 30 days. For example, an alternative strategy that invests in private equity might have significant difficulty investing a large in-flow within 30 days.

Portfolio managers are fiduciaries to the funds they manage and to limit their ability to prudently manage funds through all market cycles interferes with their fiduciary obligations. We acknowledge that rules under the 1940 Act regularly place limits on fund managers, but we believe that this aspect of the Proposal is overly prescriptive and, in the context of an 80% investment policy related to a fund name, wholly unwarranted. We believe the Proposal goes well beyond any sound investor protection justification and may be detrimental to investors if portfolio managers do not have the ability to strategically navigate unforeseen circumstances.

B. A 30-Day Limit on 80% Investment Policy Departures would be Harmful to Shareholders

The Proposal's 30-consecutive-day maximum limit on most temporary departures from 80% investment policies replaces the judgement of portfolio managers with a rigid time frame, and interferes with portfolio managers' ability to act in the best interests of shareholders. This requirement would likely cause harm to shareholders because the requirement would cause forced purchases and sales of fund investments at undesirable and inappropriate times and prices. These forced transactions could generate unwanted capital gains, increase transaction costs that would be borne by shareholders, and potentially have undesirable tax consequences. Diversification could be negatively impacted as well, which could have longer-term negative consequences for funds and their shareholders. These tangible negative impacts to retail shareholders are not justified by any intangible benefit of an arbitrary 30-day window to regain compliance with an equally arbitrary 80% investment policy.[24] Two recent market events, the impacts from the Russian invasion of Ukraine in February 2022 and effects of the ongoing global pandemic that began in the first quarter of 2020, demonstrate clearly that 30 days is an unconscionably short length of time to tie portfolio managers down to and interferes with their basic fiduciary duties to the funds they manage and those funds' shareholders.

A rigid 30-day period also could have the unintended consequence of homogenization across funds as different funds with similar strategies are pressured to sell the same securities at the same time to remain in compliance with 80% investment policies. The market impact of this dynamic is unpredictable, but could be substantial and detrimental. Consequently, we oppose requiring any rigid period to come back into compliance, and would instead recommend a standard of "as soon as reasonably practicable, consistent with the adviser's fiduciary duty to the fund."

C. A 180-Day Launch Period is Not Appropriate

In addition to our concerns with the 30-day limit on temporary departures in the Proposal, we are concerned that for certain types of funds (e.g., liquid alts) the 180-day period could be an insufficient

---

[24] We note that the SEC makes no attempt in the Proposal to justify why "30 consecutive days" is a reasonable or appropriate window for a fund to come back into compliance with it its 80% investment policy. Similarly, the SEC makes no attempt to justify why an investment policy should be keyed to 80%. The rationale of the SEC when originally adopting the Names Rule was that an 80% requirement would reduce confusion (presumably when compared to the 65% standard used by the SEC Staff and the industry from 1982 to 2002) when an investor selects a fund for specific investment needs and asset allocation goals. *See* Rule 35d-1 Adopting Release at Section I.

length of time. An alts fund may intentionally have a prolonged ramp-up period as the fund seeks appropriate opportunities to deploy its capital, consistent with its investment focus. Investors in these types of funds will understand the nature of the fund they have chosen and requiring a fund to rush to invest within 180 days would be counter to investor interests and expectations.

D. Compliance Monitoring of 80% Investment Policies

Monitoring compliance with an 80% investment policy is not as straightforward and black-and-white as the SEC seems to assume it is. Today, the 80% investment policy requirement applies to investment types or investments in a particular industry. In many cases, testing an 80% investment policy can be done at the time of investment, or even daily, when the test is regarding a type of investment. A time of investment or daily compliance test, however, is not straightforward for an 80% investment policy regarding an investment strategy. For example, an investment strategy that measures a certain metric over a given period that is longer than a single day would not lend itself to either a daily or a time-of-investment test. It is unclear how a potentially multi-year subjective concept can fit into a rule that requires daily compliance testing and has a 30-day cure period for non-compliance with an 80% investment policy. Funds should have the flexibility to determine the most appropriate way to monitor compliance with an 80% investment policy.

E. Alternative Approach

(i) Retain "Under Normal Circumstances" Clause

The "under normal circumstances" clause in today's 80% investment policies has served funds, their shareholders, and their portfolio managers well over time. It gives portfolio managers the flexibility to act in the best interests of shareholders in making investment decisions in accordance with a fund's objectives and strategies. It conveys to investors that the fund will typically be invested at least 80% in accordance with its stated investment policy, but at the same time signals that there may be "non-normal" circumstances during which the fund's portfolio manager may stray from this approach.

To the extent the SEC retains the prescribed list of specific circumstances under which a fund may depart from its 80% investment policy, a catch-all category should be added that allows a portfolio manager to reasonably determine to depart from the 80% investment policy when in the best interests of the fund and shareholders. This catch-all allowance should not be limited to any time frame.

