Proskauer

ESMA Guidelines on Fund Names

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The recent ESMA Final Report on the Guidelines for funds' names using ESG or sustainability-related terms (the “Guidelines”) marks a critical moment for asset managers. These Guidelines aim to clarify when the use of ESG or sustainability-related terms in fund names may be deemed unfair, unclear or misleading. The Guidelines introduce minimum asset allocation thresholds, exclusionary criteria and additional criteria which vary depending on the specific ESG or sustainability terms used in the name. Navigating these rules requires a solid grasp of regulatory frameworks and thoughtful strategic adjustments.

The Guidelines apply to all alternative investment funds (“AIFs”) managed by EU-based alternative investment fund managers (“AIFMs”), as well as UCITS managed by UCITS management companies. ESMA estimates that around 1,700 EU-domiciled AIFs will be impacted by these new rules.

For funds with names that include terms such as "transition," "social," "governance," "environmental impact" or "sustainability" (or derivatives of these words), the Guidelines outline specific requirements. There is no exhaustive list of names that trigger the rules, sofund managers must use their judgment to assess whether their funds fall within the scope.

These Guidelines reflect the EU’s push for greater transparency, accountability and consistency in how ESG funds are marketed. Funds with ESG-related names must now ensure that at least 80% of their assets are aligned with the binding elements of their investment strategy. This rule ensures that funds are genuinely committed to their ESG objectives, rather than using the ESG label superficially.

The Guidelines mandate the application of two sets of exclusionary criteria depending on the type of ESG fund. Funds that focus on climate transition, social and governance issues will need to adhere to the Climate Transition Benchmark exclusionary criteria. Meanwhile, funds with names linked to environmental sustainability or impact will also have to follow the additional exclusionary criteria outlined in the Paris-Aligned Benchmark.

Additionally, any fund that uses "transition" or "impact" in its name must demonstrate a clear, measurable path toward achieving a positive social or environmental transition. This should include a goal to create measurable social or environmental impact alongside financial returns. Similarly, funds with sustainability-related names are required to “meaningfully” invest in sustainable investments, as defined under Article 2(17) SFDR.

Although it is clear that these Guidelines apply to fund managed by EU-AIFMs, it remains uncertain whether non-European AIFMs marketing their funds within the EEA under the national private placement regime (NPPR) will also be affected. Another grey area is how strictly EEA regulators will apply the Guidelines to closed-ended funds that are no longer open for new distribution.

For many asset managers, these Guidelines signify a shift from voluntary ESG commitments to stricter regulatory obligations. Complying with these rules will require more than basic adherence; it will demand strategic foresight and an understanding of evolving market trends.

We recommend that asset managers monitor how the Guidelines are implemented by EEA Member States to gain clearer insight into the level of enforcement. This is especially important for non-European asset managers and closed-ended funds that had their final closing.

For EU-AIFMs, it’s advisable to integrate these Guidelines into their strategic planning, particularly if they intend to use ESG or sustainability-related fund names. Non-European AIFMs marketing closed-end funds under the NPPR in the EEA should also aim for compliance where feasible.

As ESG continues to reshape global financial markets, asset managers who successfully navigate these regulatory changes will be well-positioned to lead in a more sustainable financial future.

Proskauer and Holtara ESG Collaboration

Proskauer have collaborated with Holtara to produce a convenient summary of the guidelines and how they impact asset managers.

By offering a combination of regulatory guidance, legal drafting and compliance training, Proskauer is uniquely positioned to help clients successfully navigate the complexities of ESMA's ESG fund name guidelines, safeguarding against risks while promoting products with ESG characteristics.

Combining these capabilities with Holtara's comprehensive ESG solutions, we enable our clients to achieve a higher level of transparency and accountability in their ESG disclosures. Our partnership ensures that asset managers can seamlessly integrate ESG considerations into their investment strategies, respond effectively to regulatory changes, and uphold rigorous standards of sustainability performance and reporting.

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