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VIA ELECTRONIC SUBMISSION

August 16, 2022

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

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

Dear Ms. Countryman:

Invesco Ltd. ("**Invesco**") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "**Commission**") on its proposed rule amendments ("**Proposed Amendments**") relating to investment company names under Rule 35d-1 under the Investment Company Act of 1940 (the **"Names Rule"**).[1]

Invesco is a leading independent global investment manager with approximately $1,449.0 billion in assets under management as of July 31, 2022. Invesco has specialized investment teams managing investments across a comprehensive range of asset classes, investment styles and geographies, tailored to the needs of institutional and retail investors. In addition to our offerings in equities, bonds, and real assets, we have multi-asset strategies and liability-driven investments. Invesco's indirect wholly-owned U.S. registered investment adviser subsidiaries, including Invesco Advisers, Inc., and Invesco Capital Management LLC, advise or sponsor open-end mutual funds, closed-end funds, exchange-traded funds, collective trust funds, separately managed accounts, real estate investment trusts, unit investment trusts and other pooled vehicles.

I. Executive Summary

The Commission's Proposed Amendments address certain broad categories of fund names that it believes are likely to mislead investors about a fund's investments and risks. The Proposed Amendments are designed to increase investor protection by improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance

[1] *See* Investment Company Names, Release No. IC-34593 (May 25, 2022) (the **"Release"**), at https://www.sec.gov/rules/proposed/2022/33-11067.pdf; *see also* Investment Company Names, Release No. IC-24828 (January 17, 2001) (the "2001 Adopting Release"), at https://www.sec.gov/rules/final/ic-24828.htm.

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with the investment focus that the fund's name suggests.[2] To that end, the Proposed Amendments aim to, among other things, modify the requirements for when a fund can temporarily depart from its adopted 80% investment policy, update the rule's notice requirements, establish new recordkeeping requirements, enhance prospectus disclosure requirements for terminology used in fund names, and add new reporting requirements for Form N-PORT.

Invesco is generally supportive of the Commission's efforts to modernize the regulatory framework for the regulation of fund names and its desire to improve investor protection, understanding and experience. However, we believe the Proposed Amendments, on the whole, are a drastic and unnecessary expansion of the Names Rule that, if adopted in the current form, have the potential to harm investors more than they increase investor protection; create major hurdles to the ability of fund compliance departments to monitor fund investment portfolios accurately and efficiently; and could ultimately hurt industry competition and creativity. Since its adoption in 2001, the Names Rule has provided an effective regulatory framework for ensuring that fund names are not materially deceptive or misleading and has served to help investors understand what they can expect when they invest in a fund. From a portfolio management and compliance monitoring perspective, a key component of the Names Rule's success is the objectively measurable and quantifiable criteria on which the rule's 80% investment policy requirement relies to monitor a fund's investment portfolio accurately and efficiently. However, we believe the expansion and modification of the Names Rule's 80% investment policy requirement would have a significant and negative impact on the ability of fund portfolio managers to manage their portfolios and on the ability of fund compliance departments to efficiently monitor them. Given the generally positive effect we believe the Names Rule has had on investor outcomes and protections over the last two decades, we strongly support maintaining the Names Rule in substantially its current form and believe that any revisions to it or Commission guidance on it should seek to balance the goals of increasing investor protection and promoting investor understanding with maintaining the appropriate flexibility of portfolio management and facilitating ease of compliance and standardization across funds without impacting current investor options or experiences.

While Invesco generally supports the positions reflected in the comment letter submitted by the Investment Company Institute (ICI), we are writing separately to reiterate our position on certain important provisions of the Proposed Amendments. We note that on May 5, 2020, Invesco filed a letter (the "May 2020 Comment Letter")[3] in response to the Commission's Request for Comments on Fund Names.[4] The comments provided in this letter reiterate and expand upon our comments in the May 2020 Comment Letter. Our views and suggestions are summarized below:

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[2] Release at 1.

[3] *See* Letter from Jeffrey Kupor to Vanessa A. Countryman Regarding Request for Comments on Fund Names (May 5, 2020), at https://www.sec.gov/comments/s7-04-20/s70420-7152079-216413.pdf.

