

CONSULTATION RESPONSE

SECURITIES AND EXCHANGE COMMISSION FILE NO. S7-16-22: INVESTMENT COMPANY NAMES

16 August 2022

The information contained in this response is provided for informational purposes only and should not be construed as legal advice on any subject matter. Except where expressly stated otherwise, the opinions, recommendations, findings, interpretations and conclusions expressed in this response are those of PRI Association, and do not necessarily represent the views of the contributors to the response or any signatories to the Principles for Responsible Investment (individually or as a whole).

To inform this response, the following investor groups have been consulted: PRI Global Policy Reference Group. This consultation is not an endorsement or acknowledgement of the views expressed in this response.

INTRODUCTION

The Principles for Responsible Investment (PRI) is the world's leading initiative on responsible investment. The PRI has now over 5000 signatories, including pension funds, insurers, investment managers, and service providers to the PRI's six principles with approximately US\$121 trillion in assets under management.¹

The PRI supports its international network of signatories in implementing the Principles. As long-term investors acting in the best interests of their beneficiaries and clients, our signatories work to understand the contribution that environmental, social and governance (ESG) factors make to investment performance, the role that investment plays in broader financial markets and the impact that those investments have on the environment and society as a whole.

The PRI works to achieve this sustainable global financial system by encouraging adoption of the Principles and collaboration on their implementation; by fostering good governance, integrity and accountability; and by addressing obstacles to a sustainable financial system that lie within market practices, structures, and regulation. The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research.

The PRI welcomes the opportunity to respond to the US Securities and Exchange Commission's ("SEC" or "The Commission") proposed rulemaking on climate-related disclosures.

¹ Principles for Responsible Investment (May 2022), <https://www.unpri.org/signatories/signatory-resources/signatory-directory>.

ABOUT THIS CONSULTATION

This document responds to the SEC File No. S7-16-22: Investment Company Names (“Proposal” or “Proposed Rule”). The Proposed Rule seeks, among other things, to increase investor protection and reduce potential greenwashing from registered investment companies or business development companies (“funds”) by expanding the current requirement for certain funds to adopt a policy to invest at least 80 percent of their assets in accordance with the investment focus the fund’s name suggests and providing new enhanced disclosure and reporting requirements.

In 2001, the SEC adopted Rule 35d-1 under the Investment Company Act (the “Investment Company Names Rule” or “Names Rule” or “Fund Names Rule”) to help ensure that investors are not misled or deceived by a fund’s name.²

In 2020, Chair Clayton issued a Request for Comment seeking feedback on the effectiveness of the Fund Names Rules’ applicable requirements in an effort to “better inform and protect Main Street investors and improve their investor experience”.³ The PRI submitted a response to the SEC’s request for comments on Names Rule in May 2020.⁴

As an investor-focused organization, the PRI’s response is grounded in the perspective of a reasonable investor and evidence-based policy research.

For more information, contact:

Greg Hershman

Head of US Policy

gregory.hershman@unpri.org

Sandrine Siewe

Senior Policy Analyst

sandrine.siewe@unpri.org

² The Securities and Exchange Commission [Investment Company Act Release No. 24828](#) (Jan. 17, 2001). The Commission stated in the adopting release for the Names Rule that Congress “recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.”

³ SEC Press Release, Request for Comments on Fund Names, Investment Company Act Release No. 33809 (Mar. 6, 2020)] [SEC.gov | SEC Requests Comment on Fund Names Rule; Seeks to Eliminate Misleading Fund Names](#)

⁴ Principles for Responsible Investment (May 5, 2020), [File No. S7-04-20: Request for Comment on Fund Names](#).

SUMMARY OF THE PRI'S POSITION

The PRI supports the Securities and Exchange Commission's efforts to ensure that funds' names reflect their investments in the fund and address materially misleading or deceptive fund names, in line with the SEC's mission to protect investors. Modernization of the Fund Names Rule to incorporate fund characteristics, including ESG terms, will provide investors with necessary information on the attributes and strategies of the fund.

