MFS Investment Management
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August 16, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comments Concerning Investment Company Names and Proposed Amendments to Rule 35d-1

File No. S7-16-22

Dear Ms. Countryman:

I am writing on behalf of Massachusetts Financial Services Company ("MFS" or "We") in response to the invitation by the U.S. Securities and Exchange Commission (the "Commission") to provide comments on the Commission's recently proposed changes to the regulatory framework surrounding investment company names.[1]

MFS is a global asset management firm providing investment management services to various clients including over 135 registered investment companies sponsored by MFS held by over fourteen million shareholders. MFS traces its history back to 1924 and the creation of the country's first open-end mutual fund, Massachusetts Investors Trust. Since this time MFS has been a leading innovator in the asset management industry. In addition to launching the country's first mutual fund, we created in 1932 one of the first in-house research departments in the mutual fund industry. The MFS investment process relies on deep fundamental research, a long-term perspective, and institutional risk controls.

We appreciate the opportunity to provide our comments on the Release and the proposal to amend Rule 35d-1 (the "Rule") under the Investment Company Act of 1940, as amended (the "1940 Act"). MFS has extensive experience managing investment funds that are registered under the 1940 Act, including over 70 MFS sponsored funds that are currently subject to the Rule. MFS additionally serves as investment sub-adviser to over 65 registered funds outside of the MFS fund complex.

We believe that investment company names are an important tool for communicating information about a fund to investors, and we support the Commission's initiative to modernize certain elements of the Rule. However, we are concerned about the broad

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[1] *Investment Company Names*, SEC Release No. IC-34593 (May 25, 2022), 87 FR 36594 (June 17, 2022), available at [2022-11742.pdf (govinfo.gov)] (the "Release").

scope of the proposed amendments to the Rule and the potential negative impacts to funds and shareholders that we believe may result from the proposal. We encourage the Commission to consider the comments articulated in this letter and the comment letters submitted on the subject by the Investment Company Institute ("ICI") and the Securities Industry and Financial Markets Association – Asset Management Group ("SIFMA-AMG"), both of which we largely agree with. We believe that by revising the Rule through the implementation of the targeted comments discussed in this letter and the letters submitted by the ICI and SIFMA-AMG, the Commission can continue to protect investor interests by ensuring that investment company names are not materially misleading while maintaining a regulatory framework that appropriately discloses information about a fund's principal investment strategies and risks to investors.

I. Executive Summary

We believe that a fund's name can be an effective means of communicating information about the fund's investment objective and principal investment strategies. However, as recognized by the Commission when the Rule was adopted in 2001, "investors should not rely on an investment company's name as the sole source of information about a company's investments and risks."[2] We believe that certain elements of the proposal risk overemphasizing the importance of a fund's name and that shareholders should continue to be encouraged to look beyond a fund's name to other information, such as disclosure included in a fund's registration statement, to obtain a complete understanding of a fund's investment objective(s), policies, strategies and risks. We also believe that certain elements of the proposal could result in a decrease in portfolio management discretion and flexibility, which could negatively impact the long-term value active investment managers such as MFS provide shareholders.

The following summarizes our comments on the proposed changes included in the Rule and Release:

- The Commission should not expand the scope of the Rule to include names that suggest a focus on investments that have "particular characteristics." If the scope of the Rule is expanded, such expansion should be narrowly tailored to address the specific concerns cited by the Commission.
- The Commission should not adopt the proposed limitations regarding temporary departures from a fund's 80% Policy, which are too prescriptive and may harm funds and their shareholders.
- The Commission should provide additional guidance and clarification on the circumstances in which it could deem a fund name to be materially deceptive and misleading if the fund (i) makes a substantial investment that is "antithetical" to the fund's name or (ii) invests in a way such that the source of

[2] Investment Company Names, SEC Release No. IC-24828 (Jan. 17, 2001), available at https://www.sec.gov/rules/final/ic-24828.htm (the "Adopting Release").

a substantial portion of the fund's risk or returns is different from those that an investor would reasonably expect based on the fund's name.

- The Commission should revise the proposed Form N-PORT reporting requirements, which are overly burdensome with little anticipated benefit to fund shareholders.
- The Commission should extend the compliance period for the amendments to the Rule from one year to at least two years.

II. The Commission should not expand the scope of the Rule to include names that suggest a focus on investments that have "particular characteristics." If the scope of the Rule is expanded, such expansion should be narrowly tailored to address the specific concerns cited by the Commission with respect to ESG-related terms.