[4] *See* Request for Comments on Fund Names, SEC Release No. IC-33809 (Mar. 2, 2020), at https://www.sec.gov/rules/other/2020/ic-33809.pdf.

- *80% Investment Policy Requirement*
  - *Expansion of the 80% Investment Policy Requirement*
    - Invesco believes the Names Rule should continue to apply to particular types of investments, or investments in particular industries, or geographic focuses.
    - We strongly oppose expansion of the Names Rule to apply to terms that can connote an investment objective or investment strategy and believe that subjecting these terms to an 80% investment policy could be harmful to investors and create significant compliance problems.
    - Where a term used in a fund's name indicates an investment strategy (instead of an investment type), we think that it is reasonable for the Commission to impose, and would support, a requirement that a fund describe in its prospectus the meaning of such term, the term's implication, or impact in the pursuit of the fund's investment objective, and what part of the fund's portfolio is expected to be subject to the strategy associated with the term.
    - *ESG-related Strategies*
      - We do not believe the Names Rule's 80% investment policy requirement should apply to ESG-related terms that reflect an investment strategy rather than a specific type of investment.
    - *"Global" and "International"*
      - We do not believe the Names Rule's 80% investment policy requirement should apply to the terms "global" and "international" as it would be inappropriate and place too restrictive a box around the wide array of different investment strategies that funds using those terms in their names deploy across the industry.
    - *Index Funds*
      - We believe that imposing an 80% test that would require a fund to invest differently than its underlying index would lead to increased investor confusion.
      - In light of index funds' stated investment objectives to track a specified index and the variety of other information available to investors regarding the composition of an index and the holdings of an index fund, we believe that many of the concerns that underpinned the adoption of the Names Rule are not applicable to index funds.
      - We urge the Commission to either (i) consider a tailored exemption from the Names Rule for index funds, or (ii) specify that index funds be allowed to comply with the Names Rule by

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investing at least 80% of their assets in the securities included in their underlying index.

- *Temporary Departures from the 80% Investment Requirement*
    - The Names Rule should retain the current "under normal circumstances" and "at the time of investment" standards, as they provide portfolio managers with the flexibility to manage their funds' portfolios while also requiring that they normally invest 80% of their assets consistent with their 80% investment policy.
    - We believe the Proposed Amendments regarding temporary departures from a fund's 80% investment policy could potentially harm shareholders as they inhibit a portfolio manager's ability to exercise judgment about the circumstances under which a fund would need to temporarily depart from its 80% investment policy. This flexibility is critical to his or her ability to manage a fund in response to abnormal and often unforeseen market events.
    - We believe the better and more practical approach is to rely on the board oversight and reporting structure that funds already have in place.

- *Unlisted Closed-End Funds and BDCs*
    - Invesco opposes proposed amendments that would require an unlisted registered closed-end fund or business development company ("BDC") to adopt a fundamental 80% investment policy tied to the fund's name that cannot be changed without a shareholder vote.
    - Requiring these funds to adopt a fundamental investment policy when other registered investment companies do not have a similar requirement adds significant costs to shareholders, disadvantages these funds in the marketplace, and unduly impedes board oversight.
    - To address the Commission's concern, we recommend lengthening the existing 60-day notice period to be a timeframe that encompasses a scheduled repurchase or tender offer, but in no event less than 60 days, so that a shareholder who no longer wishes to remain invested in the fund is notified and has the opportunity to redeem their shares prior to the policy change.

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- *N-PORT Reports*

  - We do not believe that Form N-PORT should be amended to require a fund subject to the Names Rule to indicate, with respect to each portfolio investment, whether the investment is included in the fund's 80% bucket, as it would impose a significant operational and administrative burden on fund companies without yielding any substantial corresponding increase in investor protection or understanding.

  - We believe that the aim of the Proposed Amendments could be accomplished more efficiently with much less administrative and operational burden and cost if the Proposed Amendments required the fund to disclose, annually on Form N-CEN or in a fund's annual and/or semiannual report, the number of days that the Fund was out of compliance with its 80% policy and the reason(s) for the departure.

- *Recordkeeping*

  - Invesco is strongly opposed to the new recordkeeping requirements in the Proposed Amendments, which impose new and significant compliance and administrative burdens for all funds, regardless of whether they are subject to an 80% investment policy and provide no clear benefit to funds or their shareholders not otherwise accomplished by less onerous means.

