20 February 2023

ICI Global response to ESMA Consultation Paper on Guidelines on Funds' Names Using ESG or Sustainability-related Terms

Introduction

ICI Global appreciates the opportunity to provide feedback on the European Securities and Markets Authority (ESMA) Consultation Paper on guidelines on funds' names using ESG or sustainability-related terms ("Consultation Paper"). ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated investment funds. With total assets of $35.7 trillion, ICI's membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global members invest on behalf of millions of retail investors around the world choosing funds to save for retirement, education, and other important financial goals, and therefore have a significant interest in regulatory requirements for funds that incorporate environmental, social, and governance (ESG) considerations into the investment process.

ICI Global supports of ESMA's supervisory aim of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. We generally support measures at the European level which can strengthen supervisory convergence and reduce the risk of fragmentation from different national supervisory practices or diverging national guidance. We also support policies intended to promote transparency and improve comparability of ESG- and sustainability-related investment products for retail investors, especially as demand for such funds continues to grow. As ESMA recognizes in the Consultation Paper, investors should not rely on the name of a fund as an alternative to reading the disclosures to truly understand the assets in which they are investing. Therefore, it should remain a core objective for regulators to improve investors' interaction with disclosures.

Below we have summarized the key points of our response.

We are not supportive of quantitative thresholds at this time

At this stage, setting quantitative thresholds for the proportion of a fund's investments which are sustainable, or which are part of an ESG investment strategy, will not provide retail investors with meaningful information because there is no common agreement on how to measure which assets meet the criteria of being sustainable. Likewise, to the extent ESMA is seeking to address different supervisory practices by different National Competent Authorities (NCAs) and enhance comparability between different products using the same terminology in their name, we believe the lack of clarity around calculating the proposed thresholds undermines these goals.

We believe retail investors benefit from disclosures that allow fund managers to explain their strategies so that investors can better understand how money invested in those funds is being put to work. We note that as of January 2023, financial market participants (FMPs) are disclosing this information in detail under Annexes II and III of SFDR Delegated Regulation.

While we understand the attractive simplicity of applying quantitative thresholds, we believe any proposal setting out specific quantitative thresholds linked to SFDR should come only after the European Commission has sufficiently clarified how FMPs should calculate the proportion of sustainable investments as defined by Article 2(17) of SFDR as disclosed in Annexes II and III of SFDR Delegated Regulation. Without this essential context, we are unable to adequately assess ESMA's proposed quantitative thresholds, and therefore must oppose the introduction of quantitative thresholds entirely at this time. Careful analysis is required of the added value of these Guidelines in an area where the industry is already facing a significant degree of regulatory uncertainty.

If, however, ESMA is set on proceeding with these Guidelines, which we do not recommend, the points we provide below as well as the answers to specific questions are meant as technical suggestions to make the overall Guidelines more workable for FMPs.

The Guidelines should have better coherence with existing legislative texts

The proposed ESMA Guidelines should strive to ensure regulatory coherence with existing frameworks such as SFDR, MiFID2 and the EU Taxonomy. FMPs require interoperability across the multiple, and sometimes inconsistent, EU regulations, directives, and guidelines. As our answers to the questions will show, a significant number of issues need to be clarified or articulated further to achieve regulatory coherence. We encourage ESMA to take the necessary time to reflect on these points before finalizing Guidelines. If the issues we raise below are not addressed, we see a significant risk that the Guidelines will add to existing regulatory uncertainties without addressing the core issues it seeks to address. Finally, we encourage ESMA, before formulating any final Guidelines, to take into account the work that we understand the European Commission is likely to launch in the near future on SFDR, which may provide an appropriate opportunity to address these issues and more effectively improve the quality and clarity of information available to retail investors rather than introducing an additional layer of rules.

Proposal and adoption of any threshold related to sustainable investments should be appropriately sequenced

A core part of the proposed application of the 50% threshold is the interpretation of Article 2(17) of SFDR. The European Supervisory Authorities (ESAs) as well as FMPs are waiting for the European Commission to answer questions raised by the ESAs in September 2022 [Link]. It is therefore difficult for any consultation respondents, including ICI Global, to provide an informed view at this time on whether the ESMA-proposed calibration of this threshold is appropriate. We are cautious about a quantitative threshold relying on a concept that has not yet been fully clarified.

