Fondbolagens förening
SWEDISH INVESTMENT FUND ASSOCIATION

The Swedish Investment Fund Associations' reply to ESMAs Consultation Paper On Guidelines on funds' names using ESG or sustainability-related term

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

SIFA believes it is important to have a harmonised view on fund names related to ESG terms. This is key to investor protection and a level-playing-field for funds.

One of the challenges when introducing thresholds is that the notion of "sustainable investment" is not fully defined and harmonised. Even so, SIFA believes that quantitative thresholds related to the SFDR information disclosed is a way to achieve clarity and harmonisation. It is, however, important that in time there is more clarity on what constitutes a regulatory "sustainable investment".

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.

Yes.

Some flexibility must, however, be allowed in order for the fund manager to be able to act in the best interest of the unit-holder during extraordinary market circumstances. Fund managers should in such circumstances be allowed to deviate from the thresholds in order to hold more cash/cash equivalents/derivatives.

When it comes to the wording of paragraphs 16 and 17 of the proposed guidelines, the reference to "sustainable investment objective" is difficult to understand. This implies a fund disclosing under Article 9 SFDR. Since those funds should only invest in sustainable investments it could be misleading to include them in the scope of the 80 % and 50 % threshold.

In general, the scope of the guidelines could be made clearer in order to ensure harmonisation. It could be explained that funds disclosing under Article 9 SFDR are allowed to use ESG or sustainability-related terms in their names since their investments should be sustainable. It could also be explained that funds disclosing under Article 6 SFDR are not allowed to use ESG or sustainability-related terms in their names.

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.

SIFA agrees in principle. It is, however, questionable whether a retail investor could differentiate between expressions as "sustainable" and for example "ESG" or "green". One could argue that "sustainable" does not necessarily give the impression to be more qualifying than "ESG". On the other

hand, "sustainable investment" does have a particular meaning in the SFDR and is also subject to specific disclosure.

It is also evident that fund managers make different assessments of what constitutes a sustainable investment within the meaning of the SFDR. There is a risk that the threshold could have a counterproductive effect, since it creates incentives to make a more extensive assessment of which investments are sustainable, in order to reach above the threshold. At this stage, however, SIFA has no alternative proposal.

When it comes to the text of the guideline, we believe it should be made clearer that the 50 % minimum proportion is related to the total of fund investments (as opposed to 50 % of the 80 %, that is 40 %).

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

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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.

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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.

No.

One advantage with the proposed guidelines is the connection to the disclosure requirements of SFDR, which for instance makes supervision less complicated. Applying the exclusions for EU Paris aligned benchmarks is, however, not a requirement in the SFDR. It would therefore be inappropriate to add such a requirement in guidelines. Should such a requirement be set it should rather be included in the SFDR.

The reference to the Benchmark Delegated Regulation would also make the guidelines overly complex. It is not clear how the minimum safeguards relates to minimum safeguards in other regulation, for example Article 18 of the Taxonomy compared to recital 22, and Articles 22.c ii, 53 and 61 of the Commission Delegated Regulation (EU) 2022/1288.

In particular the reference to Article 12(2) would be difficult to comply with as it includes activities that could harm any of the environmental goals of the Taxonomy without limitations. This would mean that

for funds disclosing under Article 8 SFDR *all* investments must meet the DNSH requirements, when the fund name includes an ESG related word.

Apart from that, SIFA opposes an inclusion of a "recommendation" in a guideline. This gives the impression of another legal status than other guidelines. It would surely lead to different interpretations and the goal of harmonisation would not be reached.

Q7.Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?
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?
b) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?

The issue of calculating the value of derivatives is an interesting question when fulfilling the disclosure requirements under SFDR. SIFA, however, does not believe that it is appropriate to solve this issue in guidelines on fund names.

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.