The Rule currently requires funds with names that suggest a focus on a particular investment type to adopt a policy to invest at least 80% of their assets in the type of investments suggested by that name ("80% Policy"). In general, we believe that the Rule has benefitted investors and asset managers in the twenty-plus years since its adoption. We believe that a major factor in the Rule's effectiveness is its application to investment types and objective terms to which the Rule's standards can be uniformly applied.

The proposal would expand the scope of the Rule to require that a fund adopt an 80% Policy if its name suggests a focus "*in investments that have, or whose issuers have, particular characteristics."*[3] The Release cites "growth", "value", and terms indicating that a fund's investment decisions incorporate one or more environmental, social, and/or governance ("ESG") factors as examples of names suggesting such an investment focus that would require an 80% Policy.[4] Currently, these names are generally considered to be outside the scope of the Rule. As expanded by the proposal, the 80% Policy requirement would apply where a fund's name could be construed as referring to an investment strategy.

We are concerned with the proposed expansion in scope to cover investments that have "particular characteristics", in particular terms referring to investment strategies such as "growth" and "value." Expanding the scope of the Rule in this manner would require funds to adopt 80% Policies for terms that are inherently subjective and non-standardized. As the Commission recognized when it excluded investment strategies from the scope of the Rule when it was adopted in 2001, the construct of the Rule is more difficult to apply to subjective terms that do not translate well to a formulative "one-size-fits-all" approach.

In the case of terms describing investment strategies such as "growth" and "value", the strategy is the process of choosing investments as opposed to the type of investment itself. An assessment of whether a company constitutes a growth company or a value

[3] Proposed Rule 35d-1(a)(2).

[4] Release at 19.

company is often based on the subjective evaluation and outlook of an individual portfolio manager.[5] For example, the portfolio manager of ABC Growth Fund may believe that an issuer has above average earnings growth potential compared to other companies, while the portfolio manager of XYZ Value Fund in the same fund complex may believe, based on her or his own analysis, that the same issuer is undervalued relative to its perceived value in the marketplace. Under the proposal, the security in question could count towards the 80% Policy for ABC Growth Fund as well as the 80% Policy for XYZ Value Fund. In addition, third parties such as index providers use different criteria for defining growth and value companies, and certain issuers are included in growth-style indices and value-style indices administered by the same index provider.[6] We believe these examples illustrate that applying the Rule to investment strategy terms such as "growth" and "value" will result in inconsistent application of 80% Policies across the industry, potentially resulting in investor confusion, without any identifiable benefit to shareholders. In addition, requiring 80% Policies for investment strategies could reduce portfolio managers' flexibility to manage portfolios in the best interests of shareholders to the extent funds adopt stringent "one size fits all" definitions in response to the Rule's requirements. In addition, the standardization of terms like growth and value across the industry has the potential to promote homogenization and similar portfolio holdings in actively managed funds, undermining the basic principles and benefits of active management.[7]

From an operational and compliance perspective, the efforts and costs associated with developing definitions and monitoring subjective and fluid characteristics that may differ by fund and portfolio manager are significant. The proposed expansion of the Rule to cover investment strategies such as growth and value would also create additional complexities for sub-advised funds, particularly with respect to fund complexes that use a manager-of-managers approach.[8] In those cases, the primary adviser will be required to either (i) mandate that sub-advisers adopt the primary adviser's definitions for growth and value companies, which could impede a sub-adviser's ability to implement its strategy in the desired manner, or (ii) deal with the operational, oversight, and compliance complexities of having to monitor each respective sub-adviser's definition of such terms

[5] We also note that an issuer may transition back and forth from one category to another over time, presenting additional complexities under the proposed amendments to the Rule.

[6] We encourage the Commission to consider the comments included Section I(A) of the ICI's comment letter addressing the different criteria used by certain leading index providers in classifying "growth stocks" and "value stocks" for their style indices and the overlap of issuers in growth and value style indices.

[7] The standardization of terms such as "growth" and "value" for purposes of monitoring a fund's 80% Policy also has the potential to disadvantage actively managed funds relative to passive index funds. For example, an index fund tracking a particular index could generally define "growth companies" or "value companies" as issuers included in the respective index for purposes of the fund's 80% Policy. However, using these definitions with an actively managed fund could negatively impact the ability of the fund to effectively implement its investment strategy based on investment personnel's subjective assessment of issuers.

[8] As previously noted, MFS currently serves as investment sub-adviser to a number of registered funds, including certain "sleeved" funds that are managed by multiple sub-advisers.