The EU Sustainable Finance agenda has faced a number of sequencing issues since its inception. For example, asset managers were required to disclose data based on corporate data before corporate issuers were required to disclose that data. SFDR Level 2 rules to comply with Level 1 requirements were not adopted until after the Level 1 compliance date. And MiFID II sustainability preference requirements were imposed before data from the EU Taxonomy Alignment was available. Therefore, we would strongly urge ESMA to draw lessons from these instances, which caused major market confusion, and this time ensure the Guidelines are correctly sequenced with other regulatory guidance that is expected in the near future. Our core message is: any quantitative threshold based on a fund's proportion of sustainable investments should be considered and proposed for feedback only after there is certainty for ESMA and FMPs on how this information should be calculated.

ESMA should avoid a one-size-fits-all approach to minimum safeguards

We do not support the application of the exclusion criteria of Commission Delegated Regulation (EU) 2020/1818 (PAB-CTB) as an additional safeguard to the 80% and 50% quantitative thresholds, and caution ESMA against taking a one-size-fits-all approach. The safeguards proposed are very focused on environmental, and more specifically climate aspects, and therefore ill-suited to funds pursuing social objectives or other environmental objectives. As a principle, any minimum safeguards should be reasonable and relevant for the objective and investment strategy of the fund.

ESMA should provide more clarity around different terminology to avoid confusion

As a general principle, ESMA Guidelines should seek to enhance certainty for FMPs and NCAs. We are concerned that these Guidelines, as proposed, add a layer of additional uncertainty. The current draft makes a high-level distinction between two categories of ESG- and sustainability terminology. It is, however, unclear in which categories terms such as SDG, Transition or Impact would fit. As a result, it is unclear which regulatory requirements an FMP may be required to apply for specific products. It is critical for ESMA to provide much more clarity and certainty on the category in which certain terms will fall. This is not dissimilar to the application of the SFDR Level 1 text in March 2021 during which many FMPs struggled to understand whether certain products would have to disclose under Article 8 or Article 9 SFDR, with no clear distinction being provided. Avoiding a repeat of this type of regulatory uncertainty would be welcome as it would avoid unnecessary investor confusion.

ESMA should allow sufficient time after adoption of any guidelines for FMPs to adapt to operational challenges

Due consideration should be taken to the operational challenges the proposed Guidelines could create. While clarity might exist for the launch of new investment funds, FMPs would need to review their range of existing products in connection with any new quantitative thresholds. In some cases, an FMP might be required to change a product name and/or amend regulatory disclosures. This may require supervisory approval, which can involve a certain amount of time. Therefore, it seems reasonable for new Guidelines to be applicable by 18 months, or at least 12 months, after publication.

International developments and fragmentation risks suggest a need for equivalence or other tools to achieve global interoperability

Finally, while appreciating this is beyond the remit of this consultation, we welcome the fact that ESMA recognizes the international developments in other jurisdictions such as the US and UK that may be of relevance. The UK FCA and US SEC are still in the process of finalizing their own rules relating to fund names using ESG or sustainable terminology. ICI and ICI Global provided comments on the proposals, including suggestions for modifying the proposals. (See: ICI comment letter on UK FCA proposal [Link]; comment letter on SEC fund names rule amendments proposal [Link]; and comment letter on SEC ESG fund disclosure proposal [Link]) These various regimes have yet to be finalized, but we have already identified some apparent tensions.

In the case of the SEC's proposed amendments to its fund name rule, ICI opposed application of the 80% names rule policy requirement to any ESG-related terms, given the subjective nature of ESG investing and the lack of clarity on what would count as a sustainable investment. The UK FCA proposed to restrict use of ESG-related terminology in fund names for any funds not using one of the three proposed labels—labels which do not align with the SFDR, ESMA's proposed Guidelines, or the SEC's proposed categories for ESG-related fund disclosures. As we noted to the FCA, neither asset managers nor retail investors will benefit

from regulatory divergence that results in the same investment strategy using different names, different marketing materials, and making different disclosures depending on the jurisdiction where it is offered.

