Lori Gayle Nuckolls

April 26, 2020

Sent Via Email to:rule-comments@sec.gov

Vanessa A. Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-04-20

Dear Secretary,

I write with interest in Securities and Exchange Commission (the "SEC" or the "Commission") Release Nos. IC-33809; File No. S7-04-20, dated March 2, 2020 (the "Release") concerning the Request for Comments on Fund Names (the "Request for Comments") and the discussion therein of the possible amendment of the Commission's regulation of names of registered investment companies and business development companies (hereinafter referred to as "Funds"), specifically 17 C.F.R. §270.35d-1, promulgated under section 35(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-34(d)) (hereinafter referred to as "Rule 35d-1" or the "Name Rule"). The essential purpose and rationale for the Name Rule, as stated in the Commission's release announcing its adoption dated January 17, 2001, remain unchanged. (Release No. IC-24828; File No. S7-11-97) (66 Fed. Reg. 8509-8519)(as corrected at 66 Fed. Reg.14828-29) (the "Adopting Release"). Consequently, I recommend that there is no need for significant amendment or revision. Rule 35d-1 continues to meet the Commission's regulatory objectives in the main.

Since the Commission's creation almost a century ago during the administration of President Franklin D. Roosevelt, the Commission has maintained a two-fold purpose: serving a perceived need for investor protection and facilitating our nation's commerce through guidance of public and private companies. The Name Rule is a recent regulation that achieves both of these objectives. As a primary example, the United States has long recovered from the economic catastrophe of the Great Depression and the existence of unregulated markets that inspired the Commission's creation. Both those selling securities and those investing in securities have

learned to not misuse or misread, respectively, terms including the name United States, U.S. Treasury, etc., in the description of financial instruments. Thus, the proscription against doing so contained in §270.35d-1(a)(1) has long achieved its didactic purpose and it should remain as drafted.

The Commission has noted a concern regarding the Name Rule's current requirement that any Fund whose name suggests that it "focuses its investments in a particular type of investment or investments" or in a particular industry or type of industries must adopt a policy to invest at least 80% of the value of its assets in the particular type of investment or type of industry suggested by its name "under normal circumstances." 17 C.F.R. §270.35d-1(a)(2). If fund management decides to vary from the investment policy suggested by the fund name it must provide its shareholders with at least 60 days advance notice of a change in the policy governing its investments. 17 C.F.R. §270.35d-1(a)(2).[1] If the Fund does not comply with these requirements, the name of the Fund is considered to be "a materially deceptive and misleading name." 17 C.F.R. §270.35d-1(a).

The Adopting Release of the Name Rule sets forth the Commission's position as to the proper interpretation of the "80% requirement." As stated at 66 Fed. Reg. 8516:

> Only those investment companies that have names suggesting a particular investment emphasis are required to comply with the rule. In general, to comply with the rule, an investment company with a name that suggests that the company focuses on a particular type of investment will either have to adopt a fundamental policy to invest at least 80% of its assets in the type of investment suggested by its name or adopt a policy of notifying its shareholders at least 60 days prior to any change in its 80% investment policy. The 80% investment requirement will allow an investment company to maintain up to 20% of its assets in other investments. An investment company seeking maximum flexibility with respect to its investments will be free to use a

[1] If the Fund is a tax-exempt fund, such a policy is deemed a "fundamental policy" and may not be changed without a vote of fund shareholders. 17 C.F.R. §270.35d-1(a)(4).

> name that does not connote a particular investment emphasis.

In the absence of comment by Funds that the 80% requirement proves too burdensome a restriction since its adoption in 2001, this percentage should be maintained. The public as well as the ordinary investor perceives in the ordinary course that the stated purpose of Rule 35d-1, that of providing the public with an accurate understanding of fund policies and objectives, requires a significant commitment to the investment objective suggested by the Fund name. The 80% requirement is one readily understood by investors and lessening it is not indicated. Investors are expected and do alter investment allocations under the theory of the 80% requirement. The leeway provided funds to depart from the 80% requirement when incurring other than ordinary market conditions is an exceedingly permissive exception to the 80% requirement, for it defers to the discretion of Fund management as governed by fiduciary duty subject to SEC review on a case-by-case basis. Lastly, while the 60 day notice to shareholders requirement places the burden upon the ordinary investor to alter investments upon a change in Fund investment policy, a longer period would undermine the purpose of providing some profitable market flexibility to Funds.

Market conditions have changed in both the increased growth and diversity of potential investments. Consequently, emerging markets and their attendant risks are numerous. There is an even greater need for the 80% requirement. It provides Commission guidance in defining the information to be provided investors as well as apprising Funds of potential liability. By maintaining the 80% requirement, the Commission discourages abstract and vague Fund names through requiring acknowledgement of a need for specificity in the marketplace. For, an investor should know and expect to be informed as strictly as possible as to the nature of the Fund's investments and the 80% requirement achieves this end.

As the Commission suggested in the Request for Comments, market conditions pose issues of whether regulation is needed for Funds devoted to "qualitative" policy objectives, such as investments guided by environmental, social and or governmental concerns. 85 Fed. Reg. at 13224. Such lack of regulation may lead to investor confusion and the avoidance of investment. To ease investment, compliance and enforcement, the Commission could require that a Fund engaged in such qualitative objectives comply with a standard similar to that currently governing Funds whose investments are tied to certain countries or geographic areas. 17 C.F.R. §270.35d-1(a)(3). In doing so, the Commission could require that the Fund enumerate a qualitative criterion or set of criteria that are set forth in the governing documents of the entities in which it invests. The criteria would reflect the Fund's qualitative objective or objectives and aptly be reflected in the Fund's name. Restricting a Fund to one qualitative factor or criterion in its name might unduly restrict market activity and competition and result in a multiplicity of Funds in order to achieve several qualitative objectives. Requiring disclosure of the criteria would avoid the vagueness and abstraction of the "ESG" (environment, social or government) termed Funds.

Regulation of Funds whose name connotes global or international investments is probably not necessary. For, the ordinary investor would understand the wording used in these types of Funds. If greater specificity is needed by investors, market competition would result in more narrowly designed Funds. Requiring greater specificity in a Fund name and disclosure materials as to the type of international investments would, however, shift the primary burden of review from the investor to the Fund.

Similarly, in governing derivatives, Rule 35d-1 ably meets the Commission's primary concern of disclosure of risk to the investor. Use of the asset-based test of market value rather than notational value to determine whether a Fund is in compliance with the 80% requirement instructs the investor without further inquiry and also guides the Fund in compliance. Marker valuation better indicates price sensitivity.

In conclusion, investors properly rely fundamentally upon Fund management and its due diligence, judgment and maintenance of fiduciary duties. The Commission, and Rule 35d-1 specifically, ably guide Funds and investors in market participation. In reviewing the Name Rule, the Commission must decide how much diligence should be borne by the ordinary investor.

I thank you greatly for the opportunity to comment before you. And, if additional information might be of assistance, I may be contacted as indicated above.

Sincerely,

Lori G. Nuckolls