J.P.Morgan
Asset Management

George C.W. Gatch
Chief Executive Officer

August 16, 2022

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Investment Company Names (File No. S7-16-22)

Dear Ms. Countryman:

J.P. Morgan Asset Management ("JPMAM")[1] is pleased to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") proposal to enhance Rule 35d-1 under the Investment Company Act of 1940 (the "names rule").[2] JPMAM offers 155 mutual funds and ETFs (together, "funds") in the US, excluding money market funds, with a total of approximately $530 billion in assets under management as of July 31, 2022.

JPMAM supports the SEC's goal of increasing investor protection by improving and clarifying when and how the names rule applies, to help ensure that a fund's name does not misrepresent the fund's investments and risks, and so that investors' assets are invested in accordance with their reasonable expectations based on the fund's name. We agree that fund names that suggest certain information about the fund's investments and risks must do so accurately, and we applaud the Commission for recognizing that some fund names describe strategies for which there are not established definitions, and for proposing a flexible approach. Nonetheless, we are concerned that the expanded scope of the proposed rule, together with the more prescriptive approach to departures from the 80 percent test, create unique challenges for implementation and may lead to outcomes that are not in the best interests of shareholders.

Below we offer our comments on the proposed rule. Our principal comments can be summarized as follows:

- Given the developing market interest in, and regulatory and public scrutiny of, funds that have ESG- or sustainability-related characteristics, we generally support inclusion of ESG-

[1] J.P. Morgan Asset Management is a marketing name for the investment management subsidiaries of JPMorgan.

[2] Investment Company Names, Release No. 33-11067; 34-94981; IC-34591 (May 25, 2022), 87 Fed. Reg. 36594 (June 17, 2022) ("Proposing Release").

related terms within the scope of the names rule. We do not, however, support the inclusion of fund names indicating that the investments have particular characteristics.

- While we believe that most temporary departures from the 80 percent investment policy requirement can be corrected within 30 days, we do not support the proposed requirement, because 1) it would require daily testing of whether securities belong in the 80 percent basket, which will become substantially more complex given the expanded scope of the rule, and 2) we believe in some instances corrective action in that timeframe will not be in the best interest of investors. We recommend monthly testing and board oversight to ensure departures are remedied in a timely fashion.

- We support the proposed recordkeeping requirements, but do not support the proposed N-PORT reporting, because we believe the costs outweigh any benefit to shareholders.

- We recommend a compliance period of 24 months rather than the 12 months contemplated by the proposed rule. Funds newly in scope for the rule will need to develop and implement investment policies, which will at a minimum require approval by fund boards and shareholder notice; we also expect the disclosure changes will necessitate filing revised registration statements under Rule 485(a) and SEC staff review and potentially comments (which themselves could necessitate further internal consideration, board review, and notice to shareholders). A longer compliance period is necessary to accommodate this body of work.

I. Scope of the Rule: Names Suggesting an Investment Focus

As adopted, the names rule applies to funds for which the name suggests a focus in a particular type of investment or industry, or geographic focus.[3] The proposal would expand the rule to apply to fund names with terms suggesting that the fund focuses on investments that have, or investments whose issuers have, particular characteristics. The proposed rule text identifies "growth" and "value," among others, as well as terms indicating the fund's investment decisions incorporate one or more ESG factors as examples. A fund covered by the expanded rule would be required to define the terms used in its name, including the criteria the fund uses to select the investments that the term describes; such definitions must be consistent with the terms' plain English meaning or established industry use. The fund must also maintain an 80 percent investment policy consistent with the name.

Given the developing market interest in, and regulatory and public scrutiny of, funds that have ESG- or sustainability-related characteristics, we support the SEC's desire to capture ESG-related

[3] 270 CFR §35d-1(a). The rule also applies to funds suggesting guarantee or approval by the US government, and tax exempt funds.

terms within the scope of the names rule. However, we believe in practice the proposed principles-based approach leaves too much discretion to the disclosure review staff and will create substantial challenges in implementation. We offer recommendations to address this concern. More broadly, however, we do not support the expansion of the rule to cover names indicating that the investments have particular characteristics. We believe the Commission's investor protection objectives with respect to these types of funds can be met with enhanced disclosure. We discuss each of these in more detail below. Because our views are underpinned in large part by the challenges we foresee in identifying and tracking securities that meet the 80 percent test under the expanded scope of the rule, we begin by discussing this process.

