

SECURITIES AND EXCHANGE COMMISSION

Release Nos. IC-33809; File No. S7-04-20

RIN 3235-AM72

Request for Comments on Fund Names

AGENCY: Securities and Exchange Commission

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is seeking public comment on the framework for addressing names of registered investment companies and business development companies that are likely to mislead investors about a fund's investments and risks pursuant to section 35(d) of the Investment Company Act of 1940, rule 35d-1 thereunder, and the antifraud provisions of the Federal securities laws. The Commission is seeking public comment particularly in light of market and other developments since the adoption of rule 35d-1 in 2001.

DATES: Comments should be received by [insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File No. S7-04-20 on the subject line.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-04-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this request for comment. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Branch Chief; Michael Kosoff, Senior Special Counsel; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551-6721, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment from funds, their advisers, investors, and other market participants on the current approach to addressing misleading fund names.

I. INTRODUCTION

As part of the Commission’s ongoing efforts to improve the investor experience and modernize current regulatory approaches,¹ we are publishing this request for comment on 17 CFR 270.35d-1 (“rule 35d-1” or the “Names Rule”) under the Investment Company Act of 1940 (“Investment Company Act” or “Act”). The name of a registered investment company or a business development company (a “fund”) is a tool for communicating with investors. It is often the first piece of fund information investors see and, while investors should look closely at a fund’s underlying disclosures, a fund’s name can have a significant impact on their investment decision. The Names Rule was adopted by the Commission as an investor protection measure designed to help ensure that investors are not misled or deceived by a fund’s name.²

Because of the importance of fund names to investors and certain challenges regarding the application of the Names Rule, we are assessing whether the existing rule is effective in prohibiting funds from using names that are materially deceptive or misleading, and whether there are alternatives that the Commission should consider. We welcome engagement from funds, their advisers, investors, and other market participants on these and related issues.

II. BACKGROUND

The regulation of fund names is intended to address concerns that certain fund names may mislead investors about a fund’s investments. Fund names are subject to both the antifraud

¹ See Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)], available at <https://www.sec.gov/rules/other/2018/33-10503.pdf>.

² The Commission stated in the adopting release for the Names Rule that Congress “recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.” See Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)] (“Names Rule Adopting Release”), available at <https://www.sec.gov/rules/final/ic-24828.htm>.

provisions of the Federal securities laws,³ and section 35(d) of the Investment Company Act⁴ and the Names Rule.⁵ Section 35(d) prohibits any fund from adopting as part of its name “any word or words that the Commission finds are materially deceptive or misleading.”⁶

Before section 35(d) was amended in 1996, enforcing this provision of the Act as originally enacted would have required the Commission to declare by order that a particular name was misleading and, if necessary, request a Federal court to grant an injunction with respect to the use of such name.⁷ Prior to the adoption of the Names Rule, the views of the staff in the Commission’s Division of Investment Management (“Division”) regarding fund names changed over time and were expressed primarily in staff guidelines⁸ and generic “Dear

³ See, e.g., section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)], section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and rule 10b-5 [17 CFR 240.10b-5] thereunder, and section 34(b) of the Investment Company Act [15 U.S.C. 80a-33(b)].

⁴ 15 U.S.C. 80a-34(d) (“section 35(d”).

⁵ Section 35(d) and the Names Rule are applicable to registered investment companies and business development companies. Business development companies (which are not registered investment companies) are subject to the requirements of section 35(d) and the Names Rule pursuant to section 59 of the Investment Company Act [15 U.S.C. 80a-58].

⁶ See *supra* footnote 4.

⁷ 15 U.S.C. 80a-34(d) (1940), *amended by* National Securities Markets Improvement Act (“NSMIA”), Pub. L. No. 104-290, § 208 (1996). See also S. Rep. No. 104-293, at 8 (June 26, 1996) (“NSMIA Committee Report”) (“Enforcing the Act entails a cumbersome process—the Commission must first find, and declare by order, that a fund’s name is deceptive or misleading, and then bring an action in federal court to enjoin the use of the name.”).