(ii) Board Reporting and Oversight

Instead of a limited time frame to return to compliance with an 80% investment policy, a fund that falls out of compliance could instead be required to notify its board and present a plan to come back into compliance in a manner that is in the best interests of the fund and its shareholders. This might necessitate a longer period due to facts and circumstances. The number of days out of compliance requiring such notice and information to the fund's board might appropriately be set at 30 or 60 days or potentially longer, subject to established fund procedures, which would balance the interests of fund governance, the burden on the adviser and the board with respect to the escalation of these matters, and the time afforded to portfolio managers to manage the fund through market disruptions. Such timing might also permit and facilitate, subject to facts and circumstances, board oversight of such matters on a quarterly basis at regular meetings. This type of board oversight regime would be aligned with recent SEC rulemakings including liquidity risk management and the derivatives rule. Finally, as the SEC

states in its own Proposal, "[t]his approach could also provide funds with more flexibility to reduce loss during market crises and manage liquidity risk, which could, in turn, reduce any adverse effects that a fund's trading activity may have on the markets for the investments in its portfolio."[25]

VI. EFFECT OF COMPLIANCE WITH AN 80% INVESTMENT POLICY

We understand that the SEC does not view the Names Rule as insulating a fund from having a materially deceptive or misleading name under Section 35(d) of the 1940 Act. We have a number of concerns with the guidance offered in the Proposal, however, and request that the SEC provide additional clarity how funds are expected to implement the included principles.

A. Index Funds

(i) 80% Investment Policies

We are concerned that the Proposal articulates a standard where portfolio managers to passive index funds would be required to act as active managers to determine compliance with an 80% investment policy regarding investments indicated by the name of an index.[26] Currently, many index funds comply with the Names Rule by adopting policies to invest at least 80% of their assets in the securities that make up their index. Index funds typically do not conduct a security by security fundamental analysis of the companies included in the indexes they track. Under the Proposal, all index funds would be required to adjust their 80% policies and procedures substantially, to apply to the individual securities indicated in the fund's name (e.g., "small cap," "value," or "biotech") instead of just the securities in the index being tracked. This change would vastly change the landscape for many index funds.

Advisers may not have ready access to the data or analytics to test certain types of indexes on a daily basis and would need to incur additional costs to do so. For example, an index provider might construct an index that selects companies that derive at least 50% of their revenue from an industry that is not part of a traditional industry classification system. An unaffiliated fund that licenses this index might include the name of the index, which includes the name of the industry, in the name of the fund. It would not be feasible for the fund to independently verify on a daily basis that each company in the index (and the fund) complies with the revenue test that the index provider applies. This would require sufficient expertise and review of income statements of every company in the index. It is also unclear what the outcome would be to the extent a fund disagrees with the conclusion of an index provider. In this example, would a fund override the index provider to remove a security from the portfolio? This would lead to tracking error, which would not be a satisfying result for investors. The fund would be required to have a methodology in place for doing so and also a methodology for re-weighting the constituents. This type of involvement by a fund in the index construction would be akin to active management with an index screen as the first step.

An index fund with an 80% investment policy to invest 80% of its assets in its index should suffice for purposes of the Names Rule. Index funds should engage in appropriate due diligence to ensure that an index is being constructed in accordance with the relevant methodologies and consistent with the index name, but a fund should not be held accountable for the qualification of every index constituent on a

[25] Proposal at 150.
[26] Proposal at 70.

daily basis. This would be incredibly costly and in some cases simply impossible. Additionally, if an index rebalances once per year, it would not make sense for a fund tracking that index to reassess the index constituents and make adjustments to the fund's holdings based on this independent reassessment and deviate from the index (e.g., small cap fund where a small cap issuer becomes a mid cap name between rebalances). Ultimately, placing this additional burden on the fund could result in more generic fund names that do not contain the index name, essentially making fund names less helpful for investors seeking to identify the funds that track an index. Ultimately, this could result in more generic fund names that do not contain the index name, essentially decreasing the amount of useful information available to investors.

(ii) Alternative Approach

We understand the SEC's concern surrounding certain index funds (e.g., "thematic" funds and funds tracking custom indexes) and agree that funds should be required to ensure that certain index providers and indexes include investments that are consistent with the fund's name and with the index methodologies. Daily testing and monitoring, as discussed above, is both unnecessary and virtually impossible in most cases. The SEC's concern can be better addressed through funds' and investment managers' heightened review and/or governance of index providers. For example, an investment manager would implement policies and procedures that provide for initial due diligence and as-needed reviews of index methodology changes to ensure that fund names are "reasonable" in light of index methodologies. Policies and procedures could also define which indexes are in scope. An index made available by more than one unaffiliated sponsor (to both 1940 Act-registered products and/or other investment products) may present less concern that the methodologies are not being implemented as disclosed, and thus should be excluded from heightened diligence.

B. Compliance with the Names Rule

The Proposal includes a number of prescriptive amendments surrounding compliance with 80% investment policies, including certain specific circumstances under which a fund is permitted to depart from its 80% investment policy. The Proposal goes on to state that a fund's name could be deemed materially deceptive and misleading, even if the fund's departures from its 80% investment policy clearly fit within those specific circumstances. Thus, under the Proposal, which is intended to establish when the SEC believes a fund's name would be materially deceptive or misleading to investors, numerous requirements would be added that, when complied with to the letter of those provisions, can *still* result in a fund name being found to be materially deceptive or misleading. Given that, we do not believe the Proposal, with its broadened scope, additional reporting, and enhanced disclosure, would "define such [fund] names and titles as are materially deceptive or misleading."[27]

C. Antithetical Investments

The Proposal states that a fund that makes a substantial investment that is "antithetical" to the fund's investment focus as indicated in its name could deem the fund name to be materially deceptive or misleading, even if the fund is in compliance with its 80% investment policy.[28] The Proposal goes on to provide several examples of an antithetical investment. One example is a "fossil fuel free" fund

[27] See Section 35(d) of the 1940 Act.
[28] Proposal at 69.

investing in an issuer with fossil fuel reserves. While we generally support permitting a fund to "maintain up to 20% of its other investments,"[29] we understand that where a fund, specifically in its name, suggests that such fund will *not* invest in a type of security or industry, that fund name could be viewed as materially deceptive or misleading.