Signatories to the PRI commit to six principles to advance their own responsible investing strategies that include the incorporation of ESG analysis into their investment decisions. They consistently voice that lack of access to consistent and comparable ESG-related information is a barrier to their efforts to effectively integrate ESG factors into their investment decisions. The following recommendations are guided by the PRI's efforts to advance policies that will improve their access to such information.

KEY RECOMMENDATIONS

The PRI recommends that, in order to provide for a more sustainable capital market that protects investors from deceptive or misleading practices, the Commission finalize the following proposed rules: 1) *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Disclosure Proposal),⁵ 2) *The Enhanced Reporting of Proxy Votes by Registered Management Investment Companies*, 3) *Reporting of Executive Compensation Votes by Institutional Investment Managers*,⁶ and 4) *The Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices* (Investment Adviser Proposal). The finalization of these proposed rules is necessary to provide accurate information to investors to feed into fund management and asset selection. Without consistent, comparable and comprehensive ESG information, investors' understanding of their investments is inherently limited.

The PRI's key recommendations on the Proposed Rules are:

- **Further coordinate efforts with standard-setting bodies and regulators to ensure consistency, prevent market fragmentation and improve interoperability.**
- **Define the term "characteristics" and clarify the expectations for funds on how to determine an investment focus with such characteristics.**
- **Require any fund utilizing "ESG", "sustainable" or other related terms suggesting a specific focus in its name to provide the enhanced disclosure required for "ESG-Focused Funds" in the Investment Adviser Proposal.**
- **Limit the ability of funds to use ESG-related terms as part of a fund's name if ESG inputs are merely one factor among many driving an investment decision, as this would mislead investors.**

⁵ Principles for Responsible Investment (June 17, 2022), [Consultation Response: Securities and Exchange Commission File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)

⁶ Principles for Responsible Investment (December 14, 2021), [Consultation Response: Securities and Exchange Commission File No. S7-11-21: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers](#).

GENERAL COMMENTS

GREENWASHING

The PRI supports the underlying principle of the Fund Names Rule to prohibit funds from using materially deceptive or misleading names. Regardless of the reasons for adopting a name, funds should be cognizant of the potential information their names will convey to investors, including funds promoting ESG characteristics. Since the Names Rule was adopted in 2001, the fund industry has considerably changed, and therefore, we agree that a modernization of the Names Rule is appropriate and timely. Indeed, expansion of the rule's 80% investment policy requirement to apply to fund names with terms suggesting an investment focus or particular characteristics will support investor efforts to distinguish and choose between different types of funds.

As stated above, the PRI also believes that modernization of the Fund Names Rule will be supported by final adoption of proposals that would create a mandatory ESG disclosure regime for issuers and enhance existing fund disclosures on proxy voting and shareholder engagement policies. These requirements would provide investors and market participants with a clear and accurate picture of an organization's ability to create sustainable value over time, combat greenwashing and modernize our financial system to respond to the continued growth of ESG considerations.

ShareAction, a non-profit that promotes responsible investment, defines the term "greenwashing" as "the practice of misrepresenting sustainability-related practices or the sustainability-related features of investment products."⁷ For marketing purposes and in order to promote their "green" credentials, some asset owners may label products as sustainable in a deceptive manner, without necessary changes in the underlying investment objectives and strategies.

The PRI supports the Commission's efforts to ensure investors' assets in funds are invested in accordance with their reasonable expectations based on the fund's name. Per the recent guidance published by the Australian Securities and Investments Commission *How to avoid greenwashing when offering or promoting sustainability-related products*,⁸ and as illustrated in Table 1, the Commission should consider the possible ways that funds could misrepresent the fund's investments and objectives, which may, in turn, mislead investors into purchasing funds that appear to be focused on ESG factors or sustainability.

⁷ ShareAction (March 2020), [Point of No Returns: A ranking of 75 of the world's asset managers approaches to responsible investment](#).

⁸ The Australian Securities Commission (June 2022), [How to avoid greenwashing when offering or promoting sustainability-related products](#) | ASIC - Australian Securities and Investments Commission.