  - Invesco strongly believes that funds should not be required to maintain written records concerning a rule that does not apply to them when there is no meaningful shareholder benefit to the maintenance of such a record.

  - We believe the current Commission exam function and other means of inquiry have historically facilitated, and continues to facilitate, efficient acquisition of the information the Commission staff is concerned with in the normal course of an exam or audit.

  - We believe a simple, less intrusive, and more pragmatic approach is to require funds to have policies and procedures in place reasonably designed to address the areas the Commission Staff deems to be problematic.

- *Unit Investment Trusts*

  - As UITs are not currently subject to any Inline XBRL tagging requirements, UIT investors would not expect the 80% investment policy to be tagged and are highly unlikely to use such information.

  - In light of the static nature of a UITs portfolio, the proposed temporary departure requirements would be unworkable for UITs.

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- *Transition Period and Compliance Date*
  - Invesco believes strongly that a one-year transition period is not enough time for the industry to come into compliance with the requirements set forth in the Proposed Amendments to the Names Rule. Such a short transition period is problematic, especially if the rule is finalized substantially as proposed.
  - Invesco believes that the transition period should be a period of no less than two years.

II. 80% Investment Policy Requirement

A. Expansion of the 80% Investment Policy Requirement

The staff of the Commission (the "Commission Staff") proposes to broaden the scope of the Names Rule's current 80% investment policy (the "80% policy") requirement to apply to fund names that include terms suggesting that a fund focuses in investments that have, or whose issuers have, particular characteristics. It indicates in the Release that the Names Rule's 80% policy requirement would be expanded to include the terms "growth," "value," "income," "global," "international," "intermediate term (or similar) bond," and "terms indicating that a fund's investment decisions incorporate one or more ESG factors."[5] We discuss below why we oppose expansion of the 80% policy requirement to cover these terms.

Invesco believes the Names Rule should continue to apply to particular types of investments, or investments in particular industries, or geographic focuses (for purposes of our comment letter, these investment focus areas are collectively referred to as "investment types"). We strongly oppose expansion of the Names Rule to apply to terms that can connote an investment objective or investment strategy, which include terms such as "growth," "value,"[6] and "income."[7] Subjecting such terms to an 80% policy could be harmful to investors. Portfolio managers of actively managed funds define these and other investment strategy-related terms differently. They apply their own subjective, qualitative criteria based on the portfolio manager's view of how best to implement the fund's investment selection process in pursuit of its investment objective. When these terms are reflective of an investment strategy, which is associated with the investment process and manner in which portfolio investments are selected, the subjectively defined qualitative criteria can, over time, adjust with the market, portfolio manager outlook and the duty to manage the fund against changing market conditions and circumstances. The criteria used to select portfolio companies using different investment strategies, subjectively applied by different portfolio managers for different funds, could result in the same company being selected as a portfolio investment for funds that implement growth strategies and funds that implement value strategies. Indeed, the same stock can also move from being broadly considered to have growth characteristics to having value characteristics, as evidenced by changed weightings in commonly

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[5] Release at 19 and 23-24.

[6] 2001 Adopting Release, *supra* note 1.

[7] *See* Frequently Asked Questions about Rule 35d-1 (Investment Company Names) (December 4, 2021) at Question 9, at https://www.sec.gov/divisions/investment/guidance/rule35d-1faq htm (the "Names Rule FAQ").

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used value and growth indexes. In contrast, the attributes of an "investment type" typically do not change, even if market conditions change; they are static and objectively measurable investment selections that are the result of a strategy's implementation and, we believe, are appropriately subject to the Names Rule.

Investors often purchase mutual funds because they seek the fund's and its portfolio manager's investment strategy for selecting investments, i.e., the investor is purchasing the portfolio manager's expertise, judgment, and perceived ability to execute an investment program that will increase the value of their investment portfolio over time. In such instance, the investor's priority is owning the portfolio manager's implementation of the fund's investment strategy more so than an investment type, asset class or a rigidly defined investment strategy that removes the portfolio manager's judgment and expertise in navigating different markets.