That would seem reasonable and easier for investors to understand. On the other hand, it could seem odd if an index fund were not to be allowed to use the name of the relevant index in its fund name. This applies especially in light of the fact that it is the index administrator, and not the fund manager, that determines the name of the index.

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

Such guidance should be provided in the context of SFDR, and not in fund naming guidance.

Since collateral is not part of the fund it would not be reasonable to add requirements from a sustainability point of view.

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

Yes.

However, the guidelines need to be clarified. In paragraph 20 there is a reference to the thresholds in both paragraphs 16 and 17, that is both the 80 % threshold and the 50 % (sustainable investments) threshold. The use of impact-related words is also specifically mentioned in paragraph 16 which would imply that only the 80 % threshold applies. Example 5 of Annex IV refers only to the 80 % threshold with the following wording: "The word "impact" is expected to be used only for funds investing their minimum proportion with the intent to generate positive, measurable social or environmental impact alongside a financial return. The fund's investment policy and objective describe the strategy to attain these results. As the minimum proportion of investments in impact generating activities is over the 80% threshold, the fund is in compliance with the guidance on funds' names concerning the use of the word "impact"." Thus, the need for clarification.

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

No.

SIFA does not believe it would be appropriate to define which investments should be deemed to be "transition" investments in guidelines on fund names. If such a definition were to be developed, it should be inserted in a legal act in connection with SFDR.

Q12. The proposals in this consultation paper relate 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?

There should be an aim to avoid an unlevel-playing-field between financial products and services. The proposed guidelines will mean firm restrictions – and probably supervisory focus – on the use of words relating to ESG in the marketing of funds. It would be an unfortunate effect from an investor protection perspective if other products and services could use such words in marketing without meeting the corresponding requirements. Investors could as a consequence be drawn to less sustainable products.

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.

SIFA believes a transitional period is necessary and that such a period should be as short as possible for level-playing-field reasons.

However, the process of changing a funds' name is quite lengthy. It will take a board decision, changing of the fund rules. a decision from the supervisory authorities, communication with unit-holders and distributors as well as changing all internal and external documentation and agreements. It would be

difficult to handle such an operation within 6 months. The costs for a time constrained process will also be unproportionally high. SIFA would therefore propose a 12 months transitional period.

Changing of a funds' name is, at least in Sweden, subject to approval from the supervisory authorities. A longer transitional period could make it easier for the authorities to handle the applications. In any way, the fund managers could not be responsible for the time it takes for the authorities to approve the application. For legal certainty reasons, the transitional period must relate to the date when an application is made. That is, the time it takes for the authorities to approve the application should not be included in the transitional period.

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.

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

The positive effects would be a level-playing-field and retail investor protection in the fund sector. However, in relation to other products and services not subject to equivalent requirements, there is a risk of an unlevel-playing-field. This could create confusion for investors and possibly be counter-productive if investors were drawn to less sustainable financial products. There is also a risk that supervisory activities, partly due to the firm requirements on fund marketing, will be focused on the fund sector rather than other unregulated products/services.

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.

Changing the name of a fund is a quite burdensome process. There is an internal process and the decision would ultimately have to be taken by the board. All documentation, internal and external, of the fund must be changed. New information documents must be distributed. Contracts, for example with distributors, must be changed. In Sweden, the name of the fund is included in the fund rules and approved by the Supervisory Authorities. In order to change the name of a fund the management company must apply for a new approval of the fund rules, a process that is costly. All unit-holders must receive a notice of the change, which adds to the costs. A rough estimate is 20-30 000 euros per fund. Furthermore, all marketing of the fund under a previous name becomes of little use.

A short transitional period of 6 months would add to the costs in an unproportional way (see Q 13).

In order for the guidelines to be proportionate it is important that they are clear and not overly detailed or subject to interpretation due to ambiguity. SIFA believes that the proposed guidelines are clear

enough apart from paragraph 18 (minimum safeguards) which would lead to unproportional costs for compliance apart from being inappropriate per se (see Q 6).