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Response to the ESMA consultation on Guidelines on funds' names using ESG or sustainability-related terms

To	ESMA
Date	20 February 2023
Subject	**ESMA consultation on Guidelines on funds' names using ESG or sustainability-related terms**
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The Dutch Fund and Asset Management Association (DUFAS) welcomes the opportunity to respond to the Consultation on Guidelines on funds' names using ESG or sustainability-related terms as published by ESMA on 18 November 2022.

EXECUTIVE SUMMARY (For advocacy)

DUFAS fully agrees that funds and other financial products should not mislead investors by misrepresenting sustainability-related practices or features of a product. SFDR aims to further improve transparency on financial products and sustainability. We also recognize the significant impact fund names can have on investment decisions, particular by retail investors. However, we believe the proposed guidelines are pre-mature given the uncertainties within the current legislative context. Furthermore, we have multiple critical remarks on the proposed guidelines, should ESMA proceed.

Align timing with SFDR and avoid unharmonized supervision by NCAs

Although the alignment of fund names with strategies is important, this issue cannot be viewed or solved in isolation. SFDR contains many open issues and points of improvement which are still being evaluated such as through the current PAI review. Ideally, the timing of detailed guidance on fund names should align with changes to SFDR or at least when further regulatory guidance and interpretation issues are solved, such as interpretations on the concept of sustainable investments. At the same time, national competent authorities (NCAs) are already diverging with their supervision of fund names in response to the principles-based guidance provided by the ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management. We encourage ESMA to caution NCAs in providing more detailed guidance leading to unharmonized supervision.

Prioritise further development of open definitions and criteria

DUFAS in principle believes that threshold-based requirements can be effective and easy to understand by retail clients. However, we are doubtful whether the proposed criteria effectively prevent investors from investing in financial products that are not aligned with their preferences. In effect, the proposed guidelines would still allow two funds with similar names to have vastly different strategies and characteristics which may or may not align with investor preferences.

We would prefer a focus on addressing open norms and definitions in SFDR which would already lead to more comparability. However, this should be done within SFDR, not addressed within the context of the fund names used. Furthermore, linking thresholds to fund names may create operational challenges as

changes in fund names may have to be processed in other fund documentation such as prospectuses, fact sheets, PRIIPs KIDs, in operational systems and applicable distribution channels.

If guidelines are implemented, ensure they are simple and based on viable thresholds
Should ESMA proceed with guidelines on funds' names using ESG or sustainability-related terms, we emphasize that the guidance should be simple and avoid unintended practical impediments while maintaining a level playing field between financial products. Thresholds should exclude cash and hedging derivatives. Otherwise thresholds should be reduced and only apply when funds are fully invested.
We are doubtful of PAB exclusions as minimum safeguards as they introduce a minimum standard, interfere with funds following a CTB, and introduce practical issues due to some exclusions depend on open definitions and data that may not be reported.

We also suggest ESMA to publish a non-exhaustive list of "ESG-related" names to enhance NCA harmonisation. Finally, the implementation and correction of breaches should align with general prospectus updates to minimise costs to investors and supervisory burden.

FULL RESPONSE
DUFAS fully agrees that funds and other financial products should not mislead investors by misrepresenting sustainability-related practices or features of a product. SFDR aims to further improve transparency on financial products and sustainability. We also recognize the significant impact fund names can have on investment decisions, particular by retail investors. However, we believe the proposed guidelines are pre-mature given the uncertainties within the current legislative context. Furthermore, we have multiple critical remarks on the proposed guidelines, should ESMA proceed.

Align timing with SFDR and avoid unharmonized supervision by NCAs
Although the alignment of fund names with strategies is important, this issue cannot be viewed or solved in isolation. SFDR contains many open issues and points of improvement which are still being evaluated such as through the current PAI review. We support ESMA's efforts to improve alignment between legislations such as through further harmonization between active and passive PAB funds, but we would prefer this requirement to be incorporated into the SFDR directly. Ideally, the timing of detailed guidance on fund names should align with changes to SFDR or at least when further regulatory guidance and interpretation issues are solved, such as interpretations on the concept of sustainable investments as defined under the SFDR. Temporary solutions that are not aligned with potential changes to SFDR would be highly undesirable given the time and resources needed to change fund names.

