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Your character/message fromOur
2022 ESMA 34-472-373

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name
Francfort, 16 February 2023

Subject: Consultation on guidelines for fund names

ESMA 34-472-373

Dear Ladies and Gentlemen,

Thank you for the opportunity to comment. In summary, we are of the opinion that

- no specific threshold values can be derived from the prohibition of misleading statements and the fund name
- and
- to introduce thresholds, specific fund categories would have to be defined to which the appropriate thresholds could then be assigned.

Preliminary remarks

1. As the Association of Independent Asset Managers Germany (Verband unabhängiger Vermögensverwalter Deutschland e.V.), we welcome any measure that helps to avoid greenwashing and encourages institutions to develop a credible sustainability concept. From the beginning, we have encouraged our members to align their investment strategy transparently and according to the terminology of the Disclosure Regulation (SFDR). Unfortunately, the complexity of the regulation, the terminologies as well as the lack of a simple data set has led to a majority of our members deciding not to offer a sustainability concept in financial portfolio management for the time being. This means that the majority of our members neither advertise ecological or social features nor fulfil sustainability criteria. To reiterate,

this is entirely due to overregulation and complexity, which can only be met either by very large providers or by providers specialising in ESG issues.

2. We see the need expressed in the draft to provide for certain minimum quotas for investment funds to fulfil the respective "advertised" ecological or social characteristics or the respective "targeted" sustainability objective. However, we have considerable reservations about deriving the threshold values provided for in the draft from the prohibition of misleading advertising. **In our view, there is no sufficient legal basis in Art. 4(1) of Regulation 2019/1156 for the introduction of specific thresholds.** The question of whether a fund name is "fair, clear and not misleading" can only be answered on a case-by-case basis, taking into account all the surrounding circumstances, and not schematically according to threshold values.
 - 2.1 The name of a fund alone is unsuitable as a starting point for a blanket regulation of thresholds. A possible "misleading" is not limited to the fund name, but can result from all advertising descriptions. Therefore, Article 4 (1) of Regulation 2019/1156 refers to "marketing advertisements directed at investors". This means that the advertisements must be considered in their entirety.
 - 2.2 In our view, fixed thresholds are therefore unsuitable to provide a conclusive yardstick for "misleading" or, conversely, "honesty". For depending on the individual case, a fund name may not yet be misleading although "only" 79% of the investments are used to fulfil the advertised environmental or social characteristics or the sustainable investment objective. Conversely, a marketing advertisement may well be misleading even though the intended quota of 80% is fulfilled.
 - 2.3 For the question of "misleading" and "honesty", it is not only the fund name that matters, but primarily the communicated investment strategy. If, for example, the investment guidelines clearly and understandably state that "only" 60% of the investments are invested in the advertised environmental or social characteristics, then any sustainability-related fund name ("ESG...") is not misleading. An investment fund that invests only 60% of the investment or even significantly less in sustainability-related investments can still bear a sustainability-related name as long as it remains comprehensible how high the quota of sustainability-related investments is.
 - 2.4 Moreover, not all ESG-related designations in a fund name can be assessed uniformly with the same quotas. If, for example, it is expressed in the fund name that ESG only plays a minor role (for example "ESG-light"), it would be manifestly disproportionate to prescribe a quota of 80% here.
 - 2.5 Even if the fund name contains the term "sustainable", we do not see any legal basis for a schematism that in this case at least 50% of the 80% must be invested

in sustainable investments. The calculation is far too schematic and seems contrived.

3. In our view, the thresholds mentioned in the consultation draft can also not be used as an indication for the classification of "misleading". The assessment of "fair, clear and not misleading" requires a comprehensive weighing of all advertising statements.
4. In our opinion, a concrete legal basis is required for the definition of threshold values, which explicitly authorises the definition of threshold values. Here it would certainly make sense to **define different fund categories** at the regulatory level under the aspect of sustainability, to which certain sustainability-related requirement profiles are then assigned. Anyone who then wants to be assigned to a defined fund category must comply with the respective minimum values.

On the individual questions:

Q1: Do you consider the introduction of quantitative thresholds for the valuation of funds necessary? Names of the funds?

In principle, we welcome the introduction of quantitative thresholds in the area of investment funds for reasons of transparency. However, no minimum quotas can be derived from the fund name.

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

We have reservations about this. See preliminary remark no.2.

Q3: Do you agree that an additional threshold of at least 50% of the minimum proportion of sustainable investments should be set for the use of the word "sustainable" or any other sustainability-related term in the name of the fund? If not, please provide reasons and an alternative proposal.

We have reservations about this. See preliminary remark No.2. For the alternative proposal, see preliminary remark No.4.

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

See Preliminary Remarks No.4

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

See Preliminary Remarks No.4

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

Minimum protection measures are appropriate. However, they cannot be derived from the fund name alone.

Q7: Do you think that, for the purposes of these guidelines, special rules should apply to the calculation of thresholds for derivatives?

a) Would you suggest using the notional value or the market value for calculating the minimum share of the investment?

b) Are there any other measures you would recommend for derivatives to calculate the minimum investment percentage?

We have no opinion on this.

Q8: Do you agree that the same fund name requirements should apply to funds that specify an index as a reference benchmark as to any other fund? If not, please justify this and provide an alternative proposal.

Neither from the fund name nor from an assigned index can concrete threshold values be derived. This requires the definition of specific fund categories.

Q9. Would you distinguish between physical and synthetic replication of an index, for example in terms of collateral held?

We have no opinion on this.

Q10. Do you agree that there are specific provisions for "impact" or impact-related names in these guidelines?

No. The concept should not be implemented.

Q11. Should there be specific provisions for "transition" or transition-related names in these guidelines? If so, what should they be?

No. The concept should not be implemented.

Q12. The proposals in this consultation paper relate to the names of investment funds with respect to specific sectoral concerns. Given that the SFDR disclosures also apply to other sectors, do you think that these proposals could have an impact on other sectors and, if so, would you consider it useful to have similar guidance for other financial products?

The prohibition of misleading information does not only apply to investment funds, but also within the scope of MiFID investment services (Article 23 para.3 Regulation 65/2014 and Art. 44 Regulation 565/2017). The definition of thresholds for the names of investment funds could therefore also have an impact on the names of investment strategies in the context of financial portfolio management. We see no reason for such a determination. Investment strategies in the area of financial portfolio management are not marketed in the same way as investment funds. The name of an investment strategy plays a much less important role in the area of individual financial portfolio management.

Q13. Do you agree that a transitional period of 6 months from the date of application of the guidelines should be provided for existing funds? If not, please explain the reasons and make an alternative proposal.

No. The concept should not be implemented. Even taking into account a transition period, the requirements associated with renaming the investment funds are not reasonable. The resulting confusion would also be incomprehensible from the investors' point of view.

Q14. Should the naming provisions be extended to closed-end funds that have completed their subscription period before the date of application of the guidelines? If not, please explain your answer.

No. The concept should not be implemented.

Q15. What impact is the introduction of the proposed guidelines expected to have?

Probably countless investment funds would have to rename themselves because the minimum values cannot be met.

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

We cannot provide any information on this.

With kind regards

Dr. Nero Knapp
Executive Legal Adviser of the Association