However, the other example, that of a short-term bond fund using its 20% basket to invest in volatile equity securities, is a wholly different situation and raises serious questions about the type of investments that would be considered antithetical. Further, as with other aspects of the Proposal, this would ultimately create new interpretive issues for the SEC staff and the industry.

We believe that the Proposal's guidance concerning "antithetical" investments should not be adopted because it is overbroad and poses significant risks of second-guessing. Evaluating whether an investment is antithetical to a fund's name, is highly subjective and may involve value judgments.

However, to the extent the SEC elects to provide guidance on antithetical investment, we would recommend that the SEC precisely define what is an antithetical investment as describe below, or at the very least offer additional clarity and examples of when they might view an investment as "antithetical" and how substantial an investment might need to be in order to be considered as such.

D. The Names Rule Should Not Apply to the 20% Basket

The SEC stated in its 2001 Names Rule adopting release that it is "concerned that restricting the investment of the remaining 20% of an investment company's assets would unnecessarily reduce the manager's flexibility without providing significant additional benefit to shareholders."[30] We agree. The Names Rule focuses on 80% of a fund's assets and is in place to ensure that a fund is invested substantially in a way consistent with terms used in the fund's name. The principle, in theory, protects those investors who do not read the fund's disclosure from being deceived or mislead by a fund's name. An investor cannot be protected from not reading a fund's disclosure as to the other 20% of the fund's assets. We agree that it would be misleading for a fund named "fossil fuel free" to add a strategy disclosure that states that it will invest in companies with fossil fuel reserves. We do not agree, however, that it would be misleading for an equity fund to add disclosure stating that up to 20% of the fund's assets can be invested in fixed-income securities. Absent a claim in a fund's name that the fund will *not* invest in something, a fund should be able to disclose in its strategies how it will invest its 20% basket.

VII. DERIVATIVES

We appreciate the SEC's efforts to modernize the treatment of derivatives under the Names Rule, and generally agree with the Proposal's derivatives provisions. However, we believe that there are several aspects of the derivatives provisions that should be modified and that would benefit from clarification to ensure that the provisions are applied uniformly and as intended by funds required to adopt an 80% investment policy.

With respect to the valuation of derivatives, the SEC Staff has been advancing its position that all derivatives should be valued, for purposes of determining compliance with an 80% investment policy,

---

[29] See Section II(A)(1) of the Rule 35d-1 Adopting Release.
[30] *Id.*

using their notional value for a number of years now. As a result, while not all of our members agree that notional value is the most appropriate valuation for every derivative instrument in all cases, many funds have already accommodated the SEC Staff's position and recognize the benefit of eliminating disparate valuation practices among funds with an 80% investment policy.

As with Rule 18f-4 (the "**Derivatives Rule**"),[31] the Proposal provides for certain adjustments to the notional value of a derivatives instrument. Specifically, the Derivatives Rule provides that "a fund *may* convert the notional amount of interest rate derivatives to 10-year bond equivalents and delta adjust the notional amounts of options contracts and exclude any closed-out positions, if those positions were closed out with the same counterparty and result in no credit or market exposure to the fund."[32] The Proposal, on the other hand, requires funds to make the adjustments and states that the SEC believes that "requiring these tailoring adjustments is appropriate for purposes of the names rule in order for a fund's 80% investment policy to best reflect the fund's investment exposure, which in turn would help ensure that the investment focus a fund's name communicates is not materially deceptive or misleading." We agree that the interest rate and delta adjustments may in some cases be appropriate when determining the notional value of derivatives instruments, but we think that determination should be left to the discretion of the fund manager. Not only is the fund manager in the best position to make such a determination, but permitting the use of such adjustments rather than requiring them would also be consistent with the approach taken by the Derivatives Rule. Given that the Derivatives Rule is designed to effectively limit the extent to which a fund may use derivatives to increase the fund's leveraged exposure and thus, limit leverage risk, we think the SEC took care to ensure that the prescribed calculation of derivatives exposure, including the optional adjustments, would generate an accurate measure of the exposure created by a particular derivatives transaction. As such, we are not persuaded that a fund's compliance with the Names Rule warrants a different and more conservative calculation of the notional value of a derivatives transaction. Moreover, the use of consistent calculations would ensure funds are able to benefit from the operational efficiencies created by applying the same derivatives exposure calculations to both the Names Rule and the Derivatives Rule.

The SEC also undertook to clarify which derivatives may be included in a fund's 80% basket. In this regard, we believe the SEC's intent was to confirm that appropriate derivatives instruments may be included in a fund's 80% basket. However, the Proposal's discussions of the requirement to use the notional value of derivatives included in a fund's 80% basket and which derivatives instruments must be included in the numerator versus the denominator may obscure this intent. We therefore recommend that the SEC consider clarifying that the Names Rule permits funds to include derivatives instruments in their 80% baskets where such derivatives instruments provide exposure, of one form or another, to the investments suggested by a fund's name, but does not require funds to include such derivatives instruments in cases where funds can satisfy their 80% investment policy requirement using other of the funds' portfolio holdings. We believe that this approach is also consistent with the intent of the Names Rule to require that funds demonstrate a minimum investment in the investments suggested by their names.

We particularly appreciate the SEC's recognition that funds often use derivatives instruments to provide complementary investment exposure to the investments suggested by a fund's name, including exposure

---

[31] 17 CFR § 270.18f-4, Use of Derivatives by Registered Investment Companies and Business Development Companies.