Regulatory fragmentation is counterproductive to retail investors: complying with different sets of marketing/naming requirements results in higher costs for these funds. This will likely be similar to UCITS funds facing different marketing requirements when distributed in several Member States, which has led to higher costs. ICI research on UCITS has shown that funds distributed in several Member States tend to be more expensive than funds sold in only one Member State for this reason [Link]. In ICI Global's view, much more collaboration is needed among regulatory authorities to avoid costly and unnecessary regulatory divergence. We encourage ESMA to liaise as much as possible with its international counterparts with the goal of mitigating fragmentation across markets.

Questions & Answers

Q1 : Do you agree with the need to introduce quantitative thresholds to assess funds' names?

While we appreciate ESMA's objective of promoting convergence around supervisory practices with respect to fund names and how they include ESG- and sustainability-related terms, we are concerned that the proposed guidelines are premature and lacking in clarity. This will prevent them from solving the issues they are attempting to address. Therefore, we are not in favor of introducing quantitative thresholds at this time.

When it comes to supervisory convergence, we understand that different NCAs have adopted different practices for approving SFDR disclosures for different types of funds, which may lead to diverging outcomes. We acknowledge that the introduction of quantitative thresholds linked to the use of certain terminology could lead, in principle, to some convergence of supervisory approval practices. This will depend, however, on the extent to which the NCAs actually follow these Guidelines. Moreover, FMPs and NCAs will be left to independently determine how to calculate the 80% threshold on a case-by-case basis, which is likely to result in different practices continuing across Member States.

The challenge is more complex around the use of 'sustainability'-related terminology and the 50% threshold. The primary reason for this is that FMPs have applied and interpreted differently the definition of a Sustainable Investment (Article 2(17) SFDR). Until clear guidance is provided by the European Commission on how to interpret and apply the definition, setting quantitative thresholds is unlikely to improve the comparability of different products. We understand this was the rationale for the European Supervisory Authorities (ESAs) to the European Commission in September 2022 [Link] to clarify the interpretation and application of Article 2(17) SFDR. The proposed 50% threshold will only provide more comparability if the Commission's answers to the questions provide this certainty and clarity to FMPs. Absent this, the Guidelines may create more confusion and uncertainty without enhancing comparability.

To conclude, the introduction of the 80% threshold at this time is likely to be of limited help in addressing the issues ESMA is seeking to address. The 50% threshold is even more problematic as the key definition underpinning it is still subject to significant regulatory uncertainty for the foreseeable future.

Considering all these points, while quantitative thresholds could eventually be helpful for improving regulatory convergence and comparability across funds, we do not believe this is the appropriate time to introduce them. We urge ESMA to give more time for market

participants to evaluate the impact of the proposed thresholds given the uncertainty around how to calculate them for the reasons outlined above.

Q2 : 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.

First, as a general principle, we do not believe that setting quantitative thresholds will meet ESMA's stated objective of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. Setting quantitative thresholds for the proportion of a fund's investments that are used to meet the environmental or social characteristics or sustainable investment objectives will do little to ensure consistency between a fund's name and its characteristics, because at this time there is no common agreement on how to measure which assets meet these criteria.

Second, the Guidelines should seek to enhance certainty for FMPs and NCAs and not add a layer of potential uncertainty. The current draft makes a high-level distinction between two categories of ESG- and Sustainability terminology. However, FMPs may, in connection with certain terminology, struggle to determine with certainty whether they are subject to one or both quantitative thresholds. Therefore, ESMA should seek to be more comprehensive and clearer in the terminology and the examples provided.

