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Ms. Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Investment Company Names (File No. S7-16-22)

Dear Secretary Countryman,

CFA Institute appreciates the opportunity to submit this comment letter to the Securities and Exchange Commission ("SEC" or "Commission") in response to its published notice of proposed rules for Investment Company Names (the "Proposed Rule").

CFA Institute[1] is a global, not-for-profit professional association with more than 81,000 U.S.- based members who function as chief investment officers, investment advisers, and portfolio managers on the buy side of the market; as brokers, investment bankers, and financial analysts on the sell side; and as consultants, chief financial officers, regulators, and academics elsewhere in the financial markets. Our membership is bound by a common commitment to the CFA Institute Code of Ethics and Standards of Professional Conduct ("Code and Standards") that requires all members and candidates to "place their clients' interests before their employer's or their own interests."[2] CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide.

The Proposed Rule sets forth a number of amendments to Rule 35d-1 under the Investment Company Act of 1940 – otherwise known as the "Names Rule." We appreciate the Commission's efforts to improve the transparency and relevance of fund names and agree that action is needed to address names that are ambiguous, confusing, misleading, or that suggest investment focuses, strategies, benefits, or types of holdings that do not align with a fund's holdings. We agree that many fund managers purposefully adopt names to draw interest in their funds and that many investors rely on fund names rather than disclosures when choosing an investment fund.

Of particular concern are fund names that refer to ESG, sustainable investing, responsible investing, socially responsible investing, and similar terms. Strong investor demand for these products has led to a dramatic rise in assets managed according to various types of ESG approaches. Because ESG-related

[1] CFA Institute membership includes investment analysts, advisers, portfolio managers, and other investment professionals in more than 160 markets, with more than 190,000 holding the Chartered Financial Analyst (CFA®) designation.
[2] CFA Institute Code of Ethics and Standards of Professional Conduct: https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.pdf

terms lack commonly accepted meanings, such terms can have many different interpretations and generally provide little or no clarity or specific information to investors when choosing a fund. This inconsistency in terminology and lack of transparency has led to an abundance of "greenwashing" in the marketplace. We define "greenwashing" as disclosures or advertising materials that intentionally or inadvertently mislead investors about the ESG approaches used in an investment product, the ESG characteristics of an investment product, or the degree of influence that an investment product has on ESG issues. Because greenwashing reduces an investor's ability to make informed decisions, over time, it may lead to an erosion of trust in the investment industry.

In this comment letter, we provide recommendations on several aspects of the proposed amendments to the Names Rule and the related proposed instructions for prospectus disclosures.

Executive Summary

We agree that the terms used in fund names should reflect the fund's investment objective, strategies, and types of securities held. We do not agree, however, with expanding the 80% Investment Policy Requirement to cover all terms in a fund's name that suggest an investment focus, nor do we agree with the proposed requirements to limit temporary departures from a fund's 80% Investment Policy. We believe these amendments are likely to impose artificial constraints on active management and may not alleviate style drift, greenwashing, and name confusion.

Instead, we propose a set of requirements intended to reduce style drift, greenwashing, and name confusion while preserving flexibility for active management. Chief among our proposals, we recommend that the Commission require that if a fund's name suggests an investment focus, the investment focus must be consistent with the key factors in the Principal Investment Strategies that are disclosed in the fund's registration statement. Simply stated, we believe a fund's implied investment focus should match its principal investment strategies and its investments. While we agree with requiring any terms used in a fund's name that suggest an investment focus to be consistent with those terms' plain English meanings or established industry use, we further recommend requiring that the investments suggested by the investment focus be consistent with the Principal Investment Strategies under normal circumstances.

In addition, we support the Commission's view that a fund name that contains an ESG term when ESG factors are not a significant or main consideration in investment decisions should be considered materially deceptive and misleading. Finally, if a fund's name implies an investment focus, we recommend requiring, for all funds, prospectus disclosures that include the definitions for all terms used in the fund's name that relate to the investment focus and the selection criteria the fund uses to select the investments each term describes, if any.

Detailed Comments

Materially Deceptive and Misleading Fund Names

Under the current Names Rule, if a fund's name suggests a focus in a particular type of investment, or in investments in a particular industry, or geographic focus, the fund is required to adopt an investment policy to invest at least 80% of its assets in the investments suggested by the name. There is a similar

80% Investment Policy Requirement for funds with "tax-exempt" in their name. Names that reference an investment strategy are not subject to the 80% Investment Policy Requirement.