⁸ See Guidelines accompanying Form N-8B-1 (Investment Company Act Release No. 7221 (June 9, 1972) (requiring a fund to invest at least 80 percent of its assets in the type of investment indicated by its name, exclusive of cash, government securities, and short-term commercial paper), which was replaced in 1983 by guidelines to Form N-1A (Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928 (Aug. 22, 1983)] (lowering the standard from 80 percent to 65 percent to permit greater investment flexibility). The Commission rescinded the guidelines to Form N-1A in 1998 as part of an overhaul of Form N-1A. See Names Rule Adopting Release, *supra* footnote 2, at n.6. Any staff guidance or no-action letters discussed in this release represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved their content. Staff guidance has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Registrant” comment letters stating, among other things, staff’s views with respect to particular terms used in fund names.⁹ In addition, in the context of reviewing fund registration statements, staff in the Division provided comments on fund names when in the staff’s view it appeared that a name could be potentially misleading. In 1996, Congress passed NSMIA, which amended section 35(d) of the Act to provide the Commission specific rulemaking authority to define names that are materially deceptive and misleading.¹⁰ Using this authority, the Commission proposed the Names Rule in February 1997 and adopted it in January 2001.¹¹

In adopting the Names Rule, the Commission cautioned against investors relying on a fund’s name as the sole source of information about the fund’s investments and risks, but recognized that “the name of an investment company may communicate a great deal to an investor.”¹² The final rule requires a fund to invest at least 80 percent of its assets in the manner

⁹ See Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Feb. 25, 1994) at II.D. (rescinded by 1998 N-1A Amendments) (“small, medium, and large capitalization”); Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) (funds whose names include the name of a bank); Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Jan. 17, 1992) at II.A. (rescinded by 1998 N-1A Amendments) (“index”); and Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC (Jan. 3, 1991) at II.A. (rescinded by 1998 N-1A Amendments) (“guaranteed”, “insured”, “international”, and “global”).

¹⁰ See *supra* footnote 7. Congress determined that the procedural requirements for enforcing Section 35(d) were “cumbersome” and that “investor protection merits a more streamlined approach to making sure mutual funds do not name their funds in a misleading manner.” See NSMIA Committee Report, *supra* note 7, at 8.

¹¹ See Investment Company Act Rel. No. 22530 (Feb. 27, 1997) [62 FR 10955 (Mar. 10, 1997), correction 62 FR 24161 (May 2, 1997)], available at <https://www.sec.gov/rules/proposed/ic-22530.txt>; Names Rule Adopting Release, *supra* footnote 2.

¹² See *id.* at I.

suggested by its name, whereas previously funds considering then-current staff guidance would typically select fund names based on a 65 percent threshold.¹³

III. NAMES RULE

The Names Rule generally requires that if a fund's name suggests a particular type of investment (*e.g.*, ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund), industry (*e.g.*, the ABC Utilities Fund or the XYZ Health Care Fund), or geographic focus (*e.g.*, the ABC Japan Fund or XYZ Latin America Fund), the fund must invest at least 80 percent of its assets in the type of investment, industry, country, or geographic region suggested by its name.¹⁴ The Names Rule also imposes special requirements for funds that have names suggesting that a fund's distributions are exempt from Federal income tax or from both Federal and state income tax.¹⁵ Under the rule, a fund may elect to make its 80 percent policy a fundamental policy (*i.e.*, a policy that may not be changed without shareholder approval) or instead provide shareholders notice at least 60 days prior to any change in the 80 percent investment policy.¹⁶

The Names Rule does not apply to fund names that describe a fund's investment objective, strategy, or policies.¹⁷ In addition, the Names Rule is not a safe harbor, and the Commission could find that a name is materially deceptive or misleading under section 35(d) or

¹³ See rule 35d-1(a)(2) and (3).

¹⁴ See rule 35d-1(a)(2), and (a)(3). "Assets" is defined as net assets, plus the amount of any borrowings for investment purposes. See Rule 35d-1(d)(2).