Investment objectives and strategies are hard to quantify and measure, and in some cases, they can change based on market conditions. For example, a particular stock may have growth type characteristics in one market environment, but it may have value characteristics in another market environment. In June, Meta Platforms, Inc., Facebook's parent company, transitioned from being a significant part of the Russell 1000 Growth Index (companies in this index are generally considered growth companies) to a significant part of the Russell 1000 Value index (companies in this index are generally considered value companies).[8] When market conditions change again, Meta may once again be considered a growth stock. Applying the Names Rule in the context of characteristics that change in different market environments can create unintended consequences, including limiting the ability of long-term shareholders to benefit from portfolio manager stock decisions. If a value fund manager buys an undervalued stock (a value stock) that subsequently manifests growth characteristics for a period of time, and the value manager is forced to sell this stock (under the Proposed Amendments to the Names Rule) before she would otherwise do so (e.g., when it reaches her price target), fund shareholders may lose the upside potential of that stock investment.

We believe that forcing subjectively defined, qualitative terms into an 80% policy requirement that requires objectively measurable criteria to serve its purpose has the potential to severely restrict portfolio managers' ability to implement the strategies that investors affirmatively seek out when deciding to invest in a fund.

Furthermore, we also believe requiring funds that use the terms "growth," "value," and "income" in their names to adhere to an 80% policy has the potential to create more (not less) investor confusion. The factors that managers weigh in selecting portfolio investments are highly subjective and do not fit well with the Names Rule construct. The data points on which a portfolio manager selects an investment can change as a result of a myriad of market conditions, thus the 80% policy could be a moving bucket because it is not tied to any static, objective criteria that an investor can rely on, thereby obviating the purpose of an 80% policy and obscuring investor understanding. If terms that are reflective of investment strategies are subject to an 80% policy, we see no scenario where a shareholder would not need to seek other information beyond the 80% policy to understand how a fund intends to effectuate its strategy, because the 80% policy would always be in a state of flux.

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[8] FTSE Russell reshuffle adds Netflix, Paypal and Meta in value index, ETF Stream (June 27, 2022), at https://www.etfstream.com/news/ftse-russell-reshuffle-adds-netflix-paypal-and-meta-in-value-index

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The Commission appears to be taking a "one size fits all approach" to the application of the 80% policy requirement. Applying an 80% policy requirement to terms that historically have been subjectively-defined, such as "growth," "value," and "income," has the potential to constrain the flexibility of portfolio managers to manage funds in accordance with their investment objectives, resulting in strategies that could be restricted in breadth and latitude and potentially undermine the long-term performance of the fund's investment strategy. This could disrupt currently successful investment strategies and lead to constrained investor choices as portfolio managers would be forced to alter investment strategies and processes to fit portfolio investments into what could become pre-defined or prescribed categories. Our fear is that this could eliminate true active management options for mutual fund investors as portfolio managers seek safety in industry conformity. It could also limit the number of acceptable indices that passively managed funds may track. Such an outcome could stifle creativity and industry competition and reduce investor choice. In stark contrast, if forced into trying to accommodate the expansion of the 80% policy requirement under the Proposed Amendments, investment companies might create definitions of those terms that are so generically broad that they accommodate all uses, across all portfolio managers, across practically all funds, in order to create a simpler compliance oversight process. This would then make it hard for investors or the Commission to distinguish between individual funds' and portfolio managers' investment strategies. The result would be an erosion of clarity about the unique characteristics of each portfolio manager's strategy and desired outcome of the strategy's implementation. We are of the view that such lack of clarity creates investor and marketplace confusion and could have the potential to create homogeneity among funds. Therefore, if the Proposed Amendments are adopted as proposed, we believe the option of changing certain funds' names would be a practical and necessary one for funds to consider as they contemplate how best to comply with an amended Names Rule. We think this is a result that undermines the Commission's stated purpose of increasing investor protection.[9]

Subjecting terms that reflect an investment strategy or an investment objective to an 80% policy requirement also creates very significant hurdles to accurate and efficient compliance monitoring. As discussed above, this is because terms typically associated with investment strategies are not objectively measurable for purposes of compliance testing pursuant to an 80% policy. There are many different ways such terms can be defined and implemented across funds. Most fund complexes do not have one consistent firm-wide perspective on a definition of an investment-strategy related term like "growth," "value" or "income." In many firms, individual portfolio managers, investment centers or chief investment officers establish the definitions for such terms. Furthermore, typical compliance systems do not allow for coding of two or more different definitions of the same term to be applied to two or more funds. To meaningfully effectuate an 80% policy for compliance purposes, the policy would have to attach to some objectively measurable data points, which would require significant coding and data stewardship. The buildout of such a system would require a very significant, complex, layered, and costly implementation.