a. Identifying Securities That Meet the 80 Percent Investment Policy

The names rule currently applies to funds whose names suggest a focus on a particular type of investment (*e.g.,* asset class or industry) or geographic focus. In our experience, securities meeting the 80 percent investment policy for such funds can be objectively identified, typically by an external data source (*e.g.,* Bloomberg) that provides data tags. Moreover, the characteristics of such securities rarely evolve in such a way as to take them out of a fund's 80 percent investment policy. As a result, routine testing for compliance can be done in a highly automated fashion, and in most circumstances any passive breach is likely to result from market moves (*i.e.,* the value of the 80 percent basket declining relative to the other holdings), rather than from securities themselves no longer qualifying under the test.

The proposed rule would, for the first time, scope in fund names that suggest investment in assets that may not have (or rely entirely on) external data tags. Although some ESG-oriented funds may rely entirely on external ratings, others, including JPMAM's, rely on internal research, including qualitative analysis and the subjective judgment of portfolio management teams. Similarly, "growth" and "value" funds may rely on inclusion in a third party index or, as is the case at JPMAM, also on internal research, analysis and judgment that may contradict external data. And, these securities are more likely to move in and out of the 80 percent basket by virtue of the judgment applied (*e.g.,* a "growth" stock is more likely to no longer be considered "growth" than a Japanese equity is to no longer qualify as Japanese).

The Proposing Release suggests that many funds assess their names rule compliance daily, and that therefore the proposed new approach "would not result in significant operational changes."[4] We respectfully disagree. Whereas testing under the existing rule can be accomplished through a simple automated mapping of external data sources against fund holdings, for many funds that would potentially be brought into scope, testing could become a highly manual process of confirming and recording the judgment of investment professionals with respect to each holding in a fund on an

[4] Proposing Release at 39.

ongoing basis, particularly where subjective and/or forward-looking criteria are part of the decision-making process.

Consideration of our ability to reasonably comply with the proposed rule without substantially changing our investment processes in these types of funds informs our comments below.

b. Application to ESG-Related Terms

We are supportive of the Commission's proposal to capture such funds that include ESG-related terms in their names under the names rule, subject to our overall comments about the rule. Although compliance with the rule may prove challenging in many respects, we believe these challenges are outweighed by the need to ensure investors in these funds have clarity about the investments they are choosing. We are concerned, however, that in practice the Commission's principles-based approach could result in the disclosure review process for such funds becoming extremely burdensome for both the staff and fund sponsors and ultimately creating *de facto* prescriptive requirements.

JPMAM currently offers five registered funds in the US that use ESG-related terms in their names. Four of them apply an 80 percent test,[5] and we believe that an 80% policy could be adopted for the fifth fund as well as additional funds currently under consideration. Although these funds do not rely primarily on external data sources for validation, we have developed bespoke automated processes for monitoring compliance with their 80 percent policies, based on a combination of external and internal (*e.g.,* proprietary analytics) data. Although this process is more challenging than for funds covered under the current rule, we believe such a requirement could enhance investor protection by ensuring funds that hold themselves out as having an ESG-related strategy are investing consistent with this representation.

However, we believe the proposal does not provide sufficient guidance to facilitate efficient drafting and review of registration statements. As the Proposing Release acknowledges, terms like "green" and "sustainable" may be subjective, and there may be more than one reasonable definition;[6] the Release further notes that "there are different approaches a fund could take to determine if a given security is tied to the economic fortunes and risk associated with the named industry."[7] We agree, and would further observe that, particularly in the case of ESG-oriented funds, these determinations may utilize complex processes that incorporate multiple and varying data points, proprietary research, quantitative information, and qualitative judgments on the part of research analysts and

[5] *See, e.g.,* summary prospectus dated November 1, 2021 for the JPMorgan Sustainable Leaders Fund, available at https://am.jpmorgan.com/JPMorgan/TADF/4812A1308/SP?site=JPMorgan ("under normal circumstances, the Fund invests at least 80% of its Assets in equity securities of U.S. companies meeting the adviser's sustainability criteria").

[6] *See* Proposing Release at 21.

[7] Proposing Release at 27.

other investment professionals. We are concerned that the disclosure review staff may not be equipped to evaluate such processes. This could result in the staff recommending long, detailed and technical disclosures, or potentially requesting changes to a fund's investment process to rely on simpler, more "objective" measures for investment selection such as revenue tests, which may not be the most appropriate measure or measures to implement the fund's ESG-oriented strategy, but could become de facto standards for new funds entering the registration process.[8] Additionally, the disclosure review process for such funds may become unduly long by virtue of the comment and response process, which can both delay a timely fund launch and monopolize valuable SEC staff resources.