Third, the interaction between SFDR and the Guidelines is unclear. Products pursuing environmental and social characteristics are required to comply with Article 8 SFDR and the detailed disclosure requirements in Commission Delegated Regulation (EU) 2022/1288 (DR). This article was deliberately drafted to have a wide range of financial products in scope. As ESMA has proposed, funds making Article 8 disclosures, but which do not meet the 80% threshold, would not be able to use ESG-related terminology in their name. We believe it will be very confusing for retail investors who will see products with no ESG terminology in their name even as they will be provided relatively granular ESG-related disclosures in the advisory process. Therefore, we believe it would be necessary for ESMA to clarify the connection between these Guidelines and the disclosure requirements of SFDR.

Finally, we are not clear how the use of impact-related terminology relates to the 80% quantitative threshold in light of Q10.

Q3 : 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.

ICI Global supports ESMA's supervisory aim of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. However, we do not believe the proposed threshold will achieve this objective. That said, to the extent ESMA moves ahead with a regime based on quantitative thresholds, we would make the following observations.

First, similar to our response in Question 2, as a general principle, the Guidelines should seek to enhance certainty for FMPs and NCAs and not add a layer of potential uncertainty. The current draft makes a high-level distinction between two categories of ESG- and sustainability terminology. However, FMPs may in connection with certain terminology struggle to determine with certainty whether they are subject to one or both quantitative thresholds. Therefore, ESMA should seek to be clearer in the terminology and the examples provided.

Second, while we understand the desire by ESMA for a separate, more stringent, quantitative threshold for sustainability-related terminology, this is premature. As mentioned earlier, the ESAs as well as FMPs are waiting for the European Commission to answer questions raised by the ESAs in September 2022 [Link]. It is therefore difficult to provide an informed view on whether the calibration of this threshold is appropriate or feasible.

Third, the interaction between SFDR and the Guidelines needs to be clarified, as noted above in our response to Question 2. We think fund disclosure and naming rules should work together to promote investor understanding of the variety of sustainability-related fund strategies on the market, rather than confuse investors.

In light of these points, we encourage ESMA to reflect and reconsider the merit of this separate quantitative threshold to bring certainty at this stage of the process.

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

ICI Global supports ESMA's supervisory aim of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. However, the proposed thresholds will not achieve this objective. That said, to the extent ESMA moves ahead with a regime based on quantitative thresholds, we would make the following observations:

While we understand the attractive simplicity in adopting a threshold for ESG terminology, we do not expect this approach to enhance comparability between different products. If, however, ESMA moves ahead with quantitative thresholds, it should bear in mind challenges specific to certain asset classes, such as fixed income.

As mentioned earlier, we caution ESMA against using a threshold of 50% for sustainable investments, which is linked to a definition that is still likely to evolve in terms of interpretation and application. And we are still unclear how this threshold around the use of sustainability-related terminology would interact with the guidance applicable to products disclosing under Article 9 SFDR, which are expected to have 80-100% of assets meeting the definition of a sustainable investment.

Q5 : 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.

ICI Global supports ESMA's supervisory aim of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. However, as we have outlined, we do not believe that quantitative thresholds will be able to achieve these goals at this stage given the lack of guidance on how to measure the proportion of a portfolio's investments which can be considered sustainable.

We believe there are better ways to address the supervisory aim than through quantitative thresholds. We are evaluating other approaches and discussing them with our members, such as those that focus more on the investment process than on outcome-driven thresholds and those that are better linked to the MiFID sustainability preferences requirements. However, more time is required for us to formulate an alternative proposal. We look forward to constructively engaging with ESMA on viable alternatives to quantitative thresholds.

If ESMA does proceed, despite our concerns that it would be premature, we encourage ESMA to develop safe harbor standards for funds that are marketed across borders and potentially subject to NCAs' differing interpretations of the quantitative thresholds.

Q6 : 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.

We do not support the application of the exclusion criteria of Commission Delegated Regulation (EU) 2020/1818 (PAB-CTB) as an additional safeguard to the 80% and 50% quantitative thresholds, and caution ESMA against taking a one-size-fits-all approach. While we provide some more specific comments below, a general point is that these safeguards are very focused on environmental and more specifically climate aspects. They are probably ill suited to funds pursuing social objectives or other environmental objectives. As a principle, any minimum safeguards should be reasonable and relevant for the objective and investment strategy of the fund.