¹⁵ See rule 35d-1a(4).

¹⁶ See rule 35d-1(a)(2)(ii), and (a)(3)(iii). As part of its review of fund filings, the staff has observed that most funds (other than tax-exempt funds that are required to have a fundamental policy) adopt a policy to provide shareholders notice at least 60 days prior to any change to a fund's 80 percent investment policy.

¹⁷ However, names describing a fund's objective, strategy, or policies are still subject to the general prohibition on misleading names in Section 35(d), as well as other antifraud provisions of the Federal securities laws.

other antifraud provisions of the Federal securities laws even if a fund complies with the Names Rule.

Since the adoption of the Names Rule, the staff has stated its views regarding fund names that may be misleading during the review of fund registration statements¹⁸ and in other statements. For example, shortly after adoption of the Names Rule, the staff issued frequently asked questions addressing a number of issues under the rule, including whether the rule applies to names containing particular terms.¹⁹ In 2013, the staff stated its view that fund names suggesting safety or protection from loss may contribute to investor misunderstanding of investment risks and, in some circumstances, could be misleading.²⁰ Today, fund names remain a common area for staff comment as part of the disclosure review process.

IV. CURRENT CHALLENGES

The Names Rule has not been amended since its adoption in 2001. Since that time, the staff and the industry have identified a number of challenges regarding the application of the Names Rule. Several factors contribute to these challenges, including:

- Funds are increasingly using derivatives and other financial instruments that provide leverage.²¹ Because the Names Rule is an asset-based test, it may not be well-suited to

¹⁸ The Division's Disclosure Review and Accounting Office is responsible for reviewing fund registration statements, proxy statements, and shareholder reports. The disclosure review process seeks to achieve accurate, clear, and concise disclosures and help ensure that funds comply with the Federal securities laws. *See* Division of Investment Management Accounting and Disclosure Information 2018-06, Requests for Selective Review, *available at* <https://www.sec.gov/investment/adi-2018-06-requests-selective-review>.

¹⁹ *See* Frequently Asked Questions about Rule 35d-1 (Investment Company Names) ("Names Rule FAQ"), *available at* <https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm>.

²⁰ Fund Names Suggesting Protection from Loss, IM Guidance Update 2013-12 (Nov. 2013), *available at* <https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-12.pdf>.

²¹ Based on a staff analysis of the latest N-PORT filings as of September 23, 2019, it appears that approximately 41 percent of funds reported derivatives holdings. This analysis covered 11,363

derivatives investments that provide significant exposure to a “type of investment” (as specified in the Names Rule). For example, the asset test may not provide an appropriate framework when the market values of derivative investments held by funds are relatively small but the potential exposure is significant.

- Funds are increasingly using certain hybrid financial instruments that have some, but not all, of the characteristics of more common asset types that are used in a fund’s name. For example, convertible securities may have characteristics of both debt and equity securities, and they may behave more like debt or more like equity depending on market conditions. The staff has observed that both debt and equity funds include convertible securities as part of their 80 percent investment policies.
- The number of index-based funds is growing.²² While funds are subject to the Names Rule, indices are not investment companies and not subject to the Names Rule. The staff has observed that index constituents may not always be closely tied to the type of

funds with a total net assets of approximately \$23.5 trillion. This analysis excluded business development companies, unit investment trusts, money market funds, and certain smaller funds that are not yet required to report their portfolio holdings on Form N-PORT. *See also* Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers’ Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Release No. 33704 (Nov. 25, 2019) [85 FR 4446 (Jan. 24, 2020)], *available at* <https://www.sec.gov/rules/proposed/2019/34-87607.pdf>.

The Names Rule Adopting Release states that in appropriate circumstances, a fund is permitted to count a synthetic instrument (such as a derivative) toward its 80 percent investment policy if the instrument has economic characteristics similar to the securities included in the policy. However, the release did not prescribe how to account for the value of these instruments for purposes of complying with the fund’s 80 percent policy. *See* Names Rule Adopting Release, *supra* footnote 2, at n. 13.