At the same time, national competent authorities (NCAs) are already diverging with their supervision of fund names in response to the principles-based guidance provided by the ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management. We encourage ESMA to caution NCAs in providing more detailed guidance leading to unharmonized supervision. As fund managers operate on a cross-border basis, it is highly undesirable when fund names cannot be used on a consistent basis because of diverging practices of NCAs.

Prioritise further development of open definitions and criteria
DUFAS in principle believes that threshold-based requirements can be effective and easy to understand by retail clients. However, we are doubtful whether the proposed criteria effectively prevent investors from investing in financial products that are not aligned with their preferences. The fundamental problem is the wide range of strategies, ambition and criteria to promote Environmental & Social Characteristics or attain Sustainable Investment Objectives. In effect, the proposed guidelines would still allow two funds with similar names to have vastly different characteristics which may or may not align with investor preferences.

We would prefer a focus on addressing open norms and definitions. For example, further defining sustainable investments, clarifying requirements for sovereigns/supranationals and real estate, providing

minimum requirements for SFDR art. 8 and art. 9 products, and providing guidance on good governance would already lead to more comparability. However, this should be done within SFDR, not addressed within the context of the fund names used.

Linking thresholds to fund names may create operational challenges
Although thresholds may create clear boundaries, this poses operational challenges when applied to fund names. Some funds may on a regular basis hover around the threshold or go below the threshold through passive breaches, The trajectory to change names takes significant time and resources which would be infeasible if there are frequent but temporary breaches. Changes in fund names may have to be processed in other fund documentation such as prospectuses, fact sheets, PRIIPs KIDs, in operational systems and applicable distribution channels. Furthermore, frequent and short-term changes to the fund name may create confusion to end investors. As an alternative, an effective labelling system taking into account more specific criteria and strategies could lead to more meaningful comparability between financial products without the operational challenges if thresholds are breached.

If guidelines are implemented, ensure they are simple and based on viable thresholds
Should ESMA proceed with guidelines on funds' names using ESG or sustainability-related terms, we emphasize that the guidance should be simple and avoid unintended practical impediments while maintaining a level playing field between financial products. Complex guidelines can lead to further confusion for investors, especially given the context of current SFDR evaluations and uncertainty surrounding key concepts.

Thresholds should exclude cash and hedging derivatives
If guidelines are provided, we agree that a threshold for ESG terms must be sufficiently high, but the 80% threshold may result in practical issues. This is particularly the case for multi-asset funds and/or fixed-income funds hold more derivatives, and cash. Any threshold will effectively place a cap on these assets. More importantly, including cash into the calculation may unintendedly interfere with investment decisions when a fund manager divest investments and holds cash for the time being. For example, in a scenario where the market is falling and the 80% is getting to be a smaller proportion of NAV and cash is stable, asset managers will be forced to invest to maintain the 80% which may not be financially in the investor's best interests. Our suggestion is therefore to exclude cash, cash-equivalents and derivatives from the investments where the thresholds apply. This is also consistent with the requirements and approach for article 9 funds, where cash and hedging derivatives are also not included into the calculation.

Otherwise thresholds should be reduced and only apply when funds are fully invested
Alternatively, the threshold should be reduced to allow sufficient flexibility for liquidity, risk management and market fluctuations. Furthermore, it was pointed out during the open hearing that the 80% threshold for funds would not be feasible at the start for funds that take time to deploy its capital and achieve its targeted investment allocation and diversification. ESMA seems to suggest that such funds should first adopt a neutral name and can only include sustainability related terms once the 80% threshold has been reached. However, once fully invested there is no longer a reason to change the fund name as it is no longer being marketed. In addition, managers of such funds do not get to choose which investment opportunity presents themselves first. Any restrictions here could cause the fund to miss out on attractive investment opportunities. We believe the quantitative thresholds should only kick-in from the time the fund is fully invested, like any other diversification requirements. If necessary, (retail) investors can be informed through a specific mention or prominent statement in the fund document or the RTS templates that the targeted allocation will only apply when the portfolio is fully invested.