(often times within the same fund) for purposes of compliance with an 80% Policy. The subjectivity, uncertainty and operational challenges associated with the proposed Rule could also result in an increase in non-descriptive and generic fund names across the industry, which we do not believe would be a beneficial result for shareholders.

Finally, we do not believe that the Commission has articulated or demonstrated specific abuses or significant investor protection concerns associated with the use of terms such as growth, value and income in fund names that would justify expanding the scope of the Rule cover such terms. For the foregoing reasons, we urge the Commission not to expand the scope of the Rule to cover fund names that suggest a focus in investments that have "particular characteristics."

If the Commission determines to expand the current scope of the Rule, we strongly encourage the Commission to narrowly tailor any expanded coverage to exclude inherently subjective terms such as "growth" and "value" as well as terms that are reasonably determined by a fund to refer to the characteristics of its entire portfolio (such as "global"). In the Release, the Commission expressed particular concern about ESG-related terms in a fund's name, including concerns about potential "greenwashing" by funds.[9] We recognize that ESG-related terms in fund names present unique challenges given the significant increase in ESG-focused funds in recent years and the continuing evolution of terminology, definitions, and strategies in this area, thus increasing the risk for potentially misunderstood and/or misleading fund names. However, we do not believe that well-established terms such as "growth", "value" and "income" pose the same risks, and we are not aware of a situation where funds utilizing these terms have been determined to have materially deceptive or misleading names. If the scope of the Rule is expanded, we encourage the Commission to narrowly tailor the scope to specifically address the use of ESG-related terms in a fund's name. For example, the Commission could define a fund name containing an ESG-related term as materially deceptive or misleading unless the fund complies with the enhanced disclosure requirements proposed by the Commission applicable to ESG-focused funds.[10] Taking such a focused and tailored approach would address the Commission's concerns associated with ESG-related terms while maintaining the current regulatory structure that generally excludes investment strategies from the scope of the Rule.

III. *The Commission should not adopt the proposed limitations regarding temporary departures from a fund's 80% Policy, which are too prescriptive and may harm funds and shareholders.*

Under the current Rule, a fund is required to maintain compliance with its 80% Policy

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[9] Release at 14.

[10] See *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices,* SEC Release No. IC-34594 (May 25, 2022).

"under normal circumstances"[11] and measure compliance using an "at time of investment" test.[12] The proposal would permit a fund to depart temporarily from its 80% Policy only under certain enumerated circumstances and would require a fund to return to compliance with its 80% Policy as soon as reasonably practical and, in any event, not longer than 30 days subject to certain specific exceptions.[13] We do not support the proposal to place such strict limitations on temporary departures from a fund's 80% Policy. In particular, we are concerned that the proposed enumerated list of circumstances is too narrow in scope and does not capture all circumstances in which a fund may reasonably depart from its 80% Policy on a temporary basis, including portfolio manager and/or sub-adviser changes, changes in investment policies outside of the scope of a fund's 80% Policy, as well as other unforeseeable circumstances. We support retaining a principle-based approach whereby a fund's adviser can make reasonable judgments in determining whether it is appropriate to temporarily deviate from a fund's 80% Policy based on the circumstances.

We are also concerned that the proposal removes the current "at time of investment" test under the Rule, which could be harmful to shareholders. For example, a fund that falls below its 80% Policy threshold due to market appreciation may be required to sell positions at inopportune times and undesirable prices in order to maintain compliance with its 80% Policy where the portfolio manager believes it is in the best interest of fund shareholders to continue holding the securities. Implementing the strict temporary departure provisions as proposed would therefore decrease a portfolio manager's discretion and investment flexibility, which would arguably conflict with the manager's fiduciary duties to the fund and its shareholders. Adhering to the strict timeframes required under the proposal also could result in increased transaction costs and capital gains for shareholders. We are also concerned that the 30-day timeframe to come back into compliance with the 80% Policy may not be sufficient for certain asset classes and/or in certain market conditions, including severe market dislocations.

The Commission also cited potential "drift" from an 80% Policy over time as a factor supporting the proposed limitations on temporary departures from the Policy. The Commission recognized in the Release that this risk may be mitigated under the current Rule because if a fund is below its 80% Policy any future investment must be made in a manner that will bring the fund back in compliance with the 80% Policy.[14] We believe that this current requirement adequately addresses the potential risk of a fund drifting away from its 80% Policy on a prolonged basis. Based on the foregoing, we believe that the Commission should retain the current "under normal circumstances" and "at time of investment" standards that exist in the current Rule's framework.