To address these concerns, we recommend that any final rule or adopting release provide guidance to potential future registrants and the SEC staff. For example, the release might reinforce that simplified or objective tests are not required, nor is there a limited universe of acceptable objective tests (e.g., revenue). The rule or release could specifically articulate that approaches involving judgment, qualitative analysis, and discretion are equally acceptable. With respect to complex processes, the rule or release could indicate that it is acceptable for a fund utilizing a complex and multifaceted approach to describe its approach at a high level, rather than enumerating every data element or KPI considered. Finally, the SEC or the Division of Investment Management could develop protocols or best practices to ensure both that reviewers provide consistent feedback across registrants in a timely manner, and that names rule matters do not take up a disproportionate amount of staff resources relative to other important roles.

c. Application to Other Investment Characteristics

While we are sympathetic to the SEC's desire to enhance investor protection, and its concern that funds may depart from the investment focus suggested by their name over time, we believe the application of all of the proposed elements of the names rule to funds whose names indicate certain characteristics creates challenges that outweigh any investor protection benefit. While ESG funds have been subject to increased investor scrutiny related to claims regarding "greenwashing," no similar concerns have been raised with respect to 'value' and 'growth' funds. Moreover, since there is no one definition for either of these classifications, and they are likely to implicate subjective judgments by investment professionals, an investor seeking to understand the scope of investments would be best served by understanding how the fund defines "growth" or "value." We therefore do not support the proposed expansion of the rule's scope to cover these terms; we recommend instead that the SEC consider enhanced disclosure for such funds. We agree with the SEC that "portfolio-

[8] The Proposing Release offers revenue tests as a reasonable method for determining whether an asset meets the 80 percent test. *See* Proposing Release at 27. Although we agree that it may be a reasonable method for some industries, we would observe that it has limitations in the context of certain sustainable strategies, such as for a fund seeking to invest in companies that are engaged in developing sustainable technologies (*i.e.,* those that have promise but whose revenue has not yet matched traditional technologies). In some cases, a company's revenue related to a sustainable activity may be small even though its contribution to the sustainable strategy of a Fund may be meaningful.

level" descriptors such as "balanced" and "duration" do not belong withing the scope of the rule, and we offer suggest additional terms that belong in this category.

1. Expansion to other Characteristics Such as "Growth" and "Value"

Many forms of active portfolio management incorporate the informed judgment of a team of portfolio managers and research analysts, including subjective and forward looking considerations. For example, a "growth" or "value" fund may include securities with a particular dividend profile or share price trajectory, but could also include securities (or industries) that the team believes will evolve into the designated category over time, consistent with the fund's investment horizon – for example based on analysis of the future growth potential of an industry. Such judgments do not always lend themselves to objective identification and quantification. And, importantly, unlike ESG-related criteria that can be validated based on standards developed at the adviser level, many decisions regarding value or growth take place at the fund level; that is, different portfolio managers within the same fund complex may classify the same security differently.

The potentially subjective nature of security classifications presents several challenges with respect to the proposed rule. First, the designation of a security as "growth" or "value" or producing "income" may incorporate subjective views of the portfolio management team, and such designations may vary across funds within the same complex. As discussed above, identifying, monitoring, and recording which securities meet the 80 percent test for each fund on an ongoing basis is likely to be a manual process involving reconfirming the judgment of each portfolio management team. The results could appear contradictory across different funds within the same category, based on differing opinions of the investment team, which could lead to second-guessing. Additionally, we are concerned that such classifications could be retroactively second-guessed. To address these two risks, portfolio managers may elect to place additional reliance on objective measures, such as index inclusion, and may make portfolio decisions that are not in the best interest of fund shareholders to maintain compliance with the 80% policy, for example, selling securities that they believe are still within the fund's policy and would prefer to hold, but which could raise questions.

For example, in 2020-21, Meta Platforms was held in both value and growth actively managed portfolios. However, following Meta's 4Q21 earnings results, the stock declined due to competitive pressures and increasing economic headwinds that caused revenue guidance to be lower than expected; the stock moved into the Russell 1000 Value in 2022. Nonetheless, some growth managers may believe there is room for recovery and a return to revenue growth, based on an expectation that these headwinds should decline within the investment horizon of the fund. Under the proposed rule, however, they may be inclined to sell to avoid having the Commission or investors second guess their judgment.