Doubtful of PAB exclusions as minimum safeguards
We also suggest removing the minimum safeguards to avoid additional issues due to open criteria and data limitations. First, the minimum safeguards would appear to introduce an additional minimum standard and DUFAS is doubtful whether ESMA has sufficient legal basis for this. Second, using the Paris-

aligned Benchmark (PAB) exclusions would pose problems for funds that use a Climate Transition Benchmark (CTB) which as a result would not be able to use an ESG or sustainability terms in their fund name, whereas in SFDR the use of a CTB appears acceptable under art. 9 (3). Furthermore, the exclusions are catered to equity investments and less suitable for other asset classes. Third, linking the minimum safeguards to PAB exclusions would introduce practical challenges. The exclusions are currently not all included among the Principle Adverse Impact indicators, thus additional data is required. The PAB exclusions would also introduce another open criterium, namely that investments should not harm any of the EU Taxonomy objectives. The EU Taxonomy provides do no significant harm (DNSH) criteria on economic activity-level, but companies are not required to report on activities that are in breach of DNSH. Furthermore, there is no guidance on how to assess Taxonomy-alignment for investees that do not fall under CSRD, and the proposed minimum safeguards are not aligned with the Taxonomy Minimum Safeguards. With these issues, it may be preferable to first address the existing open definitions and criteria in SFDR which could also contribute to ensuring sufficient safeguards for the remaining investments in funds.

Non-exhaustive list of ESG-related names needed to enhance NCA harmonisation
We suggest that ESMA should publish a list of '"ESG related' terms that is non-exhaustive and can be updated in order to avoid discrepancies between NCAs' interpretations and to allow a level playing field in cross-border distribution. This list could not be abused by market participants due to being non-exhaustive, whereas it would prevent disharmonised views between NCAs as we currently experience. The ESG-related' word list would allude to any environmental and/or social and/or governance theme in the name other than "sustainable" or "impact". For "transition", we believe it is too early to provide specific guidelines as the use and connotation are still in flux; perhaps it should not be considered ESG-related from the outset.

Align implementation and correction of breaches with prospectus updates
For a practical implementation, we prefer if the implementation coincides with more general prospectus updates combined with a minimum period before this is required after the guidelines are published. Grouping multiple prospectus changes would minimise costs for investors and supervisory burden of any fund name changes. A similar approach could be taken for active breaches of the thresholds which would also be a breach of the binding elements under SFDR. This should require changes to the investment strategy and prospectus which can be grouped with fund name changes. However, as mentioned during the ESMA open hearing short term passive breaches due to, for example, market circumstances, must be differentiated from active breaches. The guidelines should explicitly include the supervisory expectations and the grace period for passive and active breaches.

Consultation on Guidelines on funds' names using ESG or sustainability-related terms

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

DUFAS fully agrees that funds and other financial products should not mislead investors by misrepresenting sustainability-related practices or features of a product. SFDR aims to further improve transparency on financial products and sustainability. We also recognize the significant impact fund names can have on investment decisions, particular by retail investors. However, we believe the proposed guidelines are pre-mature given the uncertainties within the current legislative context. Furthermore, we have multiple critical remarks on the proposed guidelines, should ESMA proceed.

Align timing with SFDR and avoid unharmonized supervision by NCAs
Although the alignment of fund names with strategies is important, this issue cannot be viewed or solved in isolation. SFDR contains many open issues and points of improvement which are still being evaluated such as through the current PAI review. We support ESMA's efforts to improve alignment between

legislations such as through further harmonization between active and passive PAB funds, but we would prefer this requirement to be incorporated into the SFDR directly. Ideally, the timing of detailed guidance on fund names should align with changes to SFDR or at least when further regulatory guidance and interpretation issues are solved, such as interpretations on the concept of sustainable investments. Temporary solutions that are not aligned with potential changes to SFDR would be highly undesirable given the time and resources needed to change fund names.

At the same time, national competent authorities (NCAs) are already diverging with their supervision of fund names in response to the principles-based guidance provided by the ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management. We encourage ESMA to caution NCAs in providing more detailed guidance leading to unharmonized supervision. As fund managers operate on a cross-border basis, it is highly undesirable when fund names cannot be used on a consistent basis because of diverging practices of NCAs.

Prioritise further development of open definitions and criteria
DUFAS in principle believes that threshold-based requirements can be effective and easy to understand by retail clients. However, we are doubtful whether the proposed criteria effectively prevent investors from investing in financial products that are not aligned with their preferences. The fundamental problem is the wide range of strategies, ambition and criteria to promote Environmental & Social Characteristics or attain Sustainable Investment Objectives. In effect, the proposed guidelines would still allow two funds with similar names to have vastly different characteristics which may or may not align with investor preferences.

We would prefer a focus on addressing open norms and definitions. For example, further defining sustainable investments, clarifying requirements for sovereigns/supranationals and real estate, providing minimum requirements for SFDR art. 8 and art. 9 products, and providing guidance on good governance would already lead to more comparability. However, this should be done within SFDR, not addressed within the context of the fund names used.