²² Based on data obtained from Morningstar Direct, in 2001 there were approximately 432 mutual fund and ETF index funds. As of the end of 2019, there were approximately 2,311 index funds.

investment suggested by the index’s name. This raises questions under the Names Rule when the fund name includes the name of the index.

- The number of funds with investment mandates that include criteria that require some degree of qualitative assessment or judgment of certain characteristics (such as funds that include one or more environmental, social, and governance-oriented assessments or judgments in their investment mandates (*e.g.*, “ESG” investment mandates)) is growing.²³ These funds often include these parameters in the fund name. The staff has observed that some funds appear to treat terms such as “ESG” as an investment strategy (to which the Names Rule does not apply) and accordingly do not impose an 80 percent investment policy, while others appear to treat “ESG” as a type of investment (which is subject to the Names Rule).
- In an increasingly competitive market environment, asset managers may have an incentive to use fund names as a way of differentiating new funds.²⁴ This incentive may drive managers to select fund names that are more likely to attract assets (such as names suggesting various emerging technologies), but may not be consistent with the purpose of the Names Rule.

²³ Based on EDGAR data, approximately 65 funds (excluding unit investment trusts) included the terms “ESG”, “Clean”, “Environmental”, “Impact”, “Responsible”, “Social”, or “Sustainable” in their names as of December 31, 2007. The number of funds increased to 291 as of December 31, 2019.

²⁴ The number of registered investment companies has increased by 300 percent since the adoption of the Names Rule. *See* 2019 Investment Company Fact Book (ICI, 59th ed. 2019), *available at* https://www.icifactbook.org/deployedfiles/FactBook/Site%20Properties/pdf/2019/2019_factbook.pdf.

The Commission is evaluating the effectiveness of the Names Rule in protecting investors in light of these challenges to determine whether additional action in this area is necessary or appropriate.

V. QUESTIONS

To inform potential future steps, the Commission is seeking input on the challenges that the Names Rule may present, particularly in light of market changes since 2001, as well as potential alternatives to the current framework for prohibiting the use of deceptive and misleading fund names. We welcome input from all interested parties on the following:

- How do funds select their names? Do funds use their names to market themselves to investors or convey information about their investments and risks? Are there studies or other data on the extent to which investors rely on a fund's name to determine the fund's investment strategy and risks? If so, are these determinations reasonably accurate?
- Is the Names Rule effective at preventing funds from using deceptive or misleading names? If not, why not? If it is not effective, should it be changed, and if so how?
- Should the Names Rule be repealed? If so, why? Please specifically address how repealing the Names Rule and relying solely on Section 35(d) and the general antifraud provisions of the Federal securities laws would satisfy our investor protection objectives.
- The Names Rule requires a fund to invest at least 80 percent of its assets in the type of investment suggested by its name.²⁵

²⁵ See Rule 35d-1(a)(2).

- Does this threshold continue to be appropriate? If not, what is a more appropriate threshold and why? For example, should it be lower (*e.g.*, 65 percent) or higher (*e.g.*, 95 percent)? Should the threshold apply only at the time of investment—as is the case in the current Names Rule²⁶—or should a fund be required to maintain that level of investment?
- Is an asset-based test appropriate for determining whether the use of a particular name is misleading? What are some of the current challenges with the use of an asset-based test? Are there other tests that would be more appropriate and if so, what are these tests and why would they be more appropriate? For example, should we consider a test that requires that the type of investment suggested by a fund’s name contribute at least a minimum amount (*e.g.*, 80 percent) to a fund’s returns (*e.g.*, The ABC Bond Fund would be expected to derive at least 80 percent of its returns from investments in bonds.).
 - Complying with the Names Rule (and its asset-based test) may raise particular challenges for funds that gain exposure to a “type of investment” (as specified in the Names Rule) through the use of derivatives. We understand that, although many funds have asserted that a derivative’s notional value would be more appropriate than its market value for purposes of complying with the 80 percent investment policy, funds generally use market value on account of the

²⁶ See Names Rule Adopting Release, *supra* footnote 2, at section II.A.4.