[32] Rule 18f-4(a) (Definition of "Derivatives Exposure") (emphasis added).

to the market risk factors associated with such investments, and that it is appropriate to include such derivatives instruments in a fund's 80% basket. We also agree that a fund's short positions, whether implemented through the use of derivatives instruments or physical short sales, should be permitted to be included in a fund's 80% basket where such positions provide complementary exposure to the investments indicated by a fund's name. With respect to short positions, whether accomplished through the use of derivatives instruments or the physical short sale of a security or other asset, we believe that the SEC should require that funds use the notional value of such positions for purposes of determining compliance with the funds' 80% investment policies.

We also think that the Staff should clarify that interest rate and currency derivatives, including those used for hedging purposes, are permitted to be included in a fund's 80% basket consistent with the SEC's discussion of the inclusion of derivatives instruments that provide exposure to the market risk factors associated with investments indicated by a fund's name. In addition, we think that the Staff should permit funds to exclude from the 80% calculation closed-out derivatives positions involving different counterparties where such positions otherwise offset market risk and exposure. We do not believe that requiring a closed-out position to be with the same counterparty is necessary to meet the policy concerns for the Names Rule which is focused on an investment's economic exposure rather than eliminating counterparty risk.[33]

The Proposal could be read to suggest that cash and cash equivalents are never used as investments that "themselves provide market exposure."[34] That, however, is not necessarily the case. For example, funds may employ investment strategies that seek exposure to the U.S. government through derivatives instruments, as well as cash and cash equivalents. We, therefore, encourage the SEC to clarify that the value of cash and cash equivalents would be permitted to be included in both the numerator and denominator of a fund's 80% investment policy calculation when such investments provide market exposure. Further, such investments should be included and count toward the 80% test regardless of whether they also serve as collateral. This approach is consistent with the SEC's stated goal of more accurately reflecting a fund's investment exposure.

With these clarifications and modifications, we think the SEC's provision for the uniform treatment of derivatives under the Names Rule would be a well-received improvement.

VIII. ESG FUNDS

ESG is a growing focus area for funds and investors globally. We understand the SEC's concern with greenwashing, and we agree that it is important for investors to understand how a fund that considers

---

[33] The SEC took a similar position in its 2015 Derivatives Rule proposal stating: "With respect to transactions that are directly offsetting but involve different counterparties, we note that, although a fund would remain exposed to counterparty risk, such offsetting transactions could reasonably be expected to eliminate market risk associated with the offsetting transactions if they are the same type of instrument and have the same underlying reference asset, maturity and other material terms. Accordingly, we believe that such transactions are an appropriate means to eliminate or reduce market exposure under derivatives transactions even if entered into with different counterparties for purposes of the rule's exposure limits, which are designed to limit the extent of the fund's exposure." Use of Derivatives by Registered Investment Companies and Business Development Companies, Release No. IC- 31933; (Dec. 11, 2015) at https://www.sec.gov/rules/proposed/2015/ic-31933.pdf at 81.
[34] Proposal at 53.

ESG factors implements its strategy. A universal 80% investment policy requirement for funds with ESG terms in their names does not achieve this important objective—enhanced ESG disclosure would.

A. <u>ESG as an Investment Strategy</u>

ESG is a term of art that captures a wide array of investment approaches and lacks standard terminology and definitions. Additionally, it is a developing and constantly evolving area that has seen tremendous growth and innovation in the last several years. Investor demand drives these dynamics, and all signs are that it will continue to do so. For these reasons, we agree that ESG funds should be carefully considered vis-à-vis the Names Rule to ensure that investors are not subject to the risk of being misled by a fund's name. By contrast, investment strategies such as growth, value, and income are well-established and commonly understood investment strategies and have not presented risks to investors over time, nor have their names been materially deceptive or misleading to investors. ESG funds should be subject to the Names Rule because ESG terms in a fund's name could be confusing or misleading to investors, not because ESG is an investment strategy like growth, value and income funds are. Requiring an 80% investment policy for all ESG funds is not helpful to investors, especially if an 80% investment policy would not be consistent with an ESG fund's investment strategies. An 80% investment policy in this case could actually lead to investor confusion.

B. <u>Alternative Approach</u>

As an alternative to an 80% investment policy requirement, the SEC could define any fund name containing an ESG term to be materially deceptive or misleading unless the fund complies with all enhanced disclosure requirements for ESG funds. A fund with an ESG term in its name would be defined as an "ESG-Focused fund" and thus be subject to enhanced ESG disclosure requirements.[35] This approach would ensure that all funds with ESG terms in their names would include robust disclosure regarding the ESG aspects of their investment strategies in their prospectuses. Investors would be protected because a fund would not be able to include an ESG term in its name for marketing purposes alone without meeting the high bar of including enhanced disclosure regarding its investment strategies.

Under this proposed alternative approach, ESG funds could be a separate subsection of the Names Rule and define a fund name containing one or more ESG-related terms to be materially deceptive or misleading if the fund does not comply with enhanced disclosure requirements that apply to ESG funds. Our views related to enhanced disclosure requirements for ESG funds are expressed in our letter dated August 16, 2022 in response to the SEC's ESG Rule Proposal.

IX. FORM N-PORT REPORTING REQUIREMENTS

The Proposal would require funds that have 80% investment policies in place to report on Form N-PORT the value of their 80% basket and, if applicable, the number of days the 80% basket fell below 80% during the reporting period. The Proposal would also require a fund, in N-PORT, to tag each portfolio investment to indicate whether it is included in the fund's 80% investment basket. The Proposal's N-PORT reporting requirements should not be adopted as proposed.