Linking thresholds to fund names may create operational challenges
Although thresholds may create clear boundaries, this poses operational challenges when applied to fund names. Some funds may on a regular basis hover around the threshold or go below the threshold through passive breaches, The trajectory to change names takes significant time and resources which would be infeasible if there are frequent but temporary breaches. Changes in fund names may have to be processed in other fund documentation such as prospectuses, fact sheets, PRIIPs KIDs, in operational systems and applicable distribution channels. Furthermore, frequent and short-term changes to the fund name may create confusion to end investors. As an alternative, an effective labelling system taking into account more specific criteria and strategies could lead to more meaningful comparability between financial products without the operational challenges if thresholds are breached.

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.

No, should ESMA proceed with guidelines on funds' names using ESG or sustainability-related terms, we emphasize that the guidance should be simple and avoid unintended practical impediments while maintaining a level playing field between financial products. Complex guidelines potentially lead to further confusion for investors, especially given the context of current SFDR evaluations and uncertainty surrounding key concepts.

Thresholds should exclude cash and hedging derivatives
If guidelines are provided, we agree that a threshold for ESG terms must be sufficiently high, but the 80% threshold may result in practical issues. This is particularly the case for multi-asset funds and/or fixed-income funds hold more derivatives, and cash. Any threshold will effectively place a cap on these assets. More importantly, including cash into the calculation may unintendedly interfere with investment decisions when a fund manager divest investments and holds cash for the time being. For example, in a scenario where the market is falling and the 80% is getting to be a smaller proportion of NAV and cash is stable, asset managers will be forced to invest to maintain the 80% which may not be financially in the investor's best interests. Our suggestion is therefore to exclude cash, cash-equivalents and derivatives from the investments where there thresholds apply. This is also consistent with the requirements and approach for article 9 funds, where cash and hedging derivatives are also not included into the calculation.

Otherwise thresholds should be reduced and only apply when funds are fully invested
Alternatively, the threshold should be reduced to allow sufficient flexibility for liquidity, risk management and market fluctuations. Furthermore, it was pointed out during the open hearing that the 80% threshold for funds would not be feasible at the start for funds that take time to deploy its capital and achieve its targeted investment allocation and diversification. ESMA seems to suggest that such funds should first adopt a neutral name and can only include sustainability related terms once the 80% threshold has been reached. However, once fully invested there no longer is a reason to change the fund name as it is no longer being marketed. In addition, managers of such funds do not get to choose which investment opportunity presents themselves first. Any restrictions here could cause the fund to miss out on attractive investment opportunities. We believe the quantitative thresholds should only kick-in from the time the fund is fully invested, like any other diversification requirements. If necessary, (retail) investors can be informed through a specific mention or prominent statement in the fund document or the RTS templates that the targeted allocation will only apply when the portfolio is fully invested.

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.

Should ESMA proceed with the guidelines, then we agree with the 50% threshold

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

Yes, if guidelines are provided, the thresholds should exclude cash, cash-equivalents and hedging derivatives.

We agree that a threshold for ESG terms must be sufficiently high, but the 80% threshold may result in practical issues. This is particularly the case for multi-asset funds and/or fixed-income funds hold more derivatives, and cash. Any threshold will effectively place a cap on these assets. More importantly, including cash into the calculation may unintendedly interfere with investment decisions when a fund manager divest investments and holds cash for the time being. For example, in a scenario where the market is falling and the 80% is getting to be a smaller proportion of NAV and cash is stable, asset managers will be forced to invest to maintain the 80% which may not be financially in the investor's best interests. Our suggestion is therefore to exclude cash, cash-equivalents and derivatives from the investments where there thresholds

apply. This is also consistent with the requirements and approach for article 9 funds, where cash and hedging derivatives are also not included into the calculation.

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 or objectives? If yes, please explain your alternative proposal.

