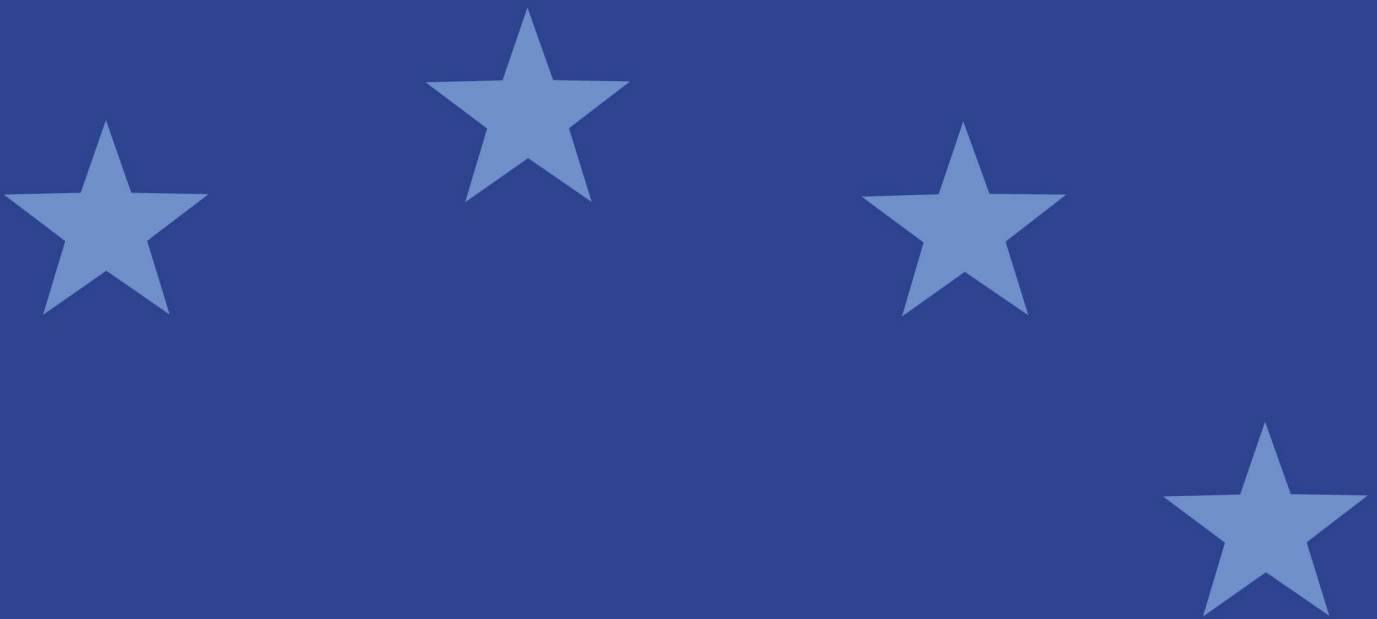




European Securities and
Markets Authority

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



18 November 2022



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered);
- do not remove the tags of `<ESMA_QUESTION_FUNA_0>` - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

`ESMA_CP_FUNA_NAMEOFCOMPANY_REPLYFORM.`

e.g. if the respondent were ABCD, the name of the reply form would be:

`ESMA_CP_FUNA_ABCD_REPLYFORM`

Deadline

Responses must reach us by 20 February 2022.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses



All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	Bundesverband Alternative Investments e.V. (BAI)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

Bundesverband Alternative Investments e.V. (BAI) welcomes the opportunity to respond to the a.m. ESMA's consultation paper on "Guidelines for the use of ESG or sustainability-related terms in funds' names".

BAI is the cross-asset and cross-product lobby association for the alternative investment industry in Germany and we perceive ourselves as a catalyzer between professional German investors and suppliers of Alternative Investment products worldwide. The overarching goal is that German institutional and professional investors must be able to diversify their investment with regard to Alternatives better and more easily. BAI is promoting a broad diversification which includes Alternative Investments as indispensable, in particular in terms of safeguarding long-term retirement pensions and the provision of money for construction, maintenance, and development of public infrastructure and renewable energies.

BAI members are recruited from all areas of the Alternative Investments' industry, e.g., AIF manager and banks, but as well service providers. At present, BAI counts more than 280 national and international member companies and is growing continuously.

Having evaluated the consultation paper and the Guidelines proposed by ESMA, we would like to highlight the following, before commenting below on the detailed questions raised.