As an alternative to requiring an 80% investment policy for growth and value funds, we would suggest that the proposed regulation be revised to provide that registrants summarize what they mean by "growth" and "value" investing including any objective measures the asset manager considers and the extent to which security selection is dependent upon the adviser's judgement with accompanying risk disclosure that growth and value investing necessarily involves judgement. We believe that such disclosure would provide greater transparency to Fund shareholders while recognizing that growth and value investment necessarily involves active management decisions.

2. Portfolio-Level Descriptors

The proposal would exclude "portfolio-level" descriptors like duration, and balanced from the scope of the rule. JPMAM supports this approach. We believe, however, that the Commission's scoping of such terms may be too narrow, For example, we believe that the phrase "intermediate term" for a bond fund is essentially synonymous with "intermediate duration."[9] We do not believe a typical investor would understand the distinction; moreover, imposing an 80 percent test on "intermediate term" funds could cause them to sell bonds as they approach maturity and buy others, when a better approach may be to hold those bonds and modify the fund's exposure through longer-term bonds or derivatives. For these reasons we recommend the Commission take a broader approach to portfolio-level descriptors.

We further recommend that the Commission explicitly include in this category names that suggest less constrained strategies that may nonetheless use a term the SEC considers a "characteristic." For example, we offer the JPMorgan Strategic Income Opportunities Fund, the objective of which is to produce total return through a combination of capital appreciation and current income.[10] Although the fund's name uses the word 'income,' the expectation (as outlined in the fund's summary prospectus) is that the fund retains flexibility to strategically invest in assets that will provide capital appreciation, as well as hold cash and short-term investments including money market funds when it is deemed strategic to do so. At times this fund may not meet an 80 percent policy for "income," nor do we believe it should be required to.

d. Prospectus Disclosure Defining Terms Used in Fund Name; Plain English/Established Industry Use

The proposed rule would require any fund that is required to adopt an 80 percent investment policy to include disclosure in its prospectus defining the terms used in its name, and the criteria the fund uses to select investments. Such definitions must be consistent with those terms' plain English

---

[9] *See, e.g.,* Morningstar's list of intermediate-term core bond funds, which describes such funds with reference to their duration. https://www.morningstar.com/intermediate-term-core-bond-funds

[10] *See* https://am.jpmorgan.com/JPMorgan/TADF/4812A4351/SP?site=JPMorgan.

meaning or established industry use.[11] We agree that this requirement will help investors better understand how the fund's investment strategies correspond with the investment focus the fund's name suggests, and we therefore support this element of the proposed rule.

It should be noted that both "plain English" and "established industry use" of certain terms may evolve over time. For example, the term "infrastructure" historically focused on physical assets such as bridges, roads, and railways; more recently, however, more recently the concept of "social infrastructure" has emerged as a subset of the infrastructure sector to describe the construction and maintenance of facilities that support social services. We expect that ESG-related terms in particular will experience rapid evolution as the field of sustainable investing develops in the coming years. We therefore recommend that the final rule or related guidance ensures that registrants may appropriately define terms in their disclosures based on contemporaneous assessments of plain English and established industry use, rather than relying on an historic or static lexicon based on previous fund registrations.

e. Materially Deceptive or Misleading Names

The proposed rule would codify the Commission's previously stated view that a fund's name may be materially deceptive or misleading even if a fund otherwise complies with its 80% investment policy. [12] It would also codify that "Integration Funds" as defined in the SEC's pending ESG disclosure proposal for funds and advisers[13] may not use terms suggesting that their investment decisions incorporate ESG factors. We agree that Integration Funds should not use names indicating that their investment decisions incorporate ESG factors, and that it is possible for a fund to comply with the 80% test and still have a materially deceptive or misleading name.

We have concerns, however, about the language in the proposing release describing how this could occur. The Proposing Release offers, as an example, a situation where the remaining 20 percent is invested in a way that is "antithetical" to the fund's 80% policy, such as a "fossil fuel-free" fund investing in an issuer with fossil fuel reserves. While we agree that this particular example is misleading on its face, we are less certain what "antithetical" could mean in other circumstances, and we are concerned that the lack of clarity could result in unexpected enforcement proceedings. We recommend the SEC remove the reference to "antithetical" investments and avoid any attempt to

---

[11] Proposed rule 35d-1(a)(2)(iii) and 35d-1(a)(3)(ii).