Table 1: Types and Examples of Greenwashing

Types of Greenwashing	Examples
Products that aren't true to label	The fund manager for a “Social Investing Fund” balances various factors when considering an investment. However, the sustainability-related considerations (i.e. the social matters) are not significant in the fund manager's investment decisions.
Vague terminology requiring further clarifying disclosures	In its marketing materials, a fund claims that it is committed to making investments that “ <i>contribute towards positive impacts for its investors and the world</i> .” However, it does not disclose what it considers to be “positive impacts for its investors and the world” or how its investments contribute to those stated outcomes
Potentially misleading headline claim	A fund claims that it “ <i>does not invest in tobacco products</i> .” Under its terms, however, the fund exclusionary investment screen for tobacco products permits investment in companies involved in the manufacture, sale, and distribution of tobacco products where the company's revenue earned from those activities is substantially below a particular threshold level.
Inadequate explanation	A fund's prospectus states that it “considers”, “integrates”, or “takes into account” sustainability-related factors when assessing new and existing investments but does not explain how.

MARKET FRAGMENTATION AND GLOBAL ALIGNMENT

As the SEC is aware, global developments surrounding ESG-related disclosure are evolving rapidly, and numerous regulatory efforts have emerged to address market fragmentation in the use of ESG names and standards in various jurisdictions and regions.

In the Institute of International Finance (IIF) - European Banking Federation Global Climate Finance Survey of 70 financial institutions,⁹ 65% of institutions reported that “green” regulatory market fragmentation was a major obstacle and would have a material impact on the market for sustainable finance. Moreover, recent PRI research reviewed 120 reporting instruments across nine jurisdictions and five global initiatives, and this analysis presents the US as a “low-regulation jurisdiction” for ESG-related reporting.¹⁰ Considering these findings, we believe that the Proposal will establish an additional tool to help investors collect comparable information across their portfolios and ensure that a fund’s name does not misrepresent its core investments. This will, in turn, allow investors, especially those operating across jurisdictions, to compare data, and ensure greater interoperability.¹¹

The PRI recognizes the Commission’s commitment and support for global regulatory alignment, which will benefit US investors. We encourage the Commission to make additional efforts toward international harmonization; there is a growing number of jurisdiction-specific rules governing ESG disclosures that create a complex and fragmented environment for registrants to navigate. This would help reconcile information from various sources and align related requirements across different jurisdictions while moving towards a sustainable financial system and engaging in the coordination efforts led by global regulators and initiatives, such as:

- The Chartered Financial Analyst (CFA) Institute Global ESG Disclosures Standards for Investment Products whose goal is to provide greater transparency and consistency in ESG-related disclosures, to enhance clarity with respect to the ESG-related features of investment products.¹²
- The IIF Sustainable Finance Working Group (SFWG) Report, which highlights sources of confusion in sustainable investment terminologies that may prevent the development of sustainability-related investment products.¹³
- The International Platform on Sustainable Finance (IPSF) recommendations whose objective is to scale up the mobilization of private capital towards environmentally sustainable investment.¹⁴

Furthermore, for consistency across domestic frameworks, regulators should pay particular attention to the alignment in their terminologies and definitions, to ensure comparability of the data across various jurisdictions, especially when referring to disclosures commonly accepted by global frameworks. However, it is important to note that while global coordination would be beneficial, perspectives and views on sustainability-related issues should be taken into consideration, respecting national and regional contexts.

⁹ The Institute of International Finance (IIF) and European Banking Federation (January 28, 2020), [Global Climate Finance Survey: A Look At How Financial Firms Are Approaching Climate Risk Analysis, Measurement, and Disclosure](#).

¹⁰ The Principles for Responsible Investment, [Review of Trends in ESG Reporting Requirement for Investors](#) (p.8)

¹¹ The Principles for Responsible Investment, The World Bank and Chronos (June 2022) [Implementation Guide for Sustainable Investment Policy and Regulation Tools - Taxonomies of Sustainable Activities](#) (p.6) Interoperability—allowing companies to collect and report in a manner that effectively serves both local and global requirements— helps meet the needs of global capital markets, including investors who allocate capital internationally, companies who operate and raise capital across national borders, and the accounting profession that serves all consumers of corporate reporting.