Limitation of the Guidelines' scope to retail investors/funds marketed to retail investors

We urge ESMA to limit the Guidelines to funds marketed to retail investors. There is no need for protection of professional investors against potentially misleading fund names. Instead, professional investors should have the flexibility to develop sustainable fund products outside of restrictive consumer protection rules.

From the Open Hearing on 23 January 2023, we understand that the rationale behind the proposed Guidelines is to protect the retail investor against greenwashing. We agree with ESMA that the fund name may be one of the most powerful marketing tools for retail investors. But this explicit statement only applies to retail investors or retail products, if ever. The connection between the fund name as a marketing tool and the investment decision does not seem as apodictic and clear, even among retail investors, as is often portrayed. Researchers from the FCA found out, for instance, while doing behavioural research (exploratory analysis, online experiments and qualitative research) that ESG fund images, fund descriptions and fund strategies have no statistically significant effect on how participants invested in their analysis setup. Participants appear no more likely to choose funds based on the factsheet having an ESG attribute compared to a neutral one. But they did find that medals have a significant effect on participants' investment choices in their analysis setup (cf. <https://www.fca.org.uk/insight/sustainable-investing-objective-gradings-greenwashing-and-consumer-choice>). Medals may have a similar influence on an investment decision as labels might have. The importance of fund names is probably overestimated.

Having said that right above with retail investors in mind, it applies even more to professional investors. The BAI represents the interests of the alternative fund industry in Germany. As the AIFMD provides as its

basic concept, the directive on which the industry is based is a set of rules by professionals for professionals. On the one hand, the various asset classes of alternative investments are only partially accessible or difficult to access for private investors from a regulatory point of view, but they are also often too complex or cannot be invested in or acquired by private investors at all due to the ticket size or regulatory restrictions. In our experience, no or hardly any institutional investor invests in a ticket without prior regulatory and tax due diligence. Professionals are at work on both sides - in this context, fund names also play a subordinate role, which is why one of the main arguments for the planned Guidelines, namely that the fund name is a main marketing tool, largely falls flat.

We think that the introduction of stricter requirements for sustainability-related funds for professional investors (going beyond the SFDR rules) could be an obstacle to orienting much-needed private capital from professional investors into sustainable economic/social transition. Market participants launching and marketing funds for professional investors may become more reserved in promoting sustainability-related strategies and using sustainability-related terms. This can lead to a lower number of new fund products which address the most pressing environmental and social challenges and may also contribute to a general resistance to sustainable investments. All this will prevent the financial system from becoming more sustainable.

Against this background, it should seriously be considered whether the Guidelines should be limited to funds that are (also) to be distributed to retail investors. It should only be mentioned in passing that the Guidelines for sustainable investment funds consulted by BaFin ("BaFin-Richtlinie für nachhaltige Publikums-Investmentvermögen") at the time exclusively included retail funds in the scope of application; the same applies to the introduced restrictions on the use of sustainability-related fund names in other jurisdictions for example in the UK, Japan, or Singapore as well as the AMF doctrine in France.

Review of the SFDR vs. "repair by the backdoor"

We also invite ESMA to reflect carefully on whether it would not be better to address the issue of greenwashing - and also greenbleaching - in other regulatory ways. The EU Commission continues to emphasise, and the European Supervisory Authorities do the same, that the SFDR is not a labelling regime, that the categorisation or classification of funds in Art. 6, 8 or 9 is not a label or an etiquette (or a medal, cf. above the behavioural research results). This is obviously contrasted by the practice of the industry in recent years - ESMA used the term of "misreception" of the SFDR concept during its open hearing on 23 January 2023 and wants to minimise this misperception by issuing the Guidelines. In its most recent "Report on Trends, Risks and Vulnerability" from 9 February 2023, ESMA even uses the term "misuse" of the SFDR as a marketing tool, p. 35.

This is part of the truth, but a possible "misconception" (if we might be allowed to say so) is perhaps another part of the same truth. It obviously meets a need of fund providers as well as investors to have some kind of label available, because labels also have the charm of simplicity and clarity, as in other areas of business and life. The FCA's considerations in the UK, but also in the EU itself (just think of the transfer of the EU Ecolabel to financial products) and in EU Member States go in a similar direction. For example, the Sustainable Finance Advisory Board of the German government is also working on some kind of a "traffic light system" ("Ampel") for financial products. We note that all these developments relate to retail investors. The current SFDR framework as a principle-based disclosure regime is generally not suited for the purposes of a label or a traffic light system. This notably applies to the Art. 8 SFDR concept under which market participants have room to promote manifold ESG strategies and approaches.