Names Rule’s asset-based test.²⁷ Should the Commission address this type of Names Rule-related challenge for funds that invest in derivatives? If so, how? For example, should the approach take derivatives’ notional value into account, and if so, how? Would there be any operational or interpretive challenges associated with this approach, and if so, what would they be and how should the Commission’s rules and guidance address these challenges? Should an approach based on notional values permit or require a fund to make any adjustments to derivatives’ notional values (*e.g.*, should a fund be permitted or required to delta adjust options contracts, or present interest rate derivatives as 10-year bond equivalents)? Should funds account for derivatives holdings using a methodology other than market value or notional value? If so, what methodology should be used and why? Should we, for example, focus on measures of risk? If so, which risk measure(s) would be most effective for this purpose?

- Under the Names Rule, most funds elect to provide investors with 60 days’ notice prior to changing their 80 percent investment policy.²⁸ Is the information provided in these notices useful for investors? Does the Names Rule’s notice requirement provide meaningful investor protection? If not, why not? Should the rule impose different or more specific requirements in certain cases, such as when a change in name

²⁷ See, *e.g.*, *supra* footnote 14.

²⁸ See *supra* footnote 16 and accompanying text.

is accompanied by significantly different investment strategies and exposures? If so, when and what type of requirements? Should a fund be required to obtain shareholder approval prior to changing its 80 percent policy?

- How do funds determine whether a portfolio investment is part of a particular industry? For example, do funds rely on third-party industry classifications or indices, a minimum level of assets, revenues, or profits tied to an industry, a company's market share of an industry, or text analytics (such as frequency of certain words and/or phrases in company filings) to determine how to assign an investment to a particular industry? Should the Names Rule provide flexibility to funds (including index funds) that intend to focus their investments in nascent industries, or industries that rely on certain emerging technologies (*e.g.*, 5G technology, artificial intelligence, or blockchain)? Are there circumstances where a company should reasonably be considered part of an industry when its revenues or assets attributable to that industry are less than a certain percentage (*e.g.*, less than 50 percent), are not quantifiable, or may be classified in more than one industry (*e.g.*, a software company that focuses on decision tools that add efficiency to the alternative energy space)? Should we consider a test that requires a minimum level of revenues or assets that are attributable to the industry suggested by the fund's name? If so, what should that minimum threshold be (*e.g.*, 25, 50, or 75 percent)?
- The Names Rule does not apply to the use of terms that suggest an investment strategy (such as "growth" or "value"), rather than a type of investment.²⁹ Often,

²⁹ See Names Rule Adopting Release, *supra* footnote 2, at section II.C.1.

funds assert that a name connotes a “strategy” not subject to the Names Rule when the term may appear to others as indicative of a type of investment. Should a strategy be differentiated from a type of investment and, if so, how? Should we amend the Names Rule to apply specifically to investment strategies (such as tax-sensitive, income, growth or value) and, if so, how? If a fund’s investment strategy is not designed to maximize returns to investors, should that be noted in the name?

- The staff has observed a number of challenges that funds face in applying the Names Rule and assessing whether certain terms in fund names comply with the rule. For example:
 - Should the Names Rule apply to terms such as “ESG” or “sustainable” that reflect certain qualitative characteristics of an investment? Are investors relying on these terms as indications of the types of assets in which a fund invests or does not invest (*e.g.*, investing only in companies that are carbon-neutral, or not investing in oil and gas companies or companies that provide substantial services to oil and gas companies)? Or are investors relying on these terms as indications of a strategy (*e.g.*, investing with the objective of bringing value-enhancing governance, asset allocation or other changes to the operations of the underlying companies)? Or are investors relying on these terms as indications that the funds’ objectives include non-economic objectives? Or are investor perceptions mixed among these alternatives or otherwise indeterminate? If investor perceptions are mixed or indeterminate, should the Names Rule impose specific requirements on when a particular investment may be characterized as ESG or sustainable and, if so, what should

those requirements be? Should there be other limits on a fund’s ability to characterize its investments as ESG or sustainable? For example, ESG (environment, social, and governance) relates to three broad factors: must a fund select investments that satisfy all three factors to use the “ESG” term? For funds that currently treat “ESG” as a type of investment subject to the Names Rule, how do such funds determine whether a particular investment satisfies one or more “ESG” factors? Are these determinations reasonably consistent across funds that use similar names? Instead of tying terms such as “ESG” in a fund’s name to any particular investments or investment strategies, should we instead require funds using these terms to explain to investors what they mean by the use of these terms?