In our view, the current Names Rule provides important investor protections by specifying several well-defined categories on which investors base fundamental portfolio allocation decisions. These categories provide a level of assurance to investors that a bond fund is invested in bonds and an international fund is invested in securities that provide international exposure. Although risk and return profiles vary greatly among funds within these categories, these types of investments provide a fundamental starting point for investor decisions. As such, we believe the Commission should retain the types of names currently covered by the 80% Investment Policy Requirement.

The Proposed Rule would expand the Names Rule's 80% Investment Policy Requirement to apply to any fund whose name contains terms suggesting that the fund focuses on investments that have, or investments whose issuers have, particular characteristics. The expanded scope would include, for example, fund names with terms that suggest an investment strategy, such as value or growth, or terms indicating that the fund's investment decisions incorporate one or more ESG factors.

We agree that the terms used in fund names should reflect the fund's investment objectives, principal investment strategies, and types of securities held. We acknowledge that fund names can be important marketing tools that are carefully chosen to appeal to certain types of investors. Fund names can lead investors to believe that certain funds have certain types of securities, characteristics, or strategies that differ from the actual fund composition and strategies.

In addition, we understand the importance of relying on regulation to protect investors by reducing misrepresentation and mis-selling, but we believe the proposed 80% Investment Policy Requirement may be difficult to implement without constraining active portfolio management and may not alleviate style drift, greenwashing, and name confusion. Instead, we recommend requiring fund names that suggest an investment focus to be consistent with the fund's Principal Investment Strategies that are disclosed in the fund's registration statement. We believe an implied investment focus provides the potential for greenwashing without such a requirement. We also recommend requiring a fund's implied investment focus to align with the key factors in the fund's Principal Investment Strategies and its holdings. If this is not the case, the Commission should consider the fund name to be materially deceptive and misleading. We also believe that if an investment focus implied by a fund name has multiple elements, the name should be considered false and misleading unless all elements implied by the investment focus are consistent with the fund's Principal Investment Strategies as disclosed in the fund's registration statement.

We see the potential for ambiguity or confusion over some multi-element names. Several examples of multiple-element names are provided in the Proposed Rule discussion, including the "ABC Wind and Solar Power Fund" and the "XYZ Preferred Securities and Income Fund." In these examples, it is clear that under the Proposed Rule, the first fund must be composed of 80% investments in wind securities and solar securities and the latter fund of 80% in preferred securities and income-producing securities.

It is unclear, however, how an investment focus would be treated in instances when the name does not clearly imply two different types of investments, such as a compound name. Under the Proposed Rule, it is ambiguous how the Commission would treat a hypothetical fund named the "Core Strategy Impact Bond Fund." Would such a fund be interpreted as having a multiple-element investment focus (some

securities are core strategy bonds, and some are impact bonds), or must it be interpreted as having a single investment focus (80% of the securities are both core strategy bonds and impact bonds)? As long as this fund holds at least 80% of its assets in bonds, it complies with the existing 80% Investment Policy Requirement in both interpretations. It is unclear, however, if both interpretations of the fund's name would comply with the proposed 80% Investment Policy Requirement. In these cases, investors would need more information about the implied investment focus. Accordingly, we recommend that the Commission provide examples in the Adopting Release for disclosures that may be appropriate for such funds when the investment focus implied by the name is unclear. For example, the Core Strategy Impact Bond Fund could disclose the percentage of core strategy bonds that are designated as impact bonds.