ESMA could lobby the legislator with the authority of the supervisory authority to ensure that the SFDR is also further developed into a label system by establishing criteria for Articles 6, 8 and 9 at Level I. In terms of the quality and intensity of this regulatory intervention, this would in any case belong more at the level of a primary law act than as secondary or tertiary law. It would be the more appropriate and honest way to go than to tighten up the SFDR regime through Q&As, supervisory and clarificatory statements or the proposed Guidelines. The argument that amending or adapting an EU regulation is a too lengthy process does not really seem relevant to us - better late than never, and better a consistent set of rules later than

patchwork and the repair of original omissions through the back door. The proposals of the French Financial Market Authority also go in this - in our view correct - direction: In its latest position paper (*Proposal for minimum environmental standards for financial products belonging to the Art.9 and 8 categories of SFDR Position paper from the AMF*), it also proposes minimum expectations for Art. 8 and 9 funds, which are to be elaborated by the EU Commission. Furthermore, AMF proposes an amendment to Art. 2(17) of the SFDR and thus an amended legal definition of "sustainable investment", which would also require an amendment to Level I.

Labels, also for financial products, are a need for retail investors. ESG regulation should take this need into account and meet it. By contrast, comprehensive and thorough disclosures are of relevance for both retail and professional investors which should be conceptually separated from labels.

Timeline - Considering the EU Commission's response to the ESAs' questions on SFDR Level I, ESMA's Call for Evidence on "Greenwashing", the SFDR Review and other regulatory developments

In any case, we invite ESMA to consider any regulatory work of the EU Commission regarding the interpretation or a potential review of the SFDR, for example with regard to a definition of "sustainable investments" etc. This also applies to ESMA's own activities - we recall the Call for Evidence on greenwashing activities. ESMA cites possible greenwashing risks as the main reason for issuing these Guidelines. A precise or uniform definition, even in the EU framework of sustainable finance, is known to be lacking as much (hence the Call of Evidence on this topic) as a truly uniform understanding of "ESG", "sustainable" etc. Greenwashing can be described as any discrepancy between what a financial product claims to be and what it really is in terms of sustainability. But, as explained, not even the measurand, i.e., what sustainability really is, is clear, so that a discrepancy with the measurand, i.e., potential greenwashing, cannot really be measured or determined. This applies all the more to unintentional greenwashing as a result of unclear legal definitions, unclear, unobtainable, incomplete or imprecise ESG data.

ESG is evolving rapidly - both from a regulatory and a market perspective. We therefore believe it is more effective to wait for the next regulatory steps and clarifications, as mentioned at the beginning of this section, rather than hastily issuing Guidelines with such a serious impact on the sustainable fund landscape.

<ESMA_QUESTION_FUNA_0>

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

<ESMA_QUESTION_FUNA_1>

Quantitative thresholds have the charm of clarity. Especially in view of the vagueness and still existing definitional uncertainty regarding many terms in the area and context of sustainable finance and ESG, which have only recently become a mainstream topic in the financial world as investment topics, and also with regard to the fact that due to the large number of existing fund products in Europe, a (purely) principle-based approach on the part of the supervisory authorities would not be able to bring about sufficiently satisfactory case-by-case justice, the introduction of quantitative thresholds appears to be a reasonable approach. European and national supervisory authorities also act in this way with regard to fund names/fund designations in other areas than in ESG-based areas and require, for example, more than 50% or 51% of corresponding assets in a fund if a fund wants to bear a specific designation.

Provided that the EU Commission does not decide to adapt the SFDR at Level I within the framework of a review and, for example, introduce labels for sustainable funds, and provided that ESMA decides to finally adopt the consulted Guidelines, also for professional/institutional investors (cf. our preliminary remarks), the introduction of quantitative thresholds is a fundamentally valid approach *per se*.

