

# ESMA Update on Funds' Names Using ESG or Sustainability-Related Terms

**Regulatory & Compliance** on **December 14, 2023**

ESMA has, on 14 December 2023, published a [public statement](#) updating its Guidelines on funds' names using ESG or sustainability-related terms. This follows the consultation paper on the same topic that ran until 20 February 2023.

ESMA plans to adopt the Guidelines following the entry into force of the amended AIFMD (and updated UCITS Directive) in 2024 and has made the public statement to highlight key content of the Guidelines ahead of expected publication.

Whilst ESMA notes that the scope of the Guidelines remains unchanged, the following amendments have been introduced:

- For 'sustainability'-related funds' names the fund should:
  - apply the 80% minimum proportion of investments used to meet the sustainability characteristics or objectives;
  - apply the Paris-aligned Benchmark ("PAB") exclusions;<sup>[1]</sup> and
  - invest meaningfully in sustainable investments as defined under SFDR (in the consultation paper this had been suggested to have a threshold of 50%).
- As the exclusions under the PAB could penalise some funds that are not environmental or that focus on transition strategies, ESMA has made several amendments to include further categories:
  - 'Transition'-related terms in the name can be used which in addition to the 80% threshold apply Climate Transition Benchmark (CTB) exclusions.<sup>[2]</sup>
  - 'Social' or 'governance' terms in the names are suggested not to need to comply with the PAB exclusions (unless a 'sustainability'-related term is used in the name) or the CTB exclusions (unless a 'transition'-related term is used in the name).
  - 'Impact'-related terms, alongside 'transition'-related terms are required to have a minimum proportion of investments made with the intention to

generate positive, measurable social or environmental impact alongside a financial return or are on a clear and measurable path to social or environmental transition.

As asset managers consider naming of strategies, we recommend having reference to these updates, in particular the exclusions which ESMA now appears to be firm on.

We will retain a watching brief on the outcome of the review of the AIFMD and UCITS Directive and the expected entry into force of the new mandates (as part of the AIFMD and UCITS Directive review) for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair or misleading. It seems that as soon as the mandates are live, the Guidelines will be published and will apply three months after publication. Managers will be expected to comply with the Guidelines from that time, with regards to new funds and for existing funds, must comply within six months.

For further information, please reach out to [ukreg@proskauer.com](mailto:ukreg@proskauer.com)

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[1] Exclusions for EU Paris-aligned Benchmarks are contained in Article 12(1)(a)-(g) of Commission Delegated Regulation (EU) 2020/1818 which includes:

- (a) companies involved in any activities related to controversial weapons;
- (b) companies involved in the cultivation and production of tobacco;
- (c) companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises;
- (d) companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite;
- (e) companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels;
- (f) companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels;

(g) companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh.

[2] The exclusions cover (a)-(c) of the above.

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