For funds that have multi-element names, the Proposed Rule would permit a fund subject to the 80% Investment Policy Requirement to take a reasonable approach in determining the investment mix of the elements in a fund's name that constitute its investment focus rather than requiring a specific minimum allocation for each name element. We support this approach. We believe managers should determine what constitutes a reasonable investment mix, and investors should determine if that mix is acceptable to them. Any element in a fund's name should reflect a key factor in the fund's principal investment strategies; therefore, the allocation to an element within a fund name should be meaningful. Although a minimum allocation requirement for each element in a fund's name would provide a level of assurance to investors that a fund holds at least a specified percentage of an investment represented by a term in its name, we find it difficult to determine what such a minimum allocation should be. If the minimum allocation requirement were set at a nominal amount to preserve investment decision-making flexibility — 5%, for instance — the potential for mis-selling and greenwashing exists. Conversely, a more meaningful allocation of, for example, 25%, would impose arbitrary constraints on a fund's portfolio construction and management process. A fund name that implies an investment focus in a specific type of investment but generally holds only a minimal allocation in that type of investment would not reflect a reasonable mix and would be considered materially misleading and deceptive. Using the prior Core Strategy Impact Bond Fund as an example, if this fund typically invested less than 10% in impact bonds, we would likely consider the fund name to be materially deceptive and misleading.

Finally, we agree that fund names that refer to portfolio characteristics, investment techniques, possible outcomes, or retirement target dates do not suggest a focus in a particular type of investment or investments that have particular characteristics, and these fund names should remain outside the scope of requirements governing an investment focus. There are many portfolio construction and management approaches that can be applied to achieve a portfolio-level characteristic, such as a particular duration target, or a targeted outcome, such as an absolute return. Therefore, we believe it is important that the Names Rule strikes the right balance between allowing a name that preserves flexibility for active management—for a bond fund, for instance, to choose between barbell and bullet strategies to achieve a certain portfolio duration target—while prohibiting a name that may mislead investors.

Plain English Meaning or Established Industry Use

For funds that are required to adopt an 80% policy, the Proposed Rule would require that any terms used in the fund's name that suggest either an investment focus, or that the fund is a tax-exempt fund, must be consistent with those terms' plain English meaning or established industry use.

As we stated above, we do not support the expanded 80% Investment Policy Requirement. However, we recommend that the Commission require that the use of terms in all fund names must be consistent with those terms' plain English meaning or established industry use. We note that some fund name terms used with a plain English meaning lack clarity in an investment context. As a result, we recommend that when a fund name contains terms that may be used inconsistently or interpreted in various ways to suggest investment benefits or certain types of holdings, the fund should be required to include in its disclosures a description of how the terms relate to the investment focus and the principal investment strategies. For example, a fund that uses the term "positive change" in its name should be required to explain the "positive change" sought in the context of the investment strategy. In addition, we caution that "established industry use" may contribute to greenwashing if a term has been widely used in an inconsistent manner; in such instances, a manager may claim that the term is used in accordance with industry practice, but the usage could be misleading. As an example, the term "impact" is used in many fund names with a range of meanings from an investment selection process to a fund composed of direct impact investments as defined by the Global Impact Investing Network.[3] Thus, it is critical that funds disclose definitions of all terms used in a name that implies an investment focus along with the specific criteria used to select the investments the terms describe so that investors can better understand a fund's investment focus.

Temporary Departures from a Fund's 80% Investment Policy

Currently, the Names Rule provides for a fund's 80% investment policy to apply "under normal circumstances"; that is, funds have discretion to determine what constitutes a departure from normal circumstances. The proposed amendments would permit a fund to depart temporarily from the 80% requirement only under certain specified circumstances: (1) as a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment; (2) to address unusually large cash inflows or unusually large redemptions; (3) to take a position in cash and cash equivalents or government securities to avoid a loss in response to adverse market, economic, political, or other conditions; or (4) to reposition or liquidate a fund's assets in connection with a reorganization, to launch the fund, or when notice of a change in the fund's 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule. Temporary departures under circumstances (1) and (3) are not permitted for more than 30 consecutive days. In all cases, a fund would have to come back into compliance as soon as reasonably practicable.

We disagree with this amendment based on our concern that the 30-day window may lead to investment decisions that may not be in the best interest of investors or may prohibit a fund from remaining in compliance during prolonged periods of market duress. Instead, we propose that the Commission require that the investments suggested by the investment focus should align with the Principal Investment Strategies under normal circumstances. This recommendation reflects current practice where a majority of funds typically disclose a target to manage 80% of their investments according to the strategies disclosed in the fund's registration form but retain discretion to manage around this 80% due to market conditions and liquidity management requirements. This recommendation provides greater style drift protection than the current requirement for a fund subject to the 80% Investment Policy rule to invest 80% at the time of initial funding (under current regulation, style drift may occur any time after a fund is fully invested) but provides more flexibility than the proposed 30-day window for market conditions and adverse events. Thus, we believe managers should

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[3] "investments made with the intention to generate positive, measurable social and environmental impact alongside a financial return." See https://thegiin.org/

maintain discretion over which circumstances constitute “a departure from normal circumstances” and the duration of the departure.

