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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 | State Street Global Advisors Europe Limited |
| Activity | Asset Management |
| Are you representing an association? |[ ]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

State Street Global Advisors appreciates the opportunity to provide feedback on the consultation paper issued by the European Supervisory and Markets Authority (“ESMA”) regarding *Guidelines on funds’ names using ESG or sustainability-related terms*.

State Street Global Advisors is the investment arm of State Street Corporation and, with $3.5 trillion in assets under management (as of 31 December 2022) is one of the largest asset managers in the world. This includes approximately $59 billion of assets with respect to SPDR® products for which State Street Global Advisors Funds Distributors, LLC (SSGA FD) acts solely as the marketing agent. SSGA FD and State Street Global Advisors are affiliated. For more information, please visit SSGA’s website at www.ssga.com.

We recognise the importance of ensuring fund names and marketing communications are “fair, clear and not misleading”, and we agree that tackling greenwashing is an emerging area of focus, globally, as a result of a growing number of funds using ESG and sustainability-related terminology in their name. Overall, whilst we are supportive of the overarching objective in this regard, we are particularly concerned with the proposed introduction of quantitative thresholds and other prescriptive criteria in order to use sustainable terminology in fund names. We provide detailed comments in response to the consultation questions below.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Whilst we appreciate the proposed Guidelines seek to promote a more consistent approach to the way in which ESG and sustainability-related terms are used in fund names, we do not agree with the proposed introduction of quantitative thresholds to assess funds’ names. Challenges with absent, unclear or incomparable data would impede investment mangers’ ability to calculate the thresholds accurately. There is also insufficient guidance provided as to how these thresholds should be calculated, not least given broad reference to undefined terms such as ‘sustainable investment’, as discussed below. We recommend that these Guidelines focus on reinforcing existing rules for fund names and marketing communications, particularly in view of any recalibration of the EU Sustainable Finance Disclosure Regulation (SFDR).

Specifically, the draft Guidelines do not provide any detail as to how the 80% threshold should be calculated. This would lead to investment managers and national competent authorities (“NCAs”) adopting different approaches, thereby having the direct opposite effect of enhancing comparability between investment funds. We have similar concerns regarding the 50% minimum proportion of sustainable investments in order to the use of the word “sustainable” or any other sustainability-related term in the name of the fund. In short, there is no legal definition of “sustainable investment” that is sufficient to ensure a consistent approach across financial market participants. In the current application of SFDR, different managers have adopted different interpretation, and this may not lead to clear and consistent outcomes for consumers as intended by the Regulation.

These Guidelines are drafted in a way that could constrain sustainable funds to only invest in securities that have reasonably adequate data such as large cap equities, since data and methodological challenges would impede other asset classes’ ability to meet specific thresholds. For example, multi-asset funds and/or fixed income funds will probably be constructed of government bonds and cash, but the introduction of any threshold would effectively place a cap on these assets. This could detrimentally impact our ability to manage risk and expose investors to heightened concentration risk.

Furthermore, in order to apply the proposed quantitative thresholds, the guidance refers to definitions provided for in the EU SFDR. This includes “environmental and social characteristics” and “sustainable investments” under Article 8 and Article 9. These definitions are not currently precisely defined in the Regulation, and have been subject to wide interpretation by financial market participants and NCAs. Should the European Commission respond to the European Supervisory Authorities’ request for clarification as part of Level 1 legislative review, these Guidelines should not introduce quantitative thresholds to avoid unnecessary further updates/changes to fund names.

Should ESMA proceed with mandating quantitative thresholds, however, the final Guidelines would need to consider allowing for ‘cure periods’ to address inadvertent breaches of such thresholds.

<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>

As above -- we do not agree with the introduction of thresholds at this time. We recommend that ESMA relies on existing marketing requirements to ensure clear, fair and accurate product information, and apply that to fund naming conventions.

<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 discussed in questions 1 and 2, we do not agree with the introduction of thresholds at this time.

<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>

As discussed in questions 1 and 2, we do not agree with the introduction of thresholds at this time.

<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>

As discussed in questions 1 and 2, we do not agree with the introduction of thresholds at this time.

<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 do not agree with minimum safeguards on the remaining assets of a portfolio that are based on the referenced exclusion criteria. This would effectively require investment funds with an ESG- or sustainability-related term in their name to be entirely (100%) constructed of sustainable investments, and could have the potential to undermine the fund’s ability to diversify. For example, multi-asset funds and/or fixed income funds are likely to contain assets including government bonds, and in particular, cash. Should ESMA proceed with final guidance that introduces thresholds and additional minimum safeguards, we recommend clarifying that instruments used for hedging currency and interest rate risk, such as for exchange, interest rate derivatives and government bonds, are excluded.

<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>

See above our comments to question 6.

<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>

See above our comments to question 6.

<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>

See above our comments to question 6.

<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>

It is reasonable to consider applying the final Guidelines to all investment funds within scope of this proposal regardless of their investment approach; however, ESMA is right to question applicability to funds designating an index as a reference benchmark—which we assume means for index tracking purposes—in view of the additional challenges that index-based investment funds face.