We first want to point out a substantive and material discrepancy between the part of ESMA's paper explaining the draft Guidelines and the Guidelines themselves. The explanatory part (par. 19) suggests that the exclusion criteria of Commission Delegated Regulation (EU) 2020/1818 (PAB-CTB) would apply only to "remaining investments of the funds" – investments not counting towards the quantitative thresholds. However, the draft Guidelines (par.18) suggest the minimum safeguards are recommended for all investment funds in scope of the Guidelines. Whether these exclusions apply to the remaining portion or the entire portfolio of a fund is a material difference that should be clarified.

Assuming ESMA's intent is to apply the exclusions to the entire portfolio, we would disagree with the application of the PAB-CTB exclusions to the entire portfolio of all funds in scope of the Guidelines. The PAB-CTB are meant to reflect portfolios with a significant degree of climate ambition. For example, products with a sustainable investment objective complying with Article 9 SFDR and having a reduction of Green House Gas emissions as an objective are expected to track/report against a PAB. It would therefore seem excessive to require every fund using ESG-terminology to apply the exclusions to the entire portfolio.

Finally, we see the exclusions of 1(e) – (f) – (g) as closely linked to Q11 and whether specific requirements should apply to transition-related terminology. Some companies falling under these exclusions may have a legitimate place in a transition-focus investment strategy that seeks to focus on companies and economic activities that are not (yet) sustainable. Therefore, these exclusions should in any case not apply to funds using transition terminology in their names.

Should ESMA move forward with adopting minimum safeguard requirements in its Guidelines, we believe better calibration of any minimum safeguards is necessary, taking into account the wide and complex variety of ESG and sustainability related investment strategies, both active and passive. Certain minimum safeguards will work with certain funds, but it is unlikely that one set of minimum safeguards would be appropriate for all funds with ESG-related terms in their names. For example, it would not make sense for funds with social terminology or those focused on transitional activities or other environmental characteristics than climate to be subject to the heavily energy-focused exclusions of the PAB.

In our view, it is equally important for any minimum safeguards to be aligned with the investment objectives and sustainability characteristics of the product, as it is for the fund name. Thus, a better approach would be to ensure fund managers have discretion to apply minimum safeguards and revenue thresholds aligned with the investment strategy, including a proprietary exclusion strategy comprised of core exclusions tailored to the ESG or sustainability-related characteristics of the product.

Q7 : Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?

As a general point, we believe that the quantitative thresholds should be calculated based on the assets of the funds, not including cash and derivatives for hedging purposes, rather than the Net Asset Value (NAV) of the fund. Furthermore, funds should be permitted to exclude assets other than cash and cash equivalents held for liquidity management purposes, including assets that are posted as collateral under derivatives instruments, interests in other short-term investment funds, and repurchase agreements on cash equivalents. Funds that engage in derivatives-focused strategies often hold a broader array of different types of assets that also effectively function as low-risk collateral for derivatives instruments, which funds hold instead of cash, and such assets generally are not held to obtain market exposure.

When buying a fund with ESG- or sustainability-related terminology, an investor is interested in understanding how the 'invested' share of the capital is allocated. Furthermore, there seems to be little purpose in applying the quantitative thresholds built on the Environmental or Social characteristics or the share of sustainable investments to cash or derivatives positions hedging interest rate or FX risks.

a) 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?

N/A

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

As mentioned in Q7, we do not believe that derivatives used for hedging purposes around interest, foreign exchange, or credit risk should be taken into account in the calculation of any quantitative threshold under these guidelines.

Q8 : 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.

In general, any principles around the use of certain terminology should apply to all investment funds regardless of their investment approach. In the case of index-based strategies it will also require looking at the terminology used by index providers.

Funds with an investment strategy to track the performance of an index typically include the name of the index in their names. The reference index will often be a material factor for investors when selecting an index-based strategy, along with costs and tracking error. Therefore, the use of ESG- or sustainability-related terminology will depend on the use of these terms by the index provider.