¹² The Chartered Financial Analyst Institute (May 2021), [Global ESG Disclosures Standards for Investment Products](#).

¹³ The IIF Sustainable Finance Working Group (October 2019), [The Case for Simplifying Sustainable Investment Terminology](#)

¹⁴ The International Platform on Sustainable Finance (August 2022), [International Platform on Sustainable Finance | European Commission \(europa.eu\)](#).

DETAILED RESPONSE

1. Should we expand the requirement for certain funds to adopt an 80% investment policy, as proposed, to cover names that include terms suggesting an investment focus in investments or issuers that have particular characteristics? Is it clear what types of names would subject a fund to the expanded scope of this requirement under the proposed rule?

The PRI supports the expansion of the Fund Names Rule’s 80% investment policy requirement, as it will align the US regulation with global standards on product-level disclosures. Similar rules adopted by EU member jurisdictions, we support a fund name reflecting the nature and extent of its sustainability focus, including ensuring consistency with its name and the particular characteristics.¹⁵ However, under the Proposal, it is unclear what types of names would subject a fund to this 80% investment policy requirement.¹⁶ We note that there is no definition of the term “characteristics”, which PRI signatories raised as a concern.¹⁷ Instead, the Proposal provides examples of terms that could represent a characteristic, such as “growth,” “value,” and terms indicating that the fund’s investment decisions incorporate one or more ESG factors. Although we support the principles-based approach adopted by the Commission, we request that the Commission provide a definition of “characteristics” and clarify expectations on how funds should define or determine an investment focus with such particular characteristics.

4. Should the names rule’s 80% investment policy requirement apply, as proposed, to fund names with terms such as “ESG” and “sustainable” that reflect certain qualitative characteristics of an investment? Why or why not? Are investors relying on these terms as indications of the kinds of companies in which the fund invests or does not invest? Would this be the case even to the extent that funds with ESG and similar terminology in their names may use disparate means to select their portfolio investments? Should there be any additional requirements for funds that use ESG or similar terminology in their names?

A fund should not be permitted to use “ESG”, “sustainable” or other related terms suggesting a specific focus in its name if ESG inputs are merely one factor among many driving an investment decision, as this would mislead investors. Most retail investors are likely to associate a fund name with an indication of how the fund will make its investment choice and consider their own definition of “ESG investing”. It would be difficult for a retail investor to make the distinction between a name reflecting the types of assets a fund is exposed to and the strategies used when investing assets. Thus, to prevent greenwashing, we support the expansion of the 80% investment policy requirement to apply to any fund whose name suggests an investment focus on particular characteristics, including qualitative characteristics of an investment, such as “ESG”, “sustainable” and other sustainability-related references.

¹⁵ The European Commission (February 2022), [The Sustainable Finance Disclosure Regulation](#). (Articles 8 and 9)

¹⁶ Proposing Release, at 198.

¹⁷ Proposing Release, at 202.

19. Is the requirement to bring a fund back into compliance with the 80% investment requirement as soon as reasonably practicable appropriate? Is it sufficient to protect against concerns about portfolio drift?

We are generally supportive of the proposed amendments providing the particular circumstances under which a fund may depart from its 80% investment policy, including specific time frames for getting back into compliance. This requirement would provide flexibility to funds and allow them to, for example, take temporary defensive positions to avoid losses in response to market fluctuations as part of particular economic, political, or other contexts. However, in order to meet one of the Proposal's goals to protect against the risk that funds would choose names that mislead or deceive investors, such flexibility should be limited in scope. Therefore, we believe that the requirement to bring a fund back into compliance with the 80% investment requirement as soon as reasonably practicable is appropriate and sufficient to protect the funds against concerns about portfolio drift.

49. Should we codify in the rule, as proposed, the position that the names rule's 80% investment policy requirement is not intended to create a safe harbor for fund names? Is the proposed provision clear?