Index-tracking funds are often obliged to use the name provided by the index provider within the fund name. It would therefore be problematic to enforce naming restrictions on such funds in the absence of applying the regime to index providers, as discussed further below. We do not believe it An outcome whereby the name of a fund is required to be different than the name of the reference benchmark it tracks arguably creates less transparency for the end investor and is thus counterintuitive to the goals of these Guidelines.

Furthermore, investment managers managing index-based strategies have limited input with respect to the methodology or standards applied by index providers. Index providers have developed sustainability-related index products in the market, using the index providers’ proprietary index construction methodologies and third-party data sources. Currently, most index providers provide transparency in the methodology at their discretion, and are not subject to legal liability regarding the construction of their indices. The proposals note that funds designating an index as a reference benchmark could only use ESG-related terms in their name if the relevant thresholds proposed are met by the fund. Index-tracking funds are obliged to purchase the constituents of the index in order to meet their investment objective to track. Similarly, the timeframes within which the index provider can change the constitution of the index are likely to differ to those required to notify investors (and relevant competent authorities) of any change to a fund name. Whilst proportionate due diligence and periodic oversight of the index provider and index methodology is appropriate, we believe that index providers should be legally responsible and accountable for ensuring the accuracy of the indices they provide with respect to SFDR.

We believe there should be additional consideration with respect to the importance of index-tracking strategies in the investment ecosystem and the role played by index providers in delivering those investment outcomes through the development of SFDR and this proposal. Importantly, the proposed Guidelines potentially exclude strategies tracking Paris-Aligned Benchmarks (PAB) and/or Climate-Transition Benchmarks (CTB) where these indices do not satisfy the proposed thresholds requirements. Clarity regarding the roles and responsibilities of the index provider, fund manager and supervisory authority should be integrated into obligations prescribed under the EU Benchmark Regulation, accordingly.

<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>

We do not have any comments on this questions.

<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>

We do not currently offer impact funds, or funds with impact-related names.

<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>

While we do not oppose specific provisions for transition-related fund names, this could create further complexity and confusion with limited benefit to investors. In the absence of clarification from the European Commission as to whether transition strategies are captured under the EU SFDR, in addition to there being no clear definition of ‘sustainable investments’ within that framework, we recommend that ESMA refrains from prescribing specific provisions.

<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>

Yes. As a general matter, we believe it would be important to ensure a level playing field where investment funds have the same target market as other products.

<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>

The proposed 6-month transitional period is not a suitable timeframe in light of the volume of work required to update funds names, prospectuses and other fund documentation—which necessitates supervisory approval—in addition to, where relevant, obtaining shareholder consent. Considering ESMA estimate circa 4,000 investment funds were expected to be impacted during its Open Hearing on these draft Guidelines, we believe a transitional period of, at least, 12-18 months would be more appropriate.

It may be prudent to consult NCAs in order to ensure there is sufficient bandwidth to support the application of these Guidelines. These Guidelines would constitute a profound reworking of the disclosures already made under SFDR, hence we are concerned that the currently proposed transitional period is unfeasible to conduct adequate supervisory review and approval. In addition, there have been multiple updates to prospectuses and offering documentation as a result of increased regulation. Further updates would not only incur additional cost to managers and funds, but could create confusion for investors given the number of updates they have seen.

<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>

We do not have any comments on this question.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

As mentioned, the anticipated impact of these Guidelines should not only be considered in relation to investment firms, but also to supervisors should there be significant change to existing fund names and relevant documentation. There are also additional challenges for index-based investment strategies, as described above.

Furthermore, for global investment managers, the impact of the Guidelines will need to be assessed in the context of similar regulatory developments in other jurisdictions like the US and the UK. Although those jurisdictions are still in the process of finalising their requirements, inconsistent regulatory approaches appear to be inevitable, for example, in relation to the criteria and quantitative thresholds in which funds can use ESG or sustainable-related terms in fund names. This inconsistency can lead to confusion to investors.

<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>

In principle, we agree that a common approach to the use of sustainability-related terms in funds’ names reduces the risk of providing misleading information to investors. However, that benefit may not be realised if the final Guidelines utilise terminology and definitions, which are not clearly defined or subject to wide interpretation by financial market participants and supervisors, as described above.

With respect to the estimated costs to regulator(s), the draft analysis presumes limited impact because the additional assessment to verify compliance with the quantitative thresholds will be part of their standard fund documentation/marketing communication approval process. However, we urge ESMA to not underestimate the sheer volume of work that would be required in practice, particularly as ESMA expects circa 4,000 funds to be impacted by these Guidelines.

Similarly, we disagree that there will be no additional compliance costs in terms of IT, training or staff, particularly in view of emerging regulatory divergence across various regulatory regimes. Investment managers would need to further develop processes and controls to monitor (and address) any breaches should the final Guidelines introduce the proposed quantitative thresholds.

<ESMA\_QUESTION\_FUNA\_16>