[12] Proposing Release at footnote 101 and accompanying text.

[13] *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. 34-94985; IA-6034, IC-34594 (May 25, 2022), 87 Fed. Reg. 36654 (June 17, 2022) ("ESG Disclosure Proposal"). Consistent with our comment letter on that proposal, we also recommend modifying the definition for "Integration Fund" to reflect that ESG factors are considered only for their impact on financial outcome. *See* Letter from Jennifer L.C. Wu, Global Head of Sustainable Investing, J.P. Morgan Asset Management, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated August 16, 2022.

characterize examples of materially misleading names; we believe fund names that are materially deceptive or misleading, such as the "fossil fuel-free" fund, will be apparent without such guidance.

II. Application of the Rule: Compliance With the 80 Percent Test

a. Temporary Departures from the 80 Percent Investment Requirement

While the names rule currently provides that the 80 percent investment policy applies "under normal circumstances," the proposed amendments articulate specific circumstances in which a departure would be permitted.[14] In most instances, they would also require that a fund bring its investments back into compliance within 30 consecutive days, and as soon as reasonably practicable. As the Proposing Release explains, these requirements are intended to provide flexibility to depart temporarily from the 80 percent investment requirement when doing so would be beneficial to the fund and its shareholders, while providing guardrails that prevent a fund from investing inconsistently from its 80% investment policy for an extended period of time.[15]

As a preliminary matter, the proposed 30-day requirement necessarily contemplates daily compliance testing in order to identify the beginning of any breach. For the reasons discussed above,[16] we do not support daily testing of whether a security continues to belong in a fund's 80 percent basket (as distinct from testing whether the value of the 80 percent basket has shrunk relative to the remainder of the portfolio, which is much less onerous). We recommend instead that the Commission require security-level testing at least monthly; any time limit for corrective action could begin at the time a breach is identified.

Further, while we are supportive of the Commission's desire to prevent prolonged departures from a fund's 80% investment requirement,[17] we believe the 30 day timeframe may be too short in a number of circumstances, and may not be in the best interests of shareholders. We believe an

---

[14] Proposed rule 35d-1(b)(1) and (g)(7). These temporary departures would be permitted only: (1) as a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment; (2) to address unusually large cash inflows or unusually large redemptions; (3) to take a position in cash and cash equivalents or government securities to avoid a loss in response to adverse market, economic, political, or other conditions; or (4) to reposition or liquidate a fund's assets in connection with a reorganization, to launch the fund, or when notice of a change in the fund's 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule.

[15] Proposing Release at 35.

[16] *See* §I.a.

[17] *See* Proposing Release at 38.

alternative incorporating board oversight, as suggested in the Proposing Release,[18] is more appropriate.

The Proposing Release observes that "some investors may prefer for a fund to be permitted to depart from its investment focus for longer than 30 days to avoid any losses that the fund may incur to come back into compliance within that time period."[19] We agree. Although temporary non-compliance in the ordinary course, such as due to unusually large flows, should be readily fixable in less than 30 days, there are also circumstances in which more flexibility is warranted. For example, in divesting securities that no longer meet the 80 percent policy, a portfolio manager may wish to consider tax consequences, and delay the sale accordingly.

Index rebalancings may also present timing concerns. For example, in late June 2022, amidst unusually high market volatility, Russell conducted its annual index rebalancing. The small-cap focused Russell 2000 Growth and Russell 2000 Value indices experienced turnover greater than 25 percent, and the large-cap focused Russell 1000 Growth and Russell 1000 Value experienced between 12 and 14 percent turnover. In connection with portfolio rebalancing, a fund relying on one of these indexes (even in part) for its 80 percent investment policy would presumably wish to consider not only tax consequences, but the risks of selling into a volatile market at a time when many other investors (e.g., index trackers) are also selling. Similarly, a portfolio manager of an investment-grade bond fund may determine that 30 days is insufficient to divest a large position of a bond that has been downgraded.

Finally, exogenous events could cause portfolio managers to reconsider their strategy. For example, the COVID-19 pandemic and the shutdown of the global economy changed the outlook for a wide range of industries (e.g., travel, shipping, pharmaceutical). Some companies took actions such as suspending dividends indefinitely. This could have caused funds to feel compelled divest these stocks quickly (e.g., for an "income" fund), when it may have been more beneficial to strategically exit the position, or consider whether the long-term fundamentals suggest that dividends would resume post-pandemic. We do not believe it is in the best interest of investors that their funds be rushed into conformance in these circumstances.

