

Submitted via Online Consultation Portal

European Securities and Markets Authority (ESMA)
CS 60747 – 201-203 rue de Bercy
Paris, France
75012

16 February 2023

Re: Comments on proposed guidelines covering the use of ESG or sustainability-related terms in fund names.

To the European Securities and Markets Authority:

Thank you for this opportunity to comment on the proposed qualifications for ESG/Sustainability/Impact funds. This letter is submitted by Accountability Counsel – a non-profit organization that advocates for robust accountability and grievance redress mechanisms to underpin the social and environmental commitments of public and private institutions operating in the space of development finance. Having worked alongside local communities harmed by European financing,¹ we agree that minimum safeguards around fund names are needed to address pervasive greenwashing. Those safeguards should be rooted in internationally accepted principles and guidelines for sustainability due diligence and impact management. What this means in short is that any fund claiming to be an ESG, Impact, or Sustainability fund, must have an effective accountability mechanism governing its investments.

We submitted comments to the United States Securities and Exchange Commission (SEC) in its consideration of similar amendments with respect to the Investment Company Act of 1940 (also known as the “Names Rule”).² We urge ESMA, as we have urged the SEC, to require ESG/Impact/Sustainability funds to be accountable to the people they impact the most: local communities. Those funds cannot merely self-report their positive impacts; they also must report on how they are addressing negative impacts. ESMA should require so-called ESG/Impact/Sustainability funds to report on the effectiveness of their accountability mechanisms and report data from those mechanisms. On this point, we respond to the following questions presented by the consultation paper:

QUESTION (5)

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 or objectives? If yes, please explain your alternative proposal.

¹ Learn more at: <https://accountabilitycounsel.org/>.

² Comment available at <https://www.inclusivedevelopment.net/wp-content/uploads/2022/08/SEC-comment-letter.pdf>.

ANSWER

Yes. The definitions of “Sustainable Investment,” under Annex [IV](#) and [V](#) of EU Regulation 2019/2088 on sustainability related disclosures in the financial services sector,³ and “Impact Investing” under [paragraph 20](#) of the proposed guidelines⁴ require due diligence and governance over environmental and social impacts. This should more specifically require these investors to have an effective grievance redress and accountability mechanism, as is recognized by several internationally accepted guidelines and standards, including the OECD Due Diligence Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the Global Reporting Initiative Universal Sustainability Reporting Standards, the UNDP SDG Impact Standards for private equity funds, and the OECD-UNDP Impact Standards for Financing Sustainable Development. Indeed, the EU’s proposed corporate sustainability due diligence legislation likewise would require that regulated actors maintain publicly accessible complaints mechanisms to ascertain and respond to environmental, social, and human rights concerns.

People whose environment and human rights are impacted by an investment are well-placed to provide experiential evidence implicating sustainability and impact, and effective grievance mechanisms are often the only conduits for investment-impacted communities to relay issues directly to investors. Funds marketing themselves as sustainable, ESG, or impact investing should therefore be required to disclose the availability, use, and issues raised through and outcomes of effective grievance mechanisms in order to substantiate claims that funds are indeed working to optimize net positive environmental and social impacts in their investment strategies. Sufficiently independent grievance mechanisms can function as assurance tools in this regard. The existence, or lack thereof, of such communication channels and mechanisms can likewise help investors assess the quality and reliability of data gathered by investment firms issuing ESG ratings and indexes.

QUESTION (10)

Do you agree with having specific provisions for “impact” or impact-related names in these Guidelines? If not, please explain why.

ANSWER

Yes. The field of impact investing is often privatized development finance; however, unlike traditional development institutions, impact investors often operate without environmental and social safeguards and independent accountability mechanisms to ensure safeguard

³ “Sustainable Investment means an investment in economic activity that contributes to an environmental or social objective, provided that the investment does not significantly harm any environmental or social objective and that the investee companies follow *good governance practices*.”

⁴ The word “impact” is expected to be used only for funds investing their minimum proportion with the intent to generate positive, *measurable* social or environmental impact alongside a financial return.

compliance and to redress unintended harm. Many investors incorrectly assume that impact funds have environmental and social standards comparable to their public sector counterparts. The lack of transparency and accountability denies the fund and its investors of knowing the true environmental and social impacts of their investment activities. Parameters and expectations must be set to combat impact-washing,⁵ i.e, false assertions and assumptions that funds are financing environmentally or socially beneficial projects. Moreover, verification of impact through grievance redress disclosures is essential to assure that investments are targeted to advance an impact fund's intended purpose and are managed to address negative impacts.

Conclusion:

Public governance of sustainable investments is essential to satisfy investors and other stakeholders that their money is being used to promote the positive changes marketed. To effectively regulate against greenwashing and impact washing, funds must be required to have and provide disclosures on grievance redress and accountability mechanisms in order to be labeled as impact investing, sustainable, or ESG. Accountability Counsel is here as a resource on how best to establish effective grievance redress mechanisms and welcomes an opportunity for further discussion.

Sincerely,



Margaux Day

Policy Director

margaux@accountabilitycounsel.org
accountabilitycounsel.org



Gregory Berry

Policy Associate

gregory@accountabilitycounsel.org

⁵ See, e.g., Catherine Cote, *Impact Washing: What Is It And How to Stop It*, Harvard Business School Online's Business Insights Blog (4 Aug 2022), available at <https://online.hbs.edu/blog/post/what-is-impact-washing#:~:text=What%20Is%20Impact%20Washing%3F.due%20t0%20inadequate%20impact%20measurement>.