Under the Proposed Rule, a temporary departure from the 80% Investment Policy Requirement would be allowed “to address unusually large cash inflows or unusually large redemptions.” If the Commission were to go forward with this amendment, we urge the Commission to also issue guidance as to what qualifies as an unusually large cash flow. We reference a similar concept in the Global Investment Performance Standards (GIPS®),[4] in which cash flow events that qualify as “significant” trigger special treatment. It is imperative that the Commission’s guidance specify in advance what qualifies as a significant cash flow and that the cash flow be large enough to temporarily prevent the fund from implementing the strategy. Without such guidance, a fund may classify a small cash flow as unusually large and use that as a reason to violate the 80% Investment Policy Requirement.

Use of ESG Terms in Fund Names

The Proposed Rule states that “[i]f a fund considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio, the use of terms in the fund’s name indicating that the fund’s investment decisions incorporate one or more ESG factors is materially deceptive and misleading.”

The Proposed Rule describes an “integration fund” as a fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but such ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio. Under the Proposed Rule, the names of integration funds are materially deceptive or misleading if the name indicates that the fund’s investment decisions incorporate one or more ESG factors. We agree with this proposed prohibition based on the principle that the terms used in a fund’s name should reflect key factors that are part of the fund’s principal investment strategies. If ESG factors are generally no more significant than other factors in the investment selection process, we believe the fund’s name should not refer to such factors. We see this scenario as one of the most common and preventable examples of greenwashing.

In addition, we believe fund names that imply a prohibition or absence of investments or issuers with certain characteristics should have an investment policy that prohibits these investments. Investors are likely to interpret terms such as “free” and “zero” in a name to mean that the fund has no exposure to the types of investments or investment characteristics referenced by the term. For example, investors are likely to assume that a “fossil fuel–free” fund holds no investments with exposure to fossil fuels. As such, any fund name that implies zero exposure, or indicates that the fund does not hold certain types of securities, may be materially deceptive and misleading if the fund’s investment policy permits allocations to such types of securities or permits exposure below a certain predetermined threshold. We recommend providing this type of name as an example of a misleading name in the Adopting Release.

[4] See https://www.gipsstandards.org/wp-content/uploads/2021/03/2020_gips_standards_firms.pdf

Prospectus Disclosure of Terms Used in Fund Names

The Proposed Rule would require each fund whose name implies an investment focus and is required to adopt and implement an 80% investment policy to include in its disclosures definitions of the terms used in its name and the specific criteria the fund uses to select the investments the term describes, if any.

Although we do not support the expanded 80% Investment Policy Requirement, we do recommend that the Commission require all funds whose name suggests an investment focus to include in their prospectus disclosures definitions of the terms used in the name and the specific non-proprietary criteria the fund uses to select the investments the term describes, if any. It is difficult for a fund's name alone to convey all of the key information about a fund's holdings, risks, characteristics, or strategies, particularly when the name contains ambiguous and undefined terms, such as "sustainable," "green," and "ESG." For example, the term "ESG" can be used to indicate several investment approaches, including exclusion screening; ESG integration; and ESG rating, scoring, and ranking investment approaches. Ambiguous terms may lead investors to inappropriately interpret fund names that include such terms and to misunderstand a fund's strategy or holdings.

We believe these additional disclosures will provide important information that will help investors better understand how a fund's investment strategies correspond with the investment focus suggested by the fund's name and how the fund's management intends to achieve the fund's objective. For funds that use Form N-1A, we believe funds should disclose the investment selection criteria related to the terms in the fund's name in Item 9 as well as the proposed addition to Item 4(a)(1).

Conclusion

Thank you for your consideration of our views and perspectives. For questions about this comment letter, please contact Deborah.Kidd@cfainstitute.org or Kurt.Schacht@cfainstitute.org.

Sincerely,

Paul P. Andrews
Managing Director
Research, Advocacy and Standards
CFA Institute

cc:
Commissioner Gary Gensler
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