---

[35] ESG Rule Proposal at 24.

A. Proposed Form N-PORT Amendments are Not Justified and Will Not Be Helpful to Investors

The SEC indicates in the Proposal that N-PORT reporting information pertaining to a fund's 80% investment policy would be helpful not only to the SEC and its Staff but also to investors. Specifically, the SEC states that information about the percentage of a fund's assets that are invested in the 80% basket "may allow investors in such funds to make investment choices that are more consistent with their investment preferences."[36] We find this justification curious given that the thrust of the Proposal and the Names Rule more generally is focused on protecting those investors who choose an investment based *solely* on the name of a fund and without reading the disclosures included in the fund's prospectus or elsewhere. It is likely that many investors who make a habit of closely reading their funds' prospectuses are not aware of Form N-PORT and the types of information reported therein, let alone investors who do not take the time to read fund prospectuses and base their investment decisions solely on the names of funds.

Additionally, the Proposal states that the Form N-PORT reporting would enable shareholders to compare funds and provides an example in which a shareholder may determine a fund with 95% of its assets invested in accordance with its investment focus might be preferable to that investor than a fund with only 81% of its assets invested in accordance with its investment focus. This is a dangerous justification and example. As discussed elsewhere in this letter, the 80% investment policies of two funds that both include the same term in their names are likely to have two different 80% investment policy formulations. For example, a shareholder comparing two XYZ Entertainment Funds based on the fact that Form N-PORT tagging indicates one fund invests 82% of its assets in accordance with its 80% policy and the other 95% of its assets would miss the fact that the latter fund's 80% investment policy states that it will invest 80% of its net assets in companies that produce, distribute or market children's television and related toys, while the first fund's 80% investment policy states that it will invest 80% of its net assets in companies that derive 90% of their annual revenue from the production and licensing of television programs and movies. While this may seem like an exaggerated example, an investor could just as easily be comparing two cannabis funds that have 80% investment policies focused on completely different aspects of the cannabis ecosystem (e.g., agricultural growth and harvesting versus dispensaries and companies involved in the distribution of cannabis).

In addition to differing 80% investment policies, the investments that one fund considers appropriate and tags for its 80% basket also may differ from the tagging approach taken by another fund. Ultimately, if an investor relies on the proposed N-PORT reporting, they will not really be looking at comparable information across two funds with similarly *named* strategies. It is also worth noting that the information to be reported in Form N-PORT is backward looking and funds' portfolios generally are not static. As a result, if a shareholder were to consult Form N-PORT for this purpose, the shareholder would be making an investment decision based on stale and incomplete investment information. While we generally support making information about fund investments more accessible to shareholders, we think it is important to do so in a manner that does not prioritize ease of access over careful consideration of complete disclosure about the investment.

While the additional Form N-PORT reporting items may aid the SEC and its Staff with its oversight of registrants required to comply with the Names Rule, we do not agree that it will be beneficial to investors. Further, we think the cost-benefit analysis for this part of the Proposal should therefore focus

---

[36] Proposal at 97.

on the fact that these reporting requirements are for the benefit of the SEC and its Staff. In this light and with the knowledge that the SEC already has access to all of a fund's portfolio holdings, we think the benefits of the proposed requirements are not likely to outweigh the cost to managers of modifying their compliance-monitoring programs to enable them to generate information responsive to the proposed N-PORT requirements.

X. TRANSITION PERIOD AND COMPLIANCE DATE

We are concerned that the Proposal's one-year compliance period is grossly inadequate for funds to implement the significant changes that would be required if the Proposal is adopted as proposed. The Proposal would not just expand the scope of the Names Rule, it would fundamentally change the operation of the rule and alter the way the rule works in practice. We estimate that two years would be the minimum time reasonably required to come into compliance with all of the changes included in the Proposal.

Implementing the changes in the Proposal would be a significant undertaking. As a first step fund sponsors would need to analyze which funds would be subject to the Names Rule as amended. The time involved in this exercise alone should not be underestimated. Given the subjective nature of the proposed "particular characteristics" category, determining whether certain fund names would be captured by this category would not be straightforward and could prove challenging, particularly for larger fund complexes. A second related step would involve making decisions related to funds newly subject to the Names Rule. Some funds may opt to change their names to avoid being required to change their investment strategies. Others would be required to change their investment strategies because of the terms used in their names. An 80% investment policy requirement would also not be a straightforward implementation exercise—funds would need to determine what their 80% investment policy would be. This will be especially challenging and time consuming for fund names that indicate an investment strategy.

Once all requisite decisions are made and a compliance plan is determined, the next steps involve necessary Board approvals, registration statement updates, and shareholder notifications. In some cases, shareholder approval through a proxy solicitation will be required. Each of these steps could take a significant amount of time. Additional time would be required for larger fund complexes. Also, certain intermediary partners require longer notices than required by the SEC (e.g., 90-day notice to change a fund name is required by many defined contribution plans).

From an operational perspective, the necessary compliance system updates to establish processes for compliance monitoring and testing might be the most significant and time-consuming part of the implementation process. Some of these upgrades and modifications could be done parallel with the above steps, but some of the more operationally complex elements could not be completed until the above decisions are made. For example, compliance testing on an 80% investment policy could not be built out in a compliance system until the parameters of the 80% investment policy are determined and approved. Additionally, many compliance systems would require significant modifications in order to monitor and test for the proposed requirements. As an example, one fund may consider a given security to be classified as a growth security, while another fund may consider the same security to be a value security, and a third fund in the same complex may consider the same security to not be a growth or a value security. The complexity of coding these classifications into a compliance system would not be trivial. A manager-of-managers context would introduce further complexity if two fund managers viewed the same security differently.