While an index provider may adjust the names of its indexes to be consistent with the Guidelines, the requirements from the Guidelines are adopted under the UCITS and AIFMD legislative frameworks. This means they will not be directly applicable to index providers.

In the unlikely event of a discrepancy between the requirements of the Guidelines and the terminology used by an index provider in the name of an index, our suggestion would be for the name of the benchmark to take precedence as this is a material feature of any index-based strategy and therefore a decisive factor in the decision of an investor to invest in this type of fund. An outcome whereby the name of a fund is required to be different than the name of the reference benchmark it tracks would arguably create less transparency for the end investor and achieve the opposite result to what the Guidelines are seeking to achieve.

Q9 : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

N/A

Q10 : Do you agree of having specific provisions for "impact" or impact-related names in these Guidelines?

Our recommendation to ESMA is to delay the adoption of the final Guidelines until ESMA has been able to formulate workable clear criteria.

We understand why ESMA wants to address impact-related terminology alongside ESG- and sustainability-related terminology. Like with other elements of the draft Guidelines, a guiding principle here should be legal clarity and certainty both for FMPs and NCAs to minimize the risk of regulatory divergence between different Member States. Currently, the draft Guidelines on this specific point do not achieve this.

The draft Guidelines (par. 20) leave quite some room for divergent approaches. It is for example unclear if the *'intention to generate positive, measurable social or environmental impact alongside a financial return*' refers to the intention of the investment strategy (i.e., investor impact) or to the investments selected (i.e., company impact). Based on Example 5 in Annex IV of the Guidelines, we assume the latter approach is taken.

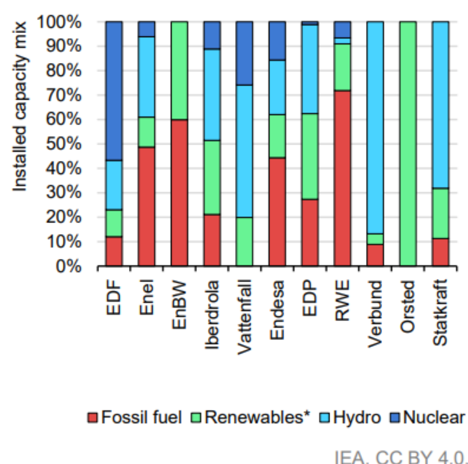
If so, it will be necessary to clarify the connection both with the definitions of a sustainable investment (Article 2(17) SFDR) and of a sustainable economic activity (Article 3 EU Taxonomy Regulation) since both definitions have embedded in them the notion of a contribution/significant contribution to an environmental objective. Based on this approach, a fund holding significant assets in both categories could use 'impact' terminology in its name.

Q11 : Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?

Some fund managers are starting to look specifically at issues related to the sustainable transition as part of their strategies to integrate ESG into the investment process. The asset management industry is still in the early phases of determining how to pursue transition-specific strategies or objectives on behalf of their institutional and retail investors, with many market participants having nuanced approaches to defining transition.

We believe it would be problematic for ESMA to include transition-related terminology in its Guidelines. Investment strategies focusing on transition will by definition invest in companies that are evolving and are therefore not or not fully sustainable yet in terms of their revenues or investment plans. Therefore, it would not be logical to apply the quantitative threshold of 50% sustainable investments linked to the use of sustainability terminology.

Finally, a tailored approach will be necessary regarding minimum safeguards. Some of the companies needing to transition will fail to meet one-size-fits-all exclusions. Investors investing in a fund using transition-terminology should equally not be surprised to find companies that may not yet be sustainable. Moreover, we think that applying Article 12(2) (DNSH principle) is not logical to transition strategies. Many companies needing to transition are unlikely at this stage to fully meet the Do No Significant Harm (DNSH) principle of the EU Taxonomy. To give a concrete illustration to this, see attached an overview by the International Energy Agency (IEA) of the installed capacity of European utility companies. Many of these companies are in the process of transitioning and quite a few will generate a part of their energy from fossil fuel.