To ensure that funds retain the flexibility to address such situations in the best interests of fund shareholders, while generally being required to rectify temporary departures from their 80 percent policy within 30 days, we recommend the SEC adopt an approach incorporating board oversight of extended policy departures. Specifically, we recommend that for temporary departures that exceed 30 days (except for launches, reorganizations, or when notice of a change in the Fund's 80% policy has been provided to shareholders), the fund board or a designated subcommittee of the board

---

[18] *See* Proposing Release at 45, question 24.

[19] Proposing Release at 38.

should receive a report within 5 days (*i.e.,* within 35 days after identification of the departure from the 80 percent policy). The report should explain the causes of the departure and include a proposed plan, including a timeline, to bring the fund back in compliance as soon as reasonably practicable, taking into account the reasons the fund departed from its investment policy, including factors such as: (1) whether the conditions that caused the fund to fall below its 80% investment policy persist; (2) current market conditions; (3) availability of conforming investments; and (4) any other factors that may impact the ability of the fund to come back into compliance with the 80% investment policy consistent with the best interests of the fund. The proposed plan would be subject to review by the board or designated committee no later than the next regularly scheduled meeting of the board or committee. If the Fund continues to be in non-compliance 30 days after the time period contemplated by the plan, the Board must assess whether the plan continues to be in the best interests of the fund.[20]

b. Considerations Regarding Derivatives in Assessing Names Rule Compliance

The proposed rule would for the first time address how funds should both value derivatives and consider their inclusion under an 80 percent investment policy. Specifically, in calculating its total assets for purposes of names rule compliance, a fund must value each derivatives instrument at its notional amount, with certain adjustments, and reduce the value of its assets by excluding cash and cash equivalents up to the notional amounts of the derivatives instrument(s).[21] A fund may include in its 80 percent basket a derivatives instrument that provides exposure to investments suggested by the fund's name, or that provides investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name.[22] The Proposing Release uses as examples currency forwards in a foreign equity fund, and interest rate swaps in a corporate bond fund.

We support this approach. We believe such flexibility is particularly important in fixed income funds, which may use a range of derivatives to acquire or adjust exposure to a wide range of factors such as interest rates, credit, and currencies. We note, however, that identifying and tracking such exposures could implicate the same concerns we have identified regarding the subjective judgments involved in "growth" and "value" investments, making data tagging and reporting operationally challenging.

[20] This type of board supervision is consistent with the board's role under other regulations, such as the required board reporting under Rule 22e-4 Liquidity Risk Management Programs requiring Board reporting when a Fund's investments exceed illiquid investment limits. *See, e.g.*, Rule 22e-4(b)(1)(iv)(B).

[21] Proposed rule 35d-1(g)(2). In calculating notional amounts for these purposes, a fund would be required to convert interest rate derivatives to their 10-year bond equivalents and to delta adjust the notional amounts of options contracts.

[22] Proposed rule 35d-1(b)(2).

III. Modernization of Notice Requirement

Currently, funds subject to the names rule must either adopt their 80 percent investment policy as a fundamental policy (*i.e.,* a policy that may not be changed without shareholder approval), or provide shareholders notice at least 60 days prior to any change in the 80 percent policy, describing the change. The proposed amendments would also require notices to describe a change to the fund's name that accompanies an investment policy change. The proposal would also establish guidelines for electronic delivery for such notice. We support these changes.

IV. Recordkeeping and Reporting

The proposed rule would require both internal recordkeeping regarding names rule compliance, as well as reporting to the SEC on Form N-PORT. While we support the recordkeeping requirements, we believe the N-PORT reporting is highly problematic. Each of these is discussed in more detail below.

a. Recordkeeping

Under the proposed rule, funds subject to an 80 percent policy must maintain written records, for at least six years, documenting compliance with the investment policy, including which investments are included in the 80 percent basket, the value of the 80 percent basket as a percentage of the fund's assets, the reasons for any departures from the 80 percent policy, dates of such departures, and any notice sent to shareholders pursuant to the rule. Funds that are not subject to an 80 percent policy must maintain a written record of the fund's analysis that it is not subject to the rule.