The relevant thresholds appear to be predicated on the amount of "investments" of a fund. ESMA's proposed Guidelines assume that under the SFDR funds are obliged to disclose in the binding templates of the SFDR RTS what proportion of the fund's underlying assets is used to achieve the promoted social or environmental characteristics (Art. 8) or the sustainable investment objectives (Art. 9). In the examples in Annex IV of the Guidelines, reference is made to the "asset allocation planned" or the minimum proportion to which the financial product "commits". It should be made clear that the relevant thresholds do not refer to the current assets at any time, but to the *planned* asset allocation or to the planned commitments. With regard to alternative investment funds, especially for illiquid asset classes, closed-ended fund structures are the most common. These closed-ended funds build up their portfolio during a ramp up period at the beginning of the lifecycle of a fund and sell the fund's assets during a wind-down period. Therefore, many funds would not be able to meet the thresholds at certain stages of their life. The Guidelines' reference to "temporary deviations" from the thresholds seem to treat them as "passive breaches" which would be at the discretion of the national competent authority to address, but it does not appear that this is intended to deal with the problem outlined above. This should be clearly addressed.

To just give you another example: We see a challenge when quantitative thresholds are defined across all asset classes. For example, we can assume that liquidity requirements vary more in private markets than in public markets. Microfinance funds, for example, hold higher cash reserves due to the risk profile of the target markets (private, emerging markets). In addition, the amount of cash can fluctuate significantly, e.g., due to high portfolio redemptions or due to mismatches between the timing of new investors (e.g., the fund has limited influence on the exact timing of public investors' subscriptions and on the tranching of these funds) and the disbursements of the fund's investments in the target region. Also, such (temporary) deviations are usual in certain types of funds, which should be addressed also clearly.

<ESMA_QUESTION_FUNA_1>

Q2 : Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_2>

When answering the "if-then-question" (i.e.: IF these Guidelines are to be introduced as planned, THEN the proposed threshold of 80% as a minimum share) may also make sense. If the minimum share is introduced as planned and consulted on, i.e., at least 80%, the impact on (sustainable) funds will be considerable. However, this kind of "cost-benefit analysis" is dealt with in a question below, which is why we do not comment further on the effects and consequences here.

In any case, the BAI member companies do not fundamentally oppose the threshold value of 80%, which is why our answer corresponds to an approval of the proposed value.

Notwithstanding this, we note that that the proposed Guidelines relate to funds which use in their names any terms which are “ESG-related”, “impact-related” or “any other term derived from the word sustainable”. For the sake of legal certainty, market participants need further guidance on the terms which ESMA considers to be “ESG related” or “impact related” or otherwise “derived from the word sustainable”. We invite ESMA to publish a compilation of words which are, and which are not considered to be in scope.
<ESMA_QUESTION_FUNA_2>

Q3 : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_3>

Yes, the BAI members support in principle the additional threshold of 50% of minimum proportion of sustainable investments for funds with designations such as sustainable or any other sustainability-related term in the name of the fund.

In principle, the following should apply: The more concise and precise a fund name contains components such as sustainability, the more it is defined by regulation or similar to regulatory definitions, the higher the thresholds may be.

The reverse is also true: the more general and generic a fund name or its components are, the lower the required thresholds should be. If the fund name contains terms from general linguistic usage, which in themselves do not necessarily represent a reference to sustainability (examples: water, earth, wood, other elements), then there should be no requirements for threshold values at all, because it should also be possible, for example, to set up a theme fund around water or similar and give it a fund name with the component “water”, “wood”, “timber”, “forestry” or “society” without it being/ wanting to be sustainable.

<ESMA_QUESTION_FUNA_3>

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

<ESMA_QUESTION_FUNA_4>

The construction of the threshold mechanism as such seems relatively simple and clear to us, which is a decisive advantage. Apart from the question of the level of thresholds, we do not currently see any alternative solutions that would be simpler and therefore better than those proposed by ESMA.

<ESMA_QUESTION_FUNA_4>

Q5 : Do you think that there are other ways than the proposed thresholds to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives? If yes, please explain your alternative proposal. If yes, please explain your alternative proposal.

<ESMA_QUESTION_FUNA_5>

From an overall perspective, the entire regulatory framework of the Sustainable Finance Initiative seems increasingly overcomplicated and complex. We are not sure whether the multitude of regulatory provisions does not sometimes cause us to lose sight of the big picture and whether the goals of the initiative can be achieved in this way. One of the main goals is to “reorient” (private) capital towards sustainable investments. Whether this goal is really helped if the impact of the ESMA Guidelines is such that only a minority of the current Art. 8 and 9 funds are able to meet their requirements is an open question. In our view, greenwashing is far from being a major problem – “greenbleaching” due to regulatory uncertainty or the desire to avoid regulatory burdens also exists.

