Dimensional

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August 16, 2022

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

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

Dear Ms. Countryman,

Dimensional Fund Advisors LP ("Dimensional") appreciates the opportunity to provide the US Securities and Exchange Commission (the "Commission") with our views on its proposal to amend current Rule 35d-1 under the Investment Company Act of 1940 (the "Names Rule").[1] Dimensional is a registered investment adviser and manages 147 registered mutual funds and exchange-traded funds in the US. We recognize that a fund's name is one way to communicate information about the fund to inv[2]estors, and with our own funds, we carefully choose names that we believe accurately reflect the fund's investment focus. While certain aspects of the existing rule could be modernized, we believe the flexible approach of the current Names Rule serves investors well, and we urge the Commission to consider the following recommendations.

I. The Commission should reconsider whether its proposed N-PORT and recordkeeping requirements will benefit investors.

Under the proposed amendments to Form N-PORT, a fund will be required to report the value of its 80% basket as a percentage of the value of the fund's assets, report the number of days that the value of the fund's 80% basket fell below 80% during the reporting period, and indicate which investments are included in the fund's 80% basket. Funds will also be required to maintain records documenting their compliance with the Names Rule. Complying with these additional Commission requirements will cost funds time and money, and we question whether any benefits to investors will outweigh these costs.

In the Proposing Release, the staff posits that some investors may prefer to invest in a fund that has a higher percentage invested in accordance with the fund's investment focus. The proposed reporting requirements would enable such investors to compare the value of the 80% baskets of funds with similar names.[3] However, comparing the value of two funds' 80% baskets may not actually provide investors with additional useful information, because the percentage in each fund's 80% basket will depend on how the fund implements its 80% policy. For example, two emerging markets funds could have the *exact same holdings*, but if one fund classifies certain

[1] US Securities and Exchange Commission, *Investment Company Names*, Release No. IC-34593 (May 25, 2022) (the "Proposing Release").

[2] As of the date of this letter.

[3] Proposing Release at 97.

holdings as being in a developed market while the other fund considers the same holdings to be in an emerging market,[4] then the latter fund will show a higher percentage of assets invested in emerging markets. If investors do not also compare each fund's definition of emerging markets, then they may mistakenly conclude that one fund has more exposure to emerging markets, despite the funds' identical holdings. In general, we do not believe that the proposed N-PORT requirements will provide information that is of much use to investors, but there will be significant costs associated with complying with the proposed requirements. We urge the Commission not to adopt regulations where the perceived benefits will not outweigh the certain costs to funds and their shareholders.

II. The Commission should retain the current Names Rule's principles-based approach to temporary departures from a fund's 80% policy.

Currently, a fund's 80% policy applies "under normal circumstances" and is measured at the time assets are invested. Under the Commission's proposal, a fund would only be permitted to depart from its 80% policy under a limited number of narrowly defined circumstances, and generally would be required to come back into compliance with its 80% policy within 30 days. We strongly oppose these proposed changes because they would be unnecessarily restrictive, particularly during adverse market conditions that may last well beyond the Commission's specified 30-day period.

When the Names Rule was originally proposed in 1997, the rule would have permitted funds to depart from their 80% policy to take a "temporary defensive position" to avoid losses in response to adverse market, economic, political, or other conditions. However, when the rule was adopted in 2001, the Commission recognized that the proposed "temporary defensive position" exception was too narrow and did not give funds sufficient flexibility to manage their portfolios.[5] Instead, the Commission adopted the "under normal circumstances" standard, noting that this standard would provide funds with flexibility to manage their portfolios, while requiring that they would normally have to comply with the 80% investment requirement.[6] We believe the Commission struck an appropriate balance when it adopted the "under normal circumstances" standard, and we urge the Commission not to replace its current principles-based standard with the proposed, extremely prescriptive approach.

In our view, the main issue with a prescriptive approach is that it reduces a fund's ability to react to circumstances not enumerated in the rule in a manner that the fund's adviser determines is in the best interests of the fund's investors. The difficulty with a prescriptive approach here is that it requires the Commission to predict—and codify—all of the circumstances in which a fund may need to depart from its 80% policy to avoid or limit harm to shareholders. We suggest that it

[4] For example, as of the date of this letter, FTSE Russell categorizes South Korea as a developed market, while MSCI classifies South Korea as an emerging market. *See* FTSE Russell, "What we mean by emerging?" (Aug. 1, 2019), available at https://www.ftserussell.com/blogs/what-we-mean-emerging, and MSCI, "The MSCI Market Classification Framework", available at https://www.msci.com/our-solutions/indexes/market-classification.