- The Names Rule does not apply to the use of the terms “global” or “international.”³⁰ Should the Names Rule apply to these terms? What factors should be used to determine whether the term “global” or “international” is not misleading? Should a fund that uses these or similar terms in its name be required to invest a certain percentage of assets in a minimum number of countries or invest a minimum percentage of assets outside of the United States? If the Names Rule were to apply to terms such as “global” or “international”, how should funds treat multinational companies with a significant presence (*e.g.*, revenues or assets) in more than one country or region? For example, should a fund invested in a diversified set of 30 or more

³⁰ See Names Rule Adopting Release, *supra* footnote 2, at fn. 42. See also Names Rule FAQ, *supra* footnote 19, at Question 10.

U.S.-incorporated and U.S.-headquartered companies, where each company derives a certain level of its revenues (*e.g.*, 25 percent) from outside the United States, be able to call itself a “global” or “international” fund without running afoul the Names Rule?

- The Names Rule does not apply to the use of the terms “actively managed”, “tax managed”, “long-term”, and “short-term”. Should the Names Rule apply to these terms? If so, how?
- Do fund names identifying well-known organizations, particular affinity groups, or a specific population of investors (*e.g.*, “veterans” or “municipal employees”) raise concerns of potentially misleading investors (*e.g.*, by suggesting the investments are tailored to these investors, only available to these investors, or that these investors may receive better terms than other investors)? If so, how should we address these concerns?
- Funds may select ticker symbols that are intended to convey information about how a fund invests. Should the Names Rule apply to fund tickers and, if so, how?
- Are there other concerns or challenges regarding fund names or the Names Rule that the Commission should consider? Are there particular terms used in fund names that are especially prone to mislead investors?
- Should registered closed-end funds or business development companies be treated differently than open-end funds under the Names Rule? If so, how should each fund type be treated and why? For example, because the securities of closed-end funds and business development companies are not redeemable and may not be publicly-traded,

does the 60 day notice requirement for changes to a fund’s 80 percent policy provide meaningful protections to investors in such funds? If not, what changes are appropriate? Are there any other types of funds or other vehicles that should be treated differently under the Names Rule or under the general antifraud provisions of the Federal securities laws?³¹

- Are there other ways in which the Names Rule should be modified to provide greater investment flexibility while still requiring that fund names suggesting a certain focus effectively convey the nature of a fund’s investments? Are there alternative ways in which fund names should be regulated or addressed that would more effectively protect investors? For example, through hyperlinks or other technology, should funds be required to connect their names to a more detailed discussion of the fund’s investment strategy in a manner that is immediately accessible to investors in a variety of contexts? Are there approaches other jurisdictions or other regulated industries use that may work well for U.S. investors? Would a principles-based approach be better? If so, what should the principles be?

VI. GENERAL REQUEST FOR COMMENT

This request for comment is not intended to limit the scope of comments, views, issues, or approaches to be considered. In addition to investors and funds, we welcome comment from other market participants and particularly welcome statistical, empirical, and other data from

³¹ See, e.g., Fixed Income Market Structure Advisory Committee (FIMSAC) Recommendation for an Exchange-Traded Product Classification Scheme (Oct. 29, 2018) (recommending that ETPs meeting certain criteria include the identifier “ETF” in their names), *available at*: <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-etp-naming-convention-recommendation.pdf>.

commenters that may support their views or support or refute the views or issues raised by other commenters.

By the Commission.

Dated: March 2, 2020.

Vanessa A. Countryman,
Secretary.