Yes, if the thresholds include cash, cash-equivalents and hedging derivatives, the threshold should be reduced to allow sufficient flexibility for liquidity, risk management and market fluctuations. Furthermore, it was pointed out during the open hearing that the 80% threshold for funds would not be feasible at the start for funds that take time to deploy its capital and achieve its targeted investment allocation and diversification. ESMA seems to suggest that such funds should first adopt a neutral name and can only include sustainability related terms once the 80% threshold has been reached. However, once fully invested there is no longer a reason to change the fund name as it is no longer being marketed. In addition, managers of such funds do not get to choose which investment opportunity presents themselves first. Any restrictions here could cause the fund to miss out on attractive investment opportunities. We believe the quantitative thresholds should only kick-in from the time the fund is fully invested, like any other diversification requirements. If necessary, (retail) investors can be informed through a specific mention or prominent statement in the fund document or the RTS templates that the targeted allocation will only apply when the portfolio is fully invested.

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, we suggest removing the minimum safeguards to avoid additional issues due to open criteria and data limitations. First, the minimum safeguards would appear to introduce an additional minimum standard and DUFAS is doubtful whether ESMA has sufficient legal basis for this. Second, using the Paris-aligned Benchmark (PAB) exclusions would pose problems for funds that use a Climate Transition Benchmark (CTB) which as a result would not be able to use an ESG or sustainability terms in their fund name, whereas in SFDR the use of a CTB appears acceptable under art. 9 (3). Furthermore, the exclusions are catered to equity investments and less suitable for other asset classes. Third, linking the minimum safeguards to PAB exclusions would introduce practical challenges. The exclusions are currently not all included among the Principle Adverse Impact indicators, thus additional data is required. The PAB exclusions would also introduce another open criterium, namely that investments should not harm any of the EU Taxonomy objectives. The EU Taxonomy provides activity-level do no significant harm (DNSH) criteria but companies are not required to report on activities that are in breach of DNSH. Furthermore, there is no guidance on how to assess Taxonomy-alignment for investees that do not fall under CSRD, and the proposed minimum safeguards are not aligned with the Taxonomy Minimum Safeguards. With these issues, it may be preferable to first address the existing open definitions and criteria in SFDR which could also contribute to ensuring sufficient safeguards for the remaining investments in funds.

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

Should ESMA proceed with the guidelines, they should exclude derivatives and cash for the calculation of the thresholds to avoid practical issues. This is particularly the case for multi-asset funds and/or fixed-

income funds hold more derivatives, and cash. Any threshold will effectively place a cap on these assets. More importantly, including cash into the calculation may unintendedly interfere with investment decisions when a fund manager divest investments and holds cash for the time being. For example, in a scenario where the market is falling and the 80% is getting to be a smaller proportion of NAV and cash is stable, asset managers will be forced to invest to maintain the 80% which may not be financially in the investor's best interests. Our suggestion is therefore to exclude cash, cash-equivalents and derivatives from the investments where there thresholds apply. This is also consistent with the requirements and approach for article 9 funds, where cash and hedging derivatives are also not included into the calculation.

Q7a. 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?

Should ESMA proceed with the guidelines, they should exclude derivatives for the calculation of thresholds. Should they be included, we suggest avoiding specific (and therefore potentially complex) provisions for Derivatives regarding the calculation of thresholds.

Q7b. Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments for naming purposes?

Should ESMA proceed with the guidelines, they should exclude derivatives for the calculation of thresholds. Should they be included, we suggest avoiding specific (and therefore potentially complex) provisions for Derivatives regarding the calculation of thresholds.

Q8. Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds names like any other fund? If not, explain why and provide an alternative proposal.

In general, the same requirements for fund names should apply to all funds. However, ETFs and index funds are obliged under index licensing terms to include the name of the chosen benchmark in their fund names, implying no flexibility on the choice by managers on the choice of these. As their objective is to "track" an index, ETFs/index funds are obliged to adhere to the index methodology. Therefore, altering ETFs/index fund names requires amending BMR as the disclosure requirements are non-aligned with those of the SFDR applying to ETF/index fund managers. Until this regulatory issue is solved, it will be impossible for such managers to apply most measures being considered in this consultation, including the potential thresholds.

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

In general, the same requirements for fund names should apply to all funds. However, more clarity is needed whether the exposure of synthetic funds is sufficient to be considered promoting E&S characteristics or attaining a sustainable investment objective under SFDR. This is not an issue to solve within the context of fund name guidelines.

Q10.Do you agree with having specific provisions for "impact" or impact-related names in these Guidelines? If not, please explain why.

Yes, should ESMA proceed with the guidelines, we believe that the proposed provisions for impact-related names are suitable and provide sufficient flexibility for different impact strategies.