Especially in the area of alternative investments, which are primarily made by institutional investors with corresponding requirements and expertise, greenwashing hardly seems to be an issue to us. Rather, de-



mand from institutional investors is as much a driver for sustainable investments as regulatory development. Industry standards and self-regulatory initiatives are therefore valid ways to achieve the regulatory goal, at least for alternative investments.

<ESMA_QUESTION_FUNA_5>

Q6 : Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_6>

We strongly request ESMA to reconsider the introduction of “minimum safeguards” and to delete this aspect of the Guidelines.

ESMA should clarify in the Guidelines whether the minimum safeguards are in fact recommendations, as the wording in No. 18 would suggest, or actual and thus additional obligations, as ESMA has stated elsewhere (e.g., the ESMA Newsletter refers to the "application of minimum safeguards" and not to recommendations, and this assessment is also suggested by the comments made during the Open Hearing on 23 January 2023).

The proposed “minimum safeguards” are defined with reference to the exclusion criteria set out in Articles 12(1)-(2) of the EU Benchmark Delegated Regulation (EU 2020/1818) and would cover all the investments made by funds, including those which are not used to meet the environmental or social characteristics or objectives of the fund.

If the minimum safeguards are really to be an obligation by effectively requiring funds which use the term "sustainable" or other ESG-related terminology in their names to comply with an extensive set of exclusionary criteria, it may require them to carry out a partial EU Taxonomy assessment on all assets to ensure they do not do significant harm to any environmental objectives, in order to meet the exclusion criteria as defined in the Benchmark Regulation Delegated Regulation (Article 12(2) of the EU Benchmark Delegated Regulation). This is significant for Art. 8 SFDR funds which do not commit to making any sustainable investments as these are not currently required to disclose EU Taxonomy alignment, and therefore do not currently need to undertake an EU Taxonomy assessment. That may change when the proposed Guidelines come into force. At the same time, it also introduces a mandatory Taxonomy DNSH screening "via the backdoor" for Article 9 SFDR funds which, as confirmed several times by the EU Commission, are not limited to Taxonomy-aligned sustainable investments and may also hold sustainable investments which do not meet the Taxonomy DNSH technical screening criteria.

We note that the EU Climate Benchmarks have been designed to be used in the highest category of sustainable products, for example in the context of funds with carbon emissions reduction as their sustainable investment objective (Article 9(3) SFDR). With that in mind, it does not make sense to apply them broadly to any sustainability-related strategy.

By way of illustration: Neither SFDR nor EU Taxonomy contain any exclusions or criteria related to tobacco cultivation and production. The fossil fuel related exclusions only make sense when pursuing a climate-related strategy and could potentially hinder a social investment strategy under Article 8/Article 9 SFDR. Even beyond social considerations, the exclusions would hinder funds from investing into the transition of the energy sector towards less carbon-emitting forms of energy production. In addition, even for climate-focused Article 9 SFDR funds no such strict thresholds apply (based on the ESAs' recommendation to use self-defined thresholds).

In addition, it is important to note that fund managers of alternative assets do not have the data required to ensure the investment meets the exclusions contained in the proposed minimum safeguards.

Certain funds currently categorise themselves as Art. 8 fund primarily on the basis of negative screening strategies. Therefore, a related impact is that the exclusionary criteria of the proposed Guidelines will undermine the defensibility of any categorisation as Art. 8 fund on the basis of negative screening strategies which are less stringent than those outlined by ESMA. As a consequence, affected funds have to decide whether they can mitigate this risk by reclassifying as Art. 6 fund or upgrading their ESG strategy.

Under the existing SFDR disclosures Art. 8 and Art- 9 funds are required to disclose what minimum environmental and social safeguards are applied to any investments which do not promote environmental or social characteristics or are not used to attain the sustainable investment objective. However, current market practice shows that funds either do not have any minimum environmental/social safeguards for the remainder of investments or at least exclude cash/liquidity in this context. It is arguable that an obligation with regard to minimum safeguards for all investments is an additional layer of requirements beyond those set out in the SFDR and the Taxonomy itself which would need rather legislative amendments on level I (pursuant to the SFDR review announced by Commissioner McGuinness).

We therefore strongly urge ESMA to reconsider the introduction of such “minimum safeguards” and to delete this aspect of the Guidelines.