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[11] Rule 35d-1(a).
[12] Rule 35d-1(b).
[13] Release at 33-34.
[14] Rule 35d-1(b).

In lieu of implementing the specific enumerated circumstances under which a fund can temporarily depart from its 80% Policy and eliminating the "at time of investment" standard, the Commission could adopt a board reporting structure whereby a fund's board must be notified at its next regularly scheduled meeting if a fund has been out of compliance with its 80% Policy for greater than 60 days. We believe that providing for board oversight of temporary departures from a fund's 80% Policy would be beneficial to funds and their shareholders as compared to the inflexible requirements included in the proposal that would impede an adviser's flexibility and discretion in managing a fund. In addition, this board oversight structure is relatively consistent with recent Commission rulemaking in the areas of derivatives (Rule 18f-4 under the 1940 Act) and liquidity risk management (Rule 22c-4 under the 1940 Act). The Commission could also require funds subject to the Rule to disclose in the principal investment strategies section of the prospectus that the 80% Policy is monitored on an "at time of purchase" basis, putting shareholders on notice of this approach.

IV. The Commission should provide additional guidance and clarification on the circumstances in which it could deem a fund name to be materially deceptive and misleading if the fund (i) makes a substantial investment that is "antithetical" to the fund's name or (ii) invests in a way such that the source of a substantial portion of the fund's risk or returns is different from those that an investor would reasonably expect based on the fund's name.

The proposal would include a new provision in the Rule providing that a fund's name may be materially deceptive or misleading under Section 35(d) of the 1940 Act even if the fund adopts an 80% Policy and otherwise complies with the Rule's requirements to implement the policy.[15] The proposal notes that a fund's name could be materially deceptive or misleading for purposes of Section 35(d) if, for example, a fund complies with its 80% Policy but (i) makes a substantial investment that is "antithetical" to the fund's investment focus (e*.g.*, a "fossil fuel-free" fund making a substantial investment in an issuer with fossil fuel reserves) or (ii) invests in a way such that the source of a substantial portion of the fund's risk or returns is different from those that an investor reasonably would expect based on the fund's name (*e.g.*, a short-term bond fund using the 20% basket to invest in highly volatile equity securities that introduce significant volatility into a fund that investors would expect to have lower levels of volatility associated with short-term bonds).

We do not oppose the proposal to codify the position that a fund name may be materially deceptive or misleading under Section 35(d) of the 1940 Act even if the fund complies with its 80% Policy, and we understand the issues the Commission is trying to address in proposing this addition to the Rule. That being said, we are concerned that the discussion and examples of antithetical investments in the Release create significant uncertainty around what would constitute a materially deceptive or misleading name under Section

[15] Proposed Rule 35d-1(c).

35(d) in the Commission's view. This uncertainty would subject funds and advisers to a significant risk of second-guessing by regulators and other parties.

Importantly, we believe that the uncertainty created by this provision would decrease portfolio management discretion and flexibility in managing a fund's 20% basket for fear of violating (or later being second-guessed on) the vague and unclear standard articulated in the Release. We note that when the Rule was adopted in 2001, the Commission stated that "we are concerned that restricting the investment of the remaining 20% of an investment company's assets would unnecessarily reduce the manager's flexibility without providing significant additional benefits to shareholders."[16] We continue to agree with the Commission's 2001 position regarding the 20% basket, while recognizing that a fund's name may still be misleading under Section 35(d) of the 1940 Act despite the fund being in compliance with its 80% Policy.

We believe that the current disclosure regime, coupled with the requirements of Section 35(d) of the 1940 Act, adequately address the concerns identified by the Commission in the Release. Under Form N-1A, funds must disclose principal investment strategies and principal risks in the prospectus. As previously noted, we believe that a fund's name should not be the primary means of communicating information about a fund to investors. Investors should look at other information, primarily a fund's prospectus, to obtain a complete understanding of a fund's investment objective, policies, strategies and risks. Under the current disclosure requirements, principal investment strategies and types outside of a fund's 80% Policy and related risks are to be disclosed in the prospectus, putting shareholders on notice that a portion of a fund's assets may be invested outside the investment type suggested by the fund's name.

If the proposed Rule 35d-1(c) is enacted, we request that the Commission provide in the adopting release more detail, guidance and examples regarding (i) when it would view an investment as "antithetical" to a fund's name, (ii) the definition of a "substantial" investment for these purposes, and (iii) when the composition of a fund's 20% basket would lead to a determination that a fund's name is materially deceptive or misleading under Section 35(d) of the 1940 Act.