IEA. CC BY 4.0.

Q12 : 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?

The Guidelines would apply to investment funds in the scope of the UCITS and AIFMD directive. In some EU Member States, retail investors access UCITS both directly and indirectly through, for example, unit-linked insurance products that would qualify as Insurance Based Investment Products (IBIPs). We believe there should be some consistency between the terminology used by investment funds and other products with an investment component. For example, from an investor protection perspective it would be undesirable if a fund faces restrictions around the use of ESG- and sustainability-related but the insurance wrapper is allowed less restricted use of the same terminology.

Q13 : 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.

We urge ESMA to extend the transitional period to 18 months, or at least 12 months. The proposed thresholds will likely result in some renaming of funds. In some EU Member States this may involve a lengthy and complex re-filling of regulatory documentation with the NCAs. In the event of index-based strategies, it will depend on whether index providers adjust the naming of their indices to the new ESMA Guidelines. Therefore, 6 months seems a short amount of time.

Q14 : 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.

No, as applying these provisions to closed-end funds with terminated subscriptions will not lead to any change in investment behavior since the subscription periods are closed. It would only create costs to the fund managers and investors without any associated benefit.

Q15 : What is the anticipated impact from the introduction of the proposed Guidelines?

We can see three primary impacts of the Guidelines on member firms of ICI Global.

First, member firms will have to evaluate their existing range of fund products in light of any final Guidelines proposed. In some cases, certain funds may have to adjust names. The extent of this will depend on the calibration of the final Guidelines in terms of quantitative

thresholds and minimum safeguards. This may be more prevalent for funds using sustainability-terminology as it will also depend on regulatory guidance expected from the European Commission on the definition of sustainable investment (Article 2(17) SFDR). This will bring additional costs for funds that have to go through this process as in some cases it will require filing amended regulatory disclosures with the NCAs. Beyond the cost, there may be a reputational risk following the renaming of funds. This unfortunate result seems to arise when FMPs must make adjustments to already-established product lines to incorporate new guidance or interpretations, as happened when some changed the disclosure framework applicable to funds from Article 9 to Article 8 as a result of new regulatory guidance around the definition of sustainable investment.

Second, 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 as ESMA noted in its Consultation Paper. The UK FCA and US SEC are still in the process of finalizing their own rules relating the fund names using ESG or sustainable terminology. Given none of these rules are finalized it is difficult to assess exactly how they will interact, and again it is therefore difficult to assess the impact of these proposed guidelines for globally active fund managers. As noted above, there are already some apparent tensions between ESMA's proposed thresholds and those proposed in the US and UK, which is likely to cause fragmentation and may cause investor confusion. While we appreciate these developments in foreign jurisdictions are not in ESMA's remit and may not be of concern, we would encourage ESMA to liaise as much as possible with its international counterparts with the goal of mitigating fragmentation across markets.

Third, we would reiterate that while the impact of the proposed guidelines may be significant for fund managers for the reasons mentioned above, we do not believe they will be impactful in their stated objective of ensuring ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives. We believe that retail investors are best served at this stage with clear and simple disclosures that allows them to understand how a fund strategy works in practice and how it follows ESG- or sustainability-related characteristics and objectives. We note that as of January 2023, FMPs are disclosing this information in detail under Annexes II and III of SFDR Delegated Regulation. Unfortunately, at this stage quantitative thresholds will not provide meaningful information given the lack of guidance on how to measure the proportion of a portfolio's investments which can be considered sustainable.

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

As we previously noted, the introduction of the proposed Guidelines may result in certain funds having to adjust their names and/or disclosure documents. This would bring additional costs for funds that have to go through this process as in some cases it will require filing amended regulatory disclosures with the NCAs.

In some cases, firms would need to amend entity and fund level investment and/or exclusion policies, embed new practices into the investment process, and develop training and compliance protocols to ensure compliance with the thresholds. This would entail first reviewing and interpreting the Guidelines to evaluate how they would apply to the funds and then building processes and modifying internal systems to incorporate the thresholds into the compliance program.