We support these requirements. We agree with the Commission that such records would allow SEC staff to understand and evaluate funds' compliance with the rule. As important, we believe these requirements will drive good governance and controls internally.

b. Reporting on Form N-PORT

The proposed rule would require a fund that is required to adopt an 80% investment policy to report on Form N-PORT: (1) the value of the fund's 80% basket, as a percentage of the value of the fund's assets; (2) if applicable, the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's assets during the reporting period; and (3) with respect to each portfolio investment, whether the investment is included in the fund's 80% basket. We do not support these requirements, because we believe the costs outweigh any benefit to shareholders.

We are particularly concerned with the proposed security level reporting requirement. As discussed previously, certain types of assets will be challenging to tag for purposes of Form N-PORT – in particular those for which assignment to the 80 percent basket involves subjective judgment or

which otherwise cannot be systematically tagged and validated.[23] We estimate that up to 50 JPMAM funds would be newly in scope for the proposed rule, over half of which incorporate subjective judgments by the investment teams. Further, these funds hold an average of about 500 securities each, making manual validation extremely challenging. While we would expect portfolio managers to track their 80 percent baskets on regular basis, the operational processes for completing and filing N-PORT exist outside of the investment teams, and rely on systematic processes to collect and prepare reporting information. Adding manual reporting processes to ensure the judgments of individual portfolio managers are reflected in N-PORT could be extremely time-consuming and error-prone.

Importantly, we do not think security level reporting will be meaningful to investors. The proposed narrative disclosure about how a fund defines the terms in its name and implements its strategy is likely to be far more useful to investors, particularly whether they may be seeking to compare two similar funds. The SEC staff, meanwhile, will have access to this information under the recordkeeping requirements, which could be important in monitoring and identifying regulatory breaches.

We also do not support the proposal to disclose the number of days a fund was out of compliance with the 80 percent test. As discussed above,[24] daily monitoring of individual securities' compliance is operationally onerous, and should not be required. Additionally, we do not believe funds should be limited to 30 days to address a breach, particularly in times of market stress; requiring disclosure of such departures without adequate explanation of the investment team's judgment (such as the information we propose be provided to the board) could create legal risk and potentially cause a fund manager to take the "safer" approach of trading quickly. As an alternative, consistent with our proposal for board oversight of a fund's compliance plan, the SEC could require a fund to report confidentially to the SEC in the event it continues to be in non-compliance 30 days after the time period contemplated by the reported provided to the board; or concurrently with the initial report to the board (*i.e.,* within 35 days after identification of the departure).[25]

V. Transition Period and Compliance Date

As proposed, compliance with the new rule would be required one year after adoption, including the investment policy, prospectus disclosure requirements, and recordkeeping and reporting. We do not believe this is sufficient. We recommend that the SEC provide a minimum of two years to comply with the rule.

[23] *See supra* §§I.b. and II.b.

[24] *See* §II.a.

[25] This approach is similar to the confidential reporting requirement on Form N-LIQUID established under Rule 22e-4.

Depending on the final scope of the new rule (*i.e.,* how many existing funds will be scoped into the rule for the first time), many funds will be required to develop and implement investment policies. At a minimum this is likely to require approval by the fund board; to the extent there are changes to fundamental investment policies (such as for funds that need to amend their existing 80 percent policies to comply with the new rule), a shareholder vote could be necessary. These changes will necessarily take time to be done properly; after which the rule requires providing 60 days notice to shareholders prior to a change. Finally, we expect the disclosure changes will necessitate filing revised registration statements under Rule 485(a) and SEC staff review and potentially comments (which themselves could necessitate further internal consideration, board review, and notice to shareholders). The SEC has also proposed a one-year transition period for the pending ESG disclosure rule,[26] which will require similar processes for funds that consider ESG factors in their investment processes (*i.e.,* a different but overlapping group of funds). We do not believe the disclosure review staff is resourced to manage this volume of 485(a) filings at the same time.

Finally, we note that a two-year compliance period may provide optionality for registrants to consider whether disclosure changes could be implemented as part of the regular annual update process for fund registration statements and advisers' Form ADVs, which could create efficiencies for funds and advisers as well as SEC disclosure review staff.

* * *

JPMAM appreciates the opportunity to comment on the Commission's proposed rule. We would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Very truly yours,

/s/ George C.W. Gatch

George C.W. Gatch

Cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
William A. Birdthistle, Director, Division of Investment Management

[26] *See* ESG Disclosure Proposal, *supra* note 13.