<ESMA_QUESTION_FUNA_6>

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

<ESMA_QUESTION_FUNA_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FUNA_7>

a) Would you suggest the use of the notional value or the market value for the purpose of the calculation of the minimum proportion of investment?

<ESMA_QUESTION_FUNA_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FUNA_1>

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

<ESMA_QUESTION_FUNA_2>

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<ESMA_QUESTION_FUNA_2>

Q8 : Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds’ names as any other fund? If not, explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_8>

Considering the same requirements, i.e., considering the same quantitative thresholds for funds designating an index as a reference benchmark may pose, in practice, a problem for passive or index tracking strategies which are reliant upon third parties to provide data relating the ESG characteristics of their portfolio.

<ESMA_QUESTION_FUNA_8>

Q9 : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?



<ESMA_QUESTION_FUNA_9>
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<ESMA_QUESTION_FUNA_9>

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

<ESMA_QUESTION_FUNA_10>

We are generally in favour of rules on the use of the word “impact” or “impact investing”. However, we ask ESMA to provide clearer guidance in this regard.

Especially in a rapidly developing field such as sustainable investment, industry standards, sector standards and self-regulatory initiatives are very valuable because of their flexibility, pragmatism, and practicality. In this respect, we expressly welcome the fact that the proposed Guidelines refer to the GIIN definition of impact investing as investments “with the intention to generate positive, measurable social and environmental impact alongside a financial return”.

However, we expressly warn against prescribing (quantitative) specifications/thresholds or minimum safeguards for “impact” or “impact investing”, as provided for in the Guidelines. Let us make two things clear at the outset: As is well known, there is no *per se* classification/categorization of impact funds in Art. 8 or Art. 9 funds under the SFDR. Not every Art. 9 fund is an impact fund, but most impact funds qualify as Art. 8 funds. Therefore, it should be clarified that impact investments in line with the GIIN definition do not always qualify as sustainable investments under Article 2 (17) SFDR. This is because the sustainable investment definition excludes investments in activities which are made sustainable through the investment (and which are the most promising in terms of impact generation). Permitting impact only in the context of sustainable investments would cut off financing for many transition-based strategies meeting generally recognized impact standards but which are “only” Article 8 SFDR funds under the SFDR framework.

As was explained below with reference to Morningstar’s assessments of Q15 (“impact” from the Guidelines), the impact of the Guidelines on Art. 8 funds in particular will be massive, and thus precisely on impact or impact investing funds. This would apply all the more to *social* impact funds if the almost exclusively *climate-related* PAB minimum safeguards were to really apply.

In addition, we ask ESMA to provide further background on the meaning of “impact-related terms”. For example, “transition” should not be regarded as an impact-related term (see below).

<ESMA_QUESTION_FUNA_10>

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

<ESMA_QUESTION_FUNA_11>

No. In our opinion, the question of transitional names may be wrongly posed. It is not so much about the fund name alone, but about the all-important transformation of the whole economy, the transition of all economic activities to a (more) sustainable one. Transition is therefore enormously important because it is in this area that the most impact can be achieved - in energy production, in industrial production, in housing and construction, etc. Actually, the most capital should be allocated where the most potential for more sustainability can be raised - and where measurable impact can be achieved. We urge ESMA not to include any restrictions for transition-related strategies by virtue of the Guidelines. Market participants should be able to use the flexibility under the SFDR framework to develop all kinds of transition-related strategies without further limiting the use of this term. In the future, it would make sense to cover the topic in the upcoming SFDR reform or a potential labelling regime.

If specific provisions for “transition” or transition-related names should be introduced, then there should be a linkage between this name to products with an objective to deliver measurable improvements in the sustainability profile of assets over time.



These products are invested in assets that, while not currently environmentally or socially sustainable, are selected for their potential to become more environmentally and/or socially sustainable over time, including in response to the stewardship influence of the firm.

<ESMA_QUESTION_FUNA_11>

Q12 : The proposals in this consultation paper relates to investment funds' names in light of specific sectoral concerns. However, considering the SFDR disclosures apply also to other sectors, do you think that these proposals may have implications for other sectors and, if so, would you see merit in having similar guidance for other financial products?

<ESMA_QUESTION_FUNA_12>

As an association representing the interests of alternative investment funds, we focus primarily on alternative asset classes and the concerns of AIFMs/AIFs. In principle, however, we believe that the principle of "same business, same rules" should apply, irrespective of the question of structuring an investment.