Additionally, from a practical standpoint, the timing of the implementation of final Names Rule amendments should be considered in the context of the resources that will be necessary for the implementation of other final rules that might be adopted at the same time or have overlapping compliance periods. Many open rulemakings would require similar implementation resources within fund complexes, and as such would increase the costs of implementation substantially.

XI. ENHANCED PROSPECTUS DISCLOSURE

The Proposal includes amendments to registration statement forms that would require funds that are subject to 80% investment policies under the Names Rule to define terms used in their names that are related to their investment focus or strategies, together with the specific criteria used to select investments that the terms describe. We support the proposed prospectus disclosure amendments requiring the definition of investment focus-related terms used in a fund's name and agree with the SEC that many funds include the contemplated disclosure currently. We particularly agree with the SEC's position that funds would "have flexibility to use reasonable definitions of the terms that their names use" and acknowledgment that there may be multiple reasonable definitions for the same term.[37]

We also support the requirement that a fund disclose the specific criteria that the fund uses to select the investments the terms in its name describe. However, we hope that the SEC will appreciate that funds will require discretion in determining the extent of any such disclosure to ensure that a fund is not disclosing a roadmap for would-be front-runners or otherwise disclosing proprietary information that could be harmful to the fund or the fund manager.

In our view, the proposed inclusion of definitions linking the terms used in a fund's name with its investment strategy and the general investment selection criteria considered would be helpful to investors of all funds, regardless of whether the fund is subject to the Names Rule as adopted, or as proposed to be amended. Requiring a fund to clarify what its name means and how the name relates to the fund's investment strategy is good disclosure and should apply to all funds. If the SEC's objective with this Proposal is to enhance investor protection, applying this proposed disclosure requirement to all funds would further that objective. As we have offered throughout this letter, a fund's investment strategy disclosure is critical to an investor's understanding of what a fund intends to invest in and how it intends to achieve its investment objective using those investments. A fund's name is only one piece of information and is not sufficient to serve as the basis for an investor's investment decision. Investors should instead be encouraged to make an investment decision only after carefully reading, at a minimum, a fund's prospectus, and we should strive to make the fund's prospectus disclosure clear, informative, and complete. The Proposal states: "We believe that [this] provision would help the investor understand whether the investment focus the name suggests is consistent with the investor's investment goals and risk tolerance."[38] We agree.

XII. COST BENEFIT ANALYSIS

We believe that the SEC's cost benefit analysis in the Proposal is flawed in multiple ways. To start, the SEC has not identified or quantified any harm to investors under the current construct of the Names Rule. Similarly, any envisioned benefits of the Proposal are not articulated sufficiently. The cost

---

[37] Proposal at 74.
[38] Proposal at 127.

analysis in the Proposal misses the mark, and the compliance cost estimates underestimate the impact that the proposed amendments would have on funds and their shareholders.

A. The Benefits to Shareholders are Insufficient to Justify the Proposal

(i) Expansion of Scope

The Proposal offers the following benefit related to the expansion of scope of the Names Rule:

> *Names Suggesting an Investment Focus*. To the extent fund names are not representative of funds' investment focuses, existing and potential investors may hold, or invest in, funds with risk and return characteristics that differ from investors' reasonable expectations. Absent investor protections with respect to fund holdings, *existing investors may expend resources they otherwise would not expend to confirm fund investments*, or they may choose to reduce or eliminate their investments in funds. Similarly, uncertainty about fund holdings could cause potential investors *to expend greater resources to confirm fund investments prior to investment or, could lead potential investors to invest less or forgo investment altogether*. The proposed amendments would extend the provisions of the names rule to a broader set of fund names. We believe that investors would benefit to the extent that the scope expansion helps ensure that a fund's investment activity supports the investment focus its name communicates and, thus, the investor expectations the name creates.[39]

We find this justification perplexing. The purpose of the Names Rule is to protect investors who read a fund's name and make an investment decision based on the name alone. The purpose of the Names Rule is not to save investors (who neglect to read strategy disclosure) the resources it would take for them to confirm how a fund invests through reviewing a fund's current holdings. All investors have access to periodic fund holdings. As discussed throughout this letter, expanding the scope of the Names Rule to subject investment strategies to an 80% investment policy requirement would not provide a benefit to shareholders, especially because two similarly named funds might execute their investment strategies very differently. Reviewing fund holdings is one way an investor could educate herself on how a fund invests. An 80% investment policy would have little bearing on this.

(ii) Temporary Departures

Equally perplexing is the Proposal's justification for limiting temporary departures:

> We believe that funds and their shareholders would benefit from the degree of flexibility that the proposed approach would provide, as it would allow fund managers to depart temporarily from the 80% investment requirement in particular, time-limited circumstances when doing so would be beneficial to the fund and its shareholders, while providing additional parameters designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time.[40]

[39] Proposal at 122-23 (emphases added).
[40] Proposal at 124.

The SEC claims to permit temporary departures when such departures would be beneficial to the fund and its shareholders, yet the 30-day limit on such departures completely ignores the best interests of the fund and shareholders beyond 30 days, and ignores these interests after that time. As discussed above, we feel that this aspect of the Proposal would cause harm to investors. The SEC has not provided a justification for the 30-day time period, nor does the SEC offer an estimate of the costs and benefits of such a period.