V. The Commission should revise the proposed Form N-PORT reporting requirements, which are overly burdensome with little anticipated benefit to fund shareholders.

Under the proposal, funds (other than money market funds) that are required to have an 80% Policy would be required to report on Form N-PORT the following information as of period end: (i) the value of the fund's 80% Policy basket, as a percentage of the fund's assets; and (ii) if applicable, the number of days that the value of the fund's 80% Policy basket fell below 80% during the reporting period. The proposal also would amend Form N-PORT to include a new reporting item requiring a registered fund that is subject to the

[16] Adopting Release, Section II(A)(1).

80% Policy requirement to indicate, with respect to each portfolio investment, whether the investment is included in the fund's 80% Policy basket.[17] The Commission noted that this transparency is intended to help Commission staff and investors better understand a fund's portfolio and allow market participants to compare characterizations across funds. This information would be publicly available for the third month of each of the fund's fiscal quarters.

We do not support the proposal to disclose on Form N-PORT whether, with respect to each portfolio investment, the investment is included in the fund's 80% Policy basket. We believe that this information would not be helpful to shareholders given that they are unlikely to regularly access a fund's N-PORT filings. In addition, tagging each investment in such a manner would be extremely burdensome and costly from an operational perspective. We also do not support the proposal to publicly disclose the number of days a fund was out of compliance with its 80% Policy during the reporting period. Again, we do not believe this information will be helpful to shareholders, particularly where no context or rationale is provided for the deviation from the 80% Policy.

If the goal is to provide shareholders with more information on a fund's compliance with its 80% Policy, we recommend that "Item 27. Financial Statements" of Form N-1A be amended to require funds subject to Rule 35d-1 to include in the required "Graphical Information of Holdings" general information regarding the fund's compliance with its 80% Policy as of period end.[18] Including this information in a fund's shareholder report would make it much more accessible to investors. With respect to the proposal to publicly disclose the number of days a fund was out of compliance with its 80% Policy during a reporting period, we believe that a fund's board would be a more appropriate means for overseeing funds that are operating outside of an 80% Policy for prolonged periods of time, as discussed in Section III above.

VI. The Commission should extend the compliance period for the amendments to the Rule from one year to at least two years.

In the Release, the Commission proposed a one-year compliance period for the proposed amendments to the Rule.[19] We believe that the proposed compliance period represents an inadequate timeframe given the significant compliance, fund governance, legal, and operational challenges presented by the proposal. For example, if the amendments are adopted as proposed, fund sponsors would need to (i) evaluate the application of the amended Rule to existing funds; (ii) determine what, if any, changes in funds' investment strategies and names are necessary and/or appropriate; (iii) obtain necessary Board and/or shareholder approvals; (iv) adopt necessary policies and procedures; (v) design, modify and/or acquire systems to define and monitor terms subject to the Rule and meet

[17] Release at 95-96, 100.
[18] For example, the ABC Utilities Fund would summarize in narrative form its 80% Policy and disclose the percentage of assets invested in utilities companies at period end (*e.g.,* 95.5% in utilities companies).
[19] Release at 111-112.

the broad reporting and recordkeeping requirements of the Rule; and (vi) amend the funds' registration statements to meet the requirements of the Rule, which may include filing numerous post-effective amendments pursuant to Rule 485(a) under the Securities Act of 1933, as amended (the "1933 Act").

We respectfully request that the Commission extend the compliance period of the Rule amendments to a period of at least two years from the effective date of the Rule given the significant operational, compliance, and other challenges associated with the proposal referenced above. In addition, if the proposal is adopted, we respectfully request that the Commission permit a fund that is adopting or revising an 80% Policy (and otherwise updating disclosure to comply with the amended Rule) to implement such changes in a post-effective amendment filed pursuant to Rule 485(b) under the 1933 Act, provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under Rule 485(b).

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We appreciate the opportunity to provide comments on the proposed amendments to the Rule. If you have any questions, please contact me at [redacted] or Brian Langenfeld at [redacted].

Sincerely,

Heidi Hardin
Heidi Hardin (Aug 16, 2022 13:38 MDT)

Heidi Hardin
Executive Vice President and General Counsel

cc: The Honorable Gary Gensler
Chairman, United States Securities and Exchange Commission

The Honorable Caroline A. Crenshaw
Commissioner, United States Securities and Exchange Commission

The Honorable Jaime Lizárraga
Commissioner, United States Securities and Exchange Commission

The Honorable Hester M. Peirce
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