We generally support this codification as drafted as fund disclosures should not be used as a tool to "cure" materially or deceptive fund names, considering that unsophisticated investors are least likely to consult the prospectus and properly assess the correlation between the content of the fund's name and the 80% investment policy.¹⁸ Moreover, such a requirement will encourage funds to properly prepare their disclosure and help prevent greenwashing. To the extent a fund invests in a way that would lead a reasonable investor to conclude that the fund does not invest in a manner consistent with its name, that should be a violation of the Fund Names Rule. Moreover, such a requirement would be a complementary tool to help prevent greenwashing.

However, we recommend the Commission provide clarification in the Proposal in relation to the 80% investment policy requirement. In its release, the Commission states that a fund name could be materially deceptive or misleading if, for example, "a fund complies with its 80% investment policy but makes a substantial investment that is antithetical to the fund's investment focus (e.g., a "fossil fuel-free" fund making a substantial investment in an issuer with fossil fuel reserves). In addition, the Commission reiterates its view that an index fund would generally expect to invest more than 80% of the value of its assets connoted by the applicable index.¹⁹ These examples suggest that there are categories of funds, including index and certain ESG-related funds, for which the SEC expects more than 80% invested in accordance with their names. Multiple signatories raised the concern that this above-mentioned expectation would make the 80% investment policy requirement something closer to a 100% investment policy de facto.

One example that is less clear than the "fossil fuel-free" fund, is a "low-carbon" fund that clearly identifies a fund goal of portfolio emissions 50% below a benchmark index. This fund could have, in aggregate, 100% of the fund in compliance with the emissions goal, yet still have significant heavy-emitting assets that a reasonable investor would consider, on their own, are not "low carbon." Furthermore, this fund may also choose to drop below that 100% threshold to 85% or 90%

¹⁸ Proposing Release, at 201.

¹⁹ Proposing Release, at 69.

temporarily should energy prices rise, for example. Technically, this fund is still in compliance with its stated “low carbon” goals, yet under the Proposal could be found materially misleading.

The Commission should clarify the language in the Proposal to ensure managers have the flexibility necessary in the management of the remaining 20%, regardless of the type of assets selected for this 20% basket to consider both risks and opportunities consistent with their fiduciary duty owed to investors while also avoiding materially misleading investors.

50. Under what circumstances would a fund’s name be misleading or deceptive under section 35(d) even where the fund complies with its 80% investment policy?

ESG terminology in a fund name would be materially deceptive and misleading unless a fund prioritizes those ESG considerations that their names suggest, as contrasted to funds that analyze ESG factors only as part of a broader investment selection process. As highlighted above, a fund should not be permitted to use “ESG”, “sustainable” or any sustainability-related term in its name if it does not comply with its investment objectives and strategies or ESG inputs are merely one factor among many driving an investment decision, as this could mislead investors.

58. Should the names rule include the proposed requirement that terms used in a fund’s name must be consistent with the terms’ plain English meaning or established industry use? Are there standards that should be considered with respect to what is plain English and/or established industry use?

As highlighted in the CFA Institute ESG Disclosures Standards for Investment Products, to avoid confusion, a practice for funds may be to describe any terms used in the fund’s name that suggest an investment focus in plain English. However, using specialized terms may help simplify the clarity of the information for investors.²⁰ The Commission should consider using terminologies contained in this paper, among others, which includes terms and definitions that tend to lead to confusion, as a baseline to prepare principles-based guidance on how funds could consider preparing their disclosure; such guidance would help clarify the requirement and help funds mitigate their compliance risks.

By way of illustration, in May 2022, the European Securities and Markets Authority published a supervisory briefing²¹ on sustainability risks and disclosures in investment management, guidance that aims to ensure convergence on the supervision of sustainability-related disclosures, among other things. This guidance provides a non-exhaustive list of acceptable and non-acceptable use cases in relation to the Sustainable Finance Disclosure Regulation the European Union’s regulation introduced to improve transparency in the market for sustainable investment products.²²

The Commission could consider providing examples of situations where a fund has defined a given term in its name in a way that is inconsistent with those terms’ plain English meaning or established industry use. The SEC could also consider following recommendations adopted by the IPSF and IIF-SFWG to improve interoperability of sustainability-related reporting standards and enable comparability.