B. The Proposal's Approach to Costs is Flawed

(i) Expansion of Scope

The Proposal states, regarding the costs associated with expanding the scope of the Names Rule:

> We believe funds with names that would be newly scoped into the names rule's 80% investment policy requirement under the proposed amendments already have systems in place for monitoring compliance with existing principal investment strategy disclosure requirements. As a result, we believe funds with names that would be newly scoped in already have internal systems that could be used to assess compliance with the proposed rule. Funds would need to develop new, or revise existing, recordkeeping processes as discussed below. Funds with names that are newly scoped into the 80% investment policy requirement may also face an indirect cost in the need to calculate whether a specific asset would qualify as part of a fund's 80% basket.[41]

The SEC's belief that "funds with names that would be newly scoped in already have internal systems that could be used to assess compliance" with the amendments is erroneous. This type of compliance monitoring for an investment strategy would be novel and potentially require substantial changes and updates to compliance systems. A single holding in a fund complex could be considered to be a "growth" security by one fund, a "value" security by another fund, and a third, fourth, fifth, etc., type of holding for other funds in the complex. Coding these classifications and testing compliance at the fund level daily, or at time of trade, would involving significant costs.

The SEC further ignores the considerable costs and burdens on index funds that the Proposal would present. Index funds typically do not test for compliance with the Names Rule on a security by security basis, but typically test for whether 80% or more of the fund's assets are invested in the securities of the fund's index. As we discuss above, extending the reach of the Names Rule beyond this for index funds would be unworkable and extraordinarily costly, as funds would be stepping into the shoes of index providers to assume a function that index funds do not play today.

The SEC also classifies the costs involved in calculating these classifications as "indirect." We disagree. The amendments in the Proposal create a compliance regime that would be material to the day-to-day management of a fund's portfolio. This would be a very direct cost to funds and, thus, the fund's investors.

[41] Proposal at 136.

(ii) Temporary Departures

The costs articulated in the Proposal associated with the restrictive 30-day allowance for temporary departures highlights the costs to shareholders of implementing this requirement more so than the costs to shareholders of *not* implementing the requirement:

> For example, investors may experience lower returns if funds are forced to sell assets at depressed prices, or in a tax-disadvantaged manner, or if funds are forced to purchase less liquid securities in a compressed timeframe which could drive up the price for those securities. Also, to the extent that funds' assets become less liquid during a market crisis, funds' ability to manage liquidity risk may be affected as well as funds' ability to meet redemptions. Conversely, a departure for longer than 30 days to address a market disruption might frustrate the expectation of investors who may expect the fund to invest consistent with its stated investment focus even during market disruptions, and therefore may choose to rebalance investments on their own rather than relying upon the fund to do so. To the extent that they do not already have systems in place for doing so, funds would have to set up systems to monitor departures from the 80% investment requirement, the reasons for departures, and the time limits for returning to the 80% investment requirement.[42]

We are concerned that the SEC feels the real tangible costs associated with forced selling and buying—including the potential for realized losses as well as the impact of taxes on realized gains—are *less* harmful to shareholders than the "frustrated expectations" of investors who may expect the fund to invest consistent with its name even during market disruptions, and at any cost. As discussed above, this component of the Proposal is arbitrary and would be harmful and costly to funds and their shareholders. The SEC has not quantified these costs to funds and investors that the Proposal would impose. "Under normal circumstances" has worked well over time to communicate to investors that the fund may deviate from its 80% investment policy when the portfolio manager deems it in the best interests of the fund and shareholders to do so. This construct should be retained.

C. The Proposal Ignores or Underestimates Certain Cost Categories

We are concerned that the Proposal does not fully account for the economic impacts that the proposed requirements will have across the funds industry. For example, the Proposal would add significant new testing requirements for index funds. The added costs of testing for compliance of each individual security would potentially be significant and could potentially make it more expensive to manage index funds. The SEC makes no serious effort to quantify these costs and the potential impact to index fund investors—a traditionally low-cost sector of the fund industry.

Certain aspects of the Proposal would lead to funds being required to materially amend their disclosures, requiring 485(a) filings, shareholder notices, and in some cases seeking shareholder approvals though proxies—all of which would involve a substantial cost. Associated mailing costs would be significant as well given the Names Rule shareholder notice requirements. Updated disclosure information would also necessitate updating similar disclosure in other places, including marketing materials and website disclosures, with associated costs.

---

[42] Proposal at 137.

Ongoing compliance and operational costs would be vast, and are difficult to estimate—particularly for the parts of the Proposal requiring building out of novel manual processes to monitor 80% tests for strategies that have not previously been treated as "investment types." The costs associated with new Form N-PORT reporting requirements in the Proposal would be significant and might require new vendor data (with associated costs) and related operational costs including updates to post-trade compliance systems to perform daily testing as well as mapping of data to N-PORT files. Additionally, the costs associated with iXBRL tagging as proposed would be significant. These operational compliance costs should not be underestimated, particularly where each strategy in a large fund complex might necessitate manually built compliance rules to comply with the Proposal. We are concerned, as we have stated throughout this letter, that these enormous costs would not be justified by a benefit to funds or to fund investors.

