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| 18 November 2022 |

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| Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds’ names |
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| Date: 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 type <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](http://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](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| Name of the company / organisation | WHEB Asset Management |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

WHEB is a specialist investment business wholly focused on investing in companies that provide solutions to sustainability challenges. Established in 1995, the business now has assets under management of approximately £1.4bn invested in our strategy. Our long-standing mission is to ‘advance sustainability and create prosperity through positive impact investments’.

As a long-established sustainable investor with a strategy that was originally founded in 2005, we welcome the European Securities and Markets Authority (ESMA) consultation paper on ‘Guidelines on funds’ names using ESG or sustainability-related terms’. We agree that sustainable investing is an important market segment with the potential to support the European Union’s objectives to deliver inclusive economic growth and environmental sustainability.

Overall we support ESMA’s efforts to prescribe more closely the requirements that are needed in order to utilise terms like ESG and sustainability in fund names and marketing. Specifically:

* We support ESMA’s view that funds using the word “impact” should demonstrate that they make investments with the intention to generate positive and measurable social or environmental impact alongside a financial return. We believe that the Guidelines could go further in specifying how firms should demonstrate this intentionality.
* We think that in principle all investments (other than cash and other instruments held for liquidity purposes) should align with the stated objectives of an investment fund. While we are not opposed to an 80% threshold as specified in the guidelines, we think that fund managers should be required to explain and justify why investments have been made that do not align with the stated objectives of the investment fund.
* The same principle should apply to the use of the word ‘sustainable’. We believe that substantially all the investments in a fund should be consistent with the stated objectives of that fund allowing some level for liquidity and trading purposes. We think 90% would be an appropriate level for the use of the word ‘sustainable’.

<ESMA\_QUESTION\_FUNA\_0>

1. : Do you agree with the need to introduce quantitative thresholds to assess funds’ names?

<ESMA\_QUESTION\_FUNA\_1>

Yes, and we believe that the thresholds should be rooted in a fund’s stated investment objectives. Critically, we agree with ESMA that the measurement should be at the level of each investment rather than underlying revenues. In order to qualify as a justifiable investment, each investment must derive a material proportion of its underlying revenues from activities that are consistent with the stated investment objectives of the fund. Where this is the case, the investment as a whole should be judged to be consistent with the stated objectives.

<ESMA\_QUESTION\_FUNA\_1>

1. : 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>

In principle, we think reasonable fund buyers would expect every investment held in an investment fund to be aligned with the stated objectives of that investment fund. In principle therefore we think a threshold of 100% is appropriate. In practice funds often hold a proportion of their assets in cash or in other instruments for liquidity purposes. These should be excluded from the calculation. In practice, it may be that there are other securities held for short periods that may also not align with the stated investment objectives of the fund. We would therefore propose that a threshold of 90% (not including cash and other instruments held for liquidity purposes) is appropriate. Furthermore, managers should be required to explain and justify any investments that do not align with the stated objectives of the investment fund.

<ESMA\_QUESTION\_FUNA\_2>

1. : 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>

As above the principle here is that the name of a fund reflects the assets held within it. It is not clear to us why 50% is deemed the appropriate threshold to justify the use of the word sustainable. We would argue that substantially all the investments should be consistent with stated objectives of the fund allowing some level for liquidity and trading purposes. We think 90% would be a more appropriate level.

We agree with the definition of a sustainable investment being an ‘investment in an economic activity that contributes to an environmental or social objective’ and that *‘does not significantly harm any environmental or social objective and that the investee company follow good governance practices*’. However, we would caution ESMA from attempting to list particular environmental or social objectives. For example, phasing out toxic chemicals and replacing with less hazardous alternatives is an important environmental objective which is not listed. Equally, social objectives such as improved healthcare, education, safety or wellbeing are not mentioned but clearly are areas of positive social impacts. The identification of specific social or environmental objectives should be required of an asset manager, but the choice should be left up to the manager.

<ESMA\_QUESTION\_FUNA\_3>

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

<ESMA\_QUESTION\_FUNA\_4>

We agree that a threshold mechanism is an important part of the naming criteria, but also believe that there should be an obligation on fund managers to explain and justify any investment (outside of cash and other instruments used for liquidity purposes) that does not align with the stated investment objectives of the strategy. This should be a requirement in addition to meeting any quantitative threshold.

<ESMA\_QUESTION\_FUNA\_4>

1. : 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>

Nothing other than that addressed in Q4.

<ESMA\_QUESTION\_FUNA\_5>

1. : 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 agree with this proposal.

<ESMA\_QUESTION\_FUNA\_6>

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

<ESMA\_QUESTION\_FUNA\_7>

No comment.

<ESMA\_QUESTION\_FUNA\_7>

1. 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>

No comment.

<ESMA\_QUESTION\_FUNA\_1>

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

<ESMA\_QUESTION\_FUNA\_2>

No comment.

<ESMA\_QUESTION\_FUNA\_2>

1. : 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>

No comment.

<ESMA\_QUESTION\_FUNA\_8>

1. : 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>

No comment.

<ESMA\_QUESTION\_FUNA\_9>

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

<ESMA\_QUESTION\_FUNA\_10>

Yes we do think there should be specific provisions for these terms. Impact investments are distinct from sustainable investments. An impact investment is made with the intention to deliver a positive impact through both the enterprise (or investee) contribution as well as the investor contribution. Sustainable investments are aligned with a social or environmental objective and do not have the same intentionality that characterises impact investments. It is possible to have an impact strategy that is not invested in sustainable investments (for example an impact strategy might be focused on transitioning businesses).

For all funds (both private and public markets) using impact-related words in their name, we suggest requiring from the fund to provide a clear statement on how the investees of the fund will contribute to the change (investee contribution) and how the fund aims to contribute to that change (investor contribution) via its investment activities. An impact fund needs to explain details about the intended changes that the fund will support and manage towards, and the mechanisms and instruments through which the fund will work with and support portfolio companies in creating real-world impact. Transparency of impact investing funds, including in their pre-contractual disclosures, about these elements and the reasoning behind them, would address questions related to intentionality and investor contribution. We propose requiring a clear statement of investment objectives and disclosures of results.

<ESMA\_QUESTION\_FUNA\_10>

1. : 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 comment.

<ESMA\_QUESTION\_FUNA\_11>

1. : 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>

No comment.

<ESMA\_QUESTION\_FUNA\_12>

1. : 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>

We agree with this proposal.

<ESMA\_QUESTION\_FUNA\_13>

1. : 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 comment.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

No comment.

<ESMA\_QUESTION\_FUNA\_15>

1. : 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>

No comment.

<ESMA\_QUESTION\_FUNA\_16>