²⁰ The Chartered Financial Analyst Institute (May 2021), [Global ESG Disclosures Standards for Investment Products](#), (p.9)

²¹ European Securities Markets Authority (May 2022), [Supervisory Briefing: Sustainability Risks and Disclosures in the Era of Risk Management](#).

²² The European Commission (February 2022), [The Sustainable Finance Disclosure Regulation](#).

63. Should we, as proposed, define a fund name as materially deceptive and misleading when the fund is an integration fund that uses ESG terms in its name? Are there circumstances in which an integration fund's use of an ESG term in its name would not be materially deceptive and misleading?

The PRI supports limiting the ability of integration funds using ESG-related terms as part of a fund's name. Integration funds, by definition, do not consider ESG factors as a primary or significant driver of their investment decision-making and therefore, should not be marketed as such. Adding an ESG-related term in the name of a fund inherently signals to investors that that word is a primary consideration of the fund's investment thesis and activities. While there is significant variability amongst levels of integration, strategies and effectiveness, the Commission must draw a distinction between good practice and primary focus or purpose. Otherwise, the Commission risks being forced to determine what integration is "enough" to be considered in a fund's name.

64. Should a fund be able to use an ESG term in its name as long as the fund also identifies itself in its name as an integration fund (e.g., "XYZ ESG Integration Fund"), and the fund meets the definition of "integration fund" that this release describes? Is the term "integration" sufficiently understood by investors such that its inclusion in a fund name would not make the name materially deceptive and misleading? Are there other, similar terms or phrasing that generally would be better understood than the term "integration?" Could there be a benefit to permitting a fund to use "ESG integration" or similar terms in its name? Would an integration fund that uses these terms in its name be able to satisfy the 80% investment policy requirement, and would adopting an 80% investment policy address the consistency of an integration fund's investment portfolio with the investment focus its name suggests? If not, is there a way to adapt the 80% investment policy requirement for integration funds to address the investor protection concerns about the potential overstatement of the consideration of ESG factors that our proposed approach addresses? Alternatively, should an integration fund be exempt from the 80% investment policy requirement? Would such an exemption raise investor protection issues?

The Commission should not allow integration funds to utilize ESG-related terms in a fund's name if they are classified as an integration fund. The classification offered by the Commission – integration, ESG-Focused, and impact categories – are new to the marketplace, and while some sophisticated investors will understand the hierarchy, retail investors may not make the same distinction, which would present an investor protection issue.

Further, allowing an integration fund to utilize ESG-related factors in its name would offer a significant advantage as this fund is not subject to the same enhanced disclosure requirements of ESG-focused funds. This makes it more likely that investors will understand far less about the integration fund's relation to ESG consideration than other funds that have a more significant consideration of ESG factors.

66. Are the proposed amendments to the current notice requirement appropriate? Is it appropriate to require notices to describe not only a change in the fund's 80% investment policy but also a change to the fund's name that accompanies the investment policy change?

We support the continuation and modernization of the 60-day notice requirement of changes to fund shareholders. Also, by codifying best practices and the current SEC guidance that permits the

electronic delivery of notices, the proposals will provide greater flexibility and clarity as to how the Fund Names Rule's Notice requirements translate to electronic delivery.

76. Our proposal would make this new Form N-PORT item public. Is there any reason why this information should not be publicly available?

The PRI supports the proposal that requires funds to report publicly on Form N-PORT whether, for each portfolio investment, such investment is included in the fund's 80% basket. We believe this requirement will strengthen the transparency of funds on their environmental, social and governance policies. Additionally, it will help investors and other market participants understand what factors or elements are considered to demonstrate consistency with the fund's 80% investment policy, which will in turn increase comparability in the proposed form and across funds.

The PRI has experience of public policy on sustainable finance policies and responsible investment across multiple markets and stands ready to further support the work of SEC to improve ESG disclosure and issuer accountability in United States.

Any questions or comments can be sent to policy@unpri.org.