However, the second part of this question 12 already shows the problems that the scope of application of the SFDR as such, on the one hand, and the issuance of the proposed Guidelines "only" for fund names, on the other hand, may entail, because the Guidelines *de facto* impose substantive/material requirements on Art. 8 and Art. 9 funds without this being regulated in the SFDR itself.

<ESMA_QUESTION_FUNA_12>

Q13 : Do you agree with having a transitional period of 6 months from the date of the application of the Guidelines for existing funds? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_13>

Yes, BAI members agree in principle having a transitional period from the date of the application of the Guidelines for existing funds. Such a transitional period is necessary regarding the potentially massive impact of the Guidelines on affected funds and the subsequent adjustments to the entire fund documents (incl. supervisory approvals, etc.). After the publication date of the Guidelines, affected funds should either bring their investments in line with the Guidelines within six months after the publication date or change the fund name not to have ESG or sustainability-related terms within these six months. Six months is not a long time for any necessary reallocation of a portfolio and depending on the market situation or illiquidity (especially with many alternative investments). We therefore even think that a six-month transitional period is rather short and tend to advocate a longer one and suggest a transitional period of 12 months.

<ESMA_QUESTION_FUNA_13>

Q14 : Should the naming-related provisions be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines? If not, please explain your answer.

<ESMA_QUESTION_FUNA_14>

No, the name-related provisions should in no case be extended to closed-end funds that are no longer distributed. If one takes ESMA's reasoning that the fund name is a powerful marketing tool, it should therefore be clear that a marketing tool for a product that is no longer being distributed/marketed is also no longer a powerful one. We therefore expressly reject the extension but are optimistic that ESMA shares our point of view - at least the statements made during the Open Hearing on 23 January 2023 seem to point in this direction (we would appreciate explicit confirmation of that in any finalised rules).

<ESMA_QUESTION_FUNA_14>

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

<ESMA_QUESTION_FUNA_15>

In BAI members' expectation, there will be an enormous impact of the proposed Guidelines for fund management companies if the Guidelines are introduced in relation to the name of their funds and related



SFDR pre-contractual and periodic disclosure requirements. The proposed Guidelines introduce measures that will form a key component of the product design and every marketing strategy of ESG-related or sustainable funds.

Especially funds disclosing under Art. 8 SFDR are likely to be significantly impacted by the Guidelines since there are currently no minimum threshold requirements for investments for funds “promoting environmental or social characteristics”. Under the proposed minimum safeguards concept, such funds disclosing under Art. 8 SFDR may also be required to apply the “do no significant harm” principle of the Taxonomy Regulation to investments that are not used to meet the environmental or social characteristics or sustainable investment objectives in order to meet the minimum exclusion safeguards. Art. 8 and 9 SFDR only stipulate a disclosure duty in relation to the “minimum safeguards” to be applied to “other assets”, considering that many of these assets, e.g., cash and liquidity, are not suitable for the application of any general “minimum safeguards”. We therefore would like to reiterate our strong request to ESMA to reconsider the introduction of “minimum safeguards” and to delete this aspect of the Guidelines.

To give figures for the possible effects, we refer to a preliminary analysis of Morningstar of ESMA’s proposed Guidelines; ESMA recommends a threshold of at least 50% of sustainable investments for Article 8 funds that use the word “sustainable” in their name.

Their research suggests that only 18% of existing Art. 8 funds using the word “sustainable” in their name would meet the Guidelines’ criteria (whereas 80% of the Art. 9 funds meet the criteria). This means that these funds would probably need to change names, to enhance their strategies or maybe to switch to a more accommodative methodology for the calculation of sustainable investment exposure.

<ESMA_QUESTION_FUNA_15>

Q16 : What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_FUNA_16>

If the ESMA Guidelines enter into force as envisaged and proposed, the impact will be significant, as we have explained in the answer to question 15 above. As for the benefits, we put a question mark for the time being. As far as the costs are concerned, they will not be insignificant, because almost all fund managers will have to check (or have checked) their sustainable funds for compatibility with the (quantitative) thresholds of the Guidelines, which will entail considerable costs for compliance and the adjustment of fund documentation. However, as an association, we cannot give concrete figures; the world of alternative investments is too diverse for that.

<ESMA_QUESTION_FUNA_16>

Q17