XIII. UNLISTED BUSINESS DEVELOPMENT COMPANIES AND CLOSED END FUNDS

The Proposal would require an unlisted business development company ("**BDC**") or closed end fund ("**CEF**") that is subject to the Names Rule to adopt its 80% investment policy as a fundamental policy. We encourage the SEC to reconsider this proposed requirement. Imposing this requirement would be a departure from the flexibility the SEC provided when it adopted the Names Rule and many funds' current practices. It also would create an unlevel playing field among listed and unlisted CEFs and BDCs, as well as with respect to UITs and open-end funds. Perhaps most importantly, the proposed requirement would hamstring a fund's ability to make strategy changes even when deemed in the best interest of a fund and its shareholders and would increase fund expenses when such a change is unavoidable.

As noted with respect to other of the Proposal's requirements, the SEC has not articulated a related risk to investors, specifically investors who seek investment opportunities in these types of vehicles, that would justify this change. Many, if not most, unlisted CEFs and BDCs offer some form of periodic liquidity, including through interval liquidity events or tender offers, and the fact that the funds do not issue redeemable securities is prominently disclosed in such funds' prospectuses. As a result, shareholders invest in such funds with full knowledge that they may not be able to redeem their investments if the funds do not perform as expected. Shareholders of unlisted CEFs and BDCs are nonetheless willing to make such investments in exchange for the funds' ability to potentially generate greater returns from their less liquid or more leveraged investments. Thus, absent a showing of investor harm, it is not at all clear to us that such investors would prefer to pay increased fund expenses and decrease their potential returns so that they can approve the fund manager's decision to modify the fund's 80% investment policy. Limiting the ability of a BDC or CEF to change its investment policy would introduce an arbitrary restriction on investment flexibility and limit or eliminate certain potential benefits to investors when changing a nonfundamental investment policy would be in the best interests of shareholders. The costs associated with seeking shareholder approval to change a fundamental investment policy would be an unnecessary added cost with no associated benefit. Without any offered evidence of the harm caused by this practice, this proposed requirement appears to be wholly unnecessary and not without an adverse effect on CEF and BDC shareholders.

XIV. UNIT INVESTMENT TRUSTS

We support the SEC's efforts to modernize the Names Rule, particularly with respect to ensuring that the name of a UIT is consistent with the selection process for its fixed portfolio of securities. We also appreciate that the SEC proposes to include certain exceptions for UITs that make or have made their

initial deposit of securities prior to the effective date of any final rule. However, because UITs offer fixed portfolios, we think it would be appropriate to exclude all operational or post-deposit UITs from the requirement to comply with the Names Rule.

The hallmark of a UIT is that it seeks to maintain a fixed and transparent portfolio of securities for a specified term, regardless of how market movements impact the weighting of those securities or whether the investment thesis underlying the selection of the securities comes to fruition. Many of the risks associated with the management of a fund, the portfolio of which must be managed on a day-to-day basis to seek to achieve its investment objective, are not applicable to a UIT because of the static nature of its portfolio. The fact that a UIT's portfolio is transparent to unitholders also eliminates the concern that a unitholder may not fully appreciate the types of investments in which the UIT invests. In recognition of their unique risk profile, UITs are subject to different requirements under the 1940 Act. For example, the 1940 Act and the rules thereunder do not require UITs to provide unitholders with semi-annual and annual reports in contrast to the requirements applicable to other types of investment companies. Rather, the 1940 Act places an emphasis on the prospectus, which discloses, for the benefit of potential investors, the securities the UIT holds, how they were selected and how long they will be held. To this end, requiring pre-deposit UITs to comply with the Names Rule is reasonable and would address the SEC's concerns regarding investor reliance on misleading or deceptive fund names.

We do not support, however, subjecting post-deposit UITs to those Proposal requirements that would regulate UITs after their deposit. This includes requiring UITs to detail departures from their 80% investment policies, which UITs—by law and contract—are essentially unable to correct, and to provide notice to unitholders in the event of such a departure. This approach is consistent with the fact that the 1940 Act and the rules thereunder do not require UITs to notify unitholders when market movements change the weighting of securities in a UIT's portfolio, even if such change is dramatic. In addition, we believe that this approach comports with unitholder expectations. Given a UIT's fixed and transparent portfolio, the elements of which are configured at the time of deposit, we believe UIT investors expect that an applicable 80% investment policy is measured at the time of deposit rather than on an ongoing basis. For the same reasons, we believe that the proposed notification of departure from an 80% investment policy would be of minimal interest or benefit to unitholders.

If the SEC is not amenable to excluding all post-deposit UITs as suggested, we think the SEC should consider at the very least excluding post-deposit UITs for which the offering period has closed. Because a UIT's interests will no longer be offered to investors after the close of its offering period, it is not possible for an investor to invest in the UIT in reliance on a deceptive or misleading UIT name.

XV. CONCLUSION

SIFMA AMG appreciates the opportunity to provide these comments and sincerely appreciates your consideration of our feedback. We would be pleased to further engage on the comments contained in this letter or on the Proposal generally. Please do not hesitate to contact Lindsey Keljo at 202-962-7312 (lkeljo@sifma.org), or our outside counsel, Morgan, Lewis & Bockius LLP, at 202-373-6799 (john.mcguire@morganlewis.com), 202-373-6101 (laura.flores@morganlewis.com), or 617-341-7810 (amy.mcdonald@morganlewis.com) with any questions.

Sincerely,

Lindsey Weber Keljo, Esq.
Head – Asset Management Group
Securities Industry and Financial Markets Association

cc: Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission
Honorable Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
Honorable Jaime Lizárraga, Commissioner, U.S. Securities and Exchange Commission
Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Honorable Mark T. Uyeda, Commissioner, U.S. Securities and Exchange Commission
Mr. William A. Birdthistle, Director, Division of Investment Management, U.S. Securities and Exchange Commission