We also suggest that ESMA should publish a list of "ESG related" terms that is non-exhaustive and can be updated to avoid discrepancies between NCAs' interpretations and to allow a level playing field in cross-border distribution. This list could not be abused by market participants due to being non-exhaustive, whereas it would prevent disharmonised views between NCAs as we currently experience. The "ESG-related" word list would allude to any environmental and/or social and/or governance theme in the name

other than “sustainable” or “impact”. For “transition”, we believe it is too early to provide specific guidelines as the use and connotation are still in flux; perhaps it should not be considered ESG-related from the outset.

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

No, should ESMA proceed with the guidelines, we believe it is too early to provide specific guidelines for “transition” as the use and connotation are still in flux; perhaps it should not be considered ESG-related from the outset.

We also suggest that ESMA should publish a list of “ESG related” terms that is non-exhaustive and can be updated in order to avoid discrepancies between NCAs’ interpretations and to allow a level playing field in cross-border distribution. This list could not be abused by market participants due to being non-exhaustive, whereas it would prevent disharmonised views between NCAs as we currently experience. The “ESG-related” word list would allude to any environmental and/or social and/or governance theme in the name other than “sustainable” or “impact”.

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?

Yes, should ESMA proceed with the guidelines, the same requirements for fund names should apply to all financial 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.

For a practical implementation, we prefer that after the 6 months transition period the implementation coincides with the first more general prospectus updates. Grouping multiple prospectus changes would minimise costs for investors and supervisory burden of any fund name changes. A similar approach could be taken for breaches of the thresholds which would also be a breach of the binding elements under SFDR. Changes to the investment strategy in the prospectus can then be grouped with fund name changes. However, as mentioned during the ESMA open hearing, short term passive breaches due to, for example, market circumstances, must be differentiated from active breaches. The guidelines should explicitly include the supervisory expectations and the grace periods for passive and passive breaches.

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, we think that the naming-related provision should not be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines, because the amortization period for these funds would make it difficult to match over the entire duration of the fund.

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

DUFAS in principle believes that threshold-based requirements can be effective and easy to understand by retail clients. However, we are doubtful whether the proposed criteria effectively prevent investors from investing in financial products that are not aligned with their preferences. In effect, the proposed guidelines would still allow two funds with similar names to have vastly different strategies and characteristics which may or may not align with investor preferences. We would prefer a focus on addressing open norms and definitions in SFDR which would already lead to more comparability. However, this should be done within SFDR, not addressed within the context of the fund names used. Furthermore, linking thresholds to fund names may create operational challenges as changes in fund names may have to be processed in other fund documentation such as fact sheets, PRIIPs KIDs, in operational systems and applicable distribution channels.

Should ESMA proceed with guidelines on funds' names using ESG or sustainability-related terms, they potentially create an additional layer of complexity and uncertainty for asset managers leading. Given the context of current SFDR evaluations and uncertainty surrounding key concepts, this could lead to further costs and human resources that may otherwise have benefitted investors.

We emphasize that the guidance should be simple and avoid unintended practical impediments while maintaining a level playing field between financial products. Thresholds should exclude cash and hedging derivatives, otherwise thresholds should be reduced and only apply when funds are fully invested. We are doubtful of PAB exclusions as minimum safeguards as they introduce a minimum standard, interfere with funds following a CTB, and introduce practical issues due to some exclusions depend on open definitions and data that may not be reported. We also suggest ESMA to publish a non-exhaustive list of "ESG-related" names to enhance NCA harmonisation. Finally, the implementation and correction of breaches should align with general prospectus updates to minimise costs to investors and supervisory burden.

For a practical implementation, we prefer if the implementation coincides with more general prospectus updates combined with a minimum period before this is required after the guidelines are published. Grouping multiple prospectus changes would minimise costs for investors and supervisory burden of any fund name changes. A similar approach could be taken for active breaches of the thresholds which would also be a breach of the binding elements under SFDR. This should require changes to the investment strategy and prospectus which can be grouped with fund name changes. However, as mentioned during the ESMA open hearing short term passive breaches due to, for example, market circumstances, must be differentiated from actual breaches. The guidelines should explicitly include the supervisory expectations and the grace period for passive breaches.

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.

Please refer to Q15

DUFAS: Dutch Fund and Asset Management Association

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.

More information

Would you like to respond, or should you have any questions? I would be pleased to hear from you. Please feel welcome to e-mail Randy Pattiselanno, DUFAS manager strategy & regulatory affairs, at rp@dufas.nl.