[5] US Securities and Exchange Commission, *Investment Company Names*, 66 Fed. Reg. 8509 (Feb. 1, 2001) at 8513.

[6] *Id.*

may be when there is an *unforeseeable* circumstance that it may be most essential for funds to have the ability to depart from their 80% policies. The existing "under normal circumstances" standard appropriately allows flexibility for funds to respond to unusual circumstances that are foreseeable—like adverse market conditions or unusually large redemptions—as well as any unforeseeable circumstances that may arise. We believe it is in the best interests of a fund's investors for the fund to have sufficient flexibility to implement its investment strategy, rather than be bound by a prescriptive approach.

We also object to the proposal to replace the existing "at the time of investment" test with a continuous compliance standard. Forcing a fund to come back into compliance with its 80% policy within a specific time frame fails to recognize that the fund's investors may be harmed if the fund does not have the flexibility and discretion to determine how best to manage its portfolio. The proposed 30-day time frame is likely to force sales at undesirable and inappropriate times and prices, which may generate unwanted capital gains or lock in losses to the detriment of shareholders. We believe the existing time of investment standard for measuring a fund's compliance with its 80% policy already appropriately balances compliance objectives while maintaining flexibility for the fund to determine when to buy and sell securities.

Finally, there are other, less restrictive ways that the Commission could require a fund to revisit the appropriateness of its name if the fund perpetually "drifts" from its investment focus. For example, the Commission could require funds that have been out of compliance with their 80% policy for more than 60 days to report this to their board at their next quarterly meeting. This would allow the fund's board to judge whether, under the specific circumstances, investors are likely to be misled or harmed by a protracted departure from the fund's 80% policy and consider whether any corrective action is warranted.

III. ***When calculating compliance with its 80% policy, a fund that uses derivatives should be permitted to exclude from its assets a broader range of securities that are commonly used as collateral.***

Under the proposed rule, funds will be required to include the notional amount of derivatives in both the numerator and denominator of their 80% tests, and will be permitted to exclude cash and cash equivalents[7] from the value of their assets, *i.e.*, the denominator. However, permitting funds to exclude only cash and cash equivalents does not fully reflect the range of ways that funds can—and do—invest their collateral. Instead, we suggest permitting funds to exclude US Treasury securities maturing in five years or less and investment grade government or corporate bonds maturing in three years or less, in addition to cash and cash equivalents. Such shorter-term securities effectively function as low-risk collateral for derivative instruments. In our view, funds that use derivatives continue to have the same economic exposure to the underlying securities, even when they invest their collateral in shorter-term fixed income securities.

[7] As noted in the Proposing Release at FN 86, items commonly considered to be cash equivalents include Treasury bills, agency securities, bank deposits, commercial paper, and shares of money market funds.

IV. ***We support the proposed prohibition on the use of ESG terms in an Integration Fund's name.***

The proposed rule would also prohibit an Integration Fund, *i.e.*, a fund that considers environmental, social, and governance ("ESG") factors but where those factors are generally no more significant than other factors in the investment selection process, from using ESG terms in its name. We support this proposed prohibition, and we agree that if a fund does not use ESG as a significant or main consideration, it should not be able to include ESG terms in its name. As the Commission notes, the extent to which funds consider ESG varies widely, and investors could be misled if the ESG considerations identified in a fund's name do not play a central role in the fund's strategy.

In our comment letter dated August 16, 2022 to the Commission on its proposal to enhance ESG disclosures made by funds and advisers (the "ESG Proposal"),[8] we suggest that defining the term Integration Fund is unnecessary and may inadvertently lead to an overemphasis on ESG. To avoid using the Integration Fund definition in the Names Rule, the proposed prohibition could be reframed so that only ESG-Focused Funds, as defined in the ESG Proposal, would be permitted to ESG terms in their names. We believe this would be an effective way to resolve the Commission's concerns that investors are being misled by fund names in cases where ESG is not a significant or main consideration.

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In general, we believe the Names Rule has served investors well over the past two decades, and we urge the Commission to continue to take a principles-based approach to investment company names. We appreciate, for example, that in the Proposing Release, the Commission specifically gives funds the flexibility to use reasonable definitions of the terms in their names. If we can be of further assistance, please do not hesitate to contact Stephanie Hui, Vice President and Counsel. We would welcome the opportunity to expand on our discussion of these issues.

Sincerely,

Catherine L. Newell
General Counsel and Executive Vice President

[8] US Securities and Exchange Commission, *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Release Nos. IA-6034, IC-34594 (May 25, 2022).