Fund compliance systems are powered by the reference data fed to them by third party data providers. These data providers do not currently provide reference data to support subjectively defined qualitative terms such as "growth" and "value." Without such data, the application of an 80% policy to such terms would create chaos for compliance professionals. The result would be

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[9] Release at 1.

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a compliance regime that would likely fall far short in its ability to efficiently and accurately compliance monitor, and would almost certainly require the daily involvement of portfolio managers to validate the holdings in the 80% bucket. Even if third party data providers were able to eventually support the expansion of the Names Rule to such terms, we do not see a scenario in which compliance testing could be accomplished where there is no involvement from portfolio management personnel. Such an outcome is unworkable, with the result being a major distraction and drain on the resources of portfolio managers and their investment teams, whose time is much better focused on fund management and efforts to enhance fund performance. We do not see a corresponding benefit to investor protection that warrants such a complex, expensive and operationally burdensome buildout.

For the reasons indicated above, we believe the best approach is to subject only investment types to an 80% investment policy. Under this approach, the terms “growth,” “value,” “income,” and similar terms, i.e., terms used in names where the particular attributes can change over time as markets change, would not be subject to the Names Rule because they describe terms that are not easily reduced to objectively measurable and quantifiable features for purposes of an 80% bucketing test. To be sure, where a term is used and clearly intended to be an investment type, Invesco believes the Names Rule’s 80% policy requirement should apply.

However, where a term used in a fund’s name indicates an investment strategy (instead of an investment type), we think that it is reasonable for the Commission to impose, and would support, a requirement that a fund describe in its prospectus the meaning of such term, the term’s implication or impact in the pursuit of the fund’s investment objective, and what part of the fund’ portfolio is expected to be subject to the strategy associated with the term. This is consistent with other requirements being proposed under the Proposed Amendments,[10] but extends the requirement for more detailed and descriptive disclosure to funds that have strategy-related or investment-objective related terms in their names. This approach is simple, clear, pragmatic and easily implemented. It establishes for each the industry practitioner and regulator alike a clear line of demarcation between those terms that are objectively measurable and monitorable, which should be subject to an 80% policy; and those terms that are defined subjectively, are not easily reduced to terms that can be monitored and measured, and require flexibility to adapt. This approach would also address the glaring lack of clarity around other terms not addressed in the Proposed Amendments.[11]

<u>Short-, Intermediate-, and Long-Term (or Similar) Terms used in Bond Fund Names</u>

The Proposed Amendments also introduce a change in the treatment of the terms “short-,” “intermediate-,” and “long-term” typically used in the names of bond funds under the Names Rule[12] that would significantly change the way these funds are perceived by investors and,

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[10] *See* Section II.B. of the Release at 72 (regarding prospectus defining terms used in fund name).

[11] There are many terms that are commonly used in fund names that the Proposed Amendments do not address under its “particular characteristics” standard, including for example, “strategic,” “focused,” “managed,” “disciplined,” “dynamic,” “plus,” “concentrated,” “quality,” “tactical,” “aggressive,” “conservative,” “dividend,” “defensive” and “volatility.”

[12] Release at 24.

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ultimately, the way they are being managed. The Names Rule has historically not required an 80% policy for funds whose names include "intermediate-term" or similar phrases because, as the Commission correctly recognized, "intermediate term bond" or similar terms are meant to be reflective of a portfolio's characteristics as a whole.[13] Accordingly, the Commission Staff required such funds to have an appropriate dollar-weighted average maturity, measured at the portfolio level, rather than instituting an 80% policy for the particular term used in the fund's name.[14] We continue to believe that this historical approach accurately reflects the experience and investment exposure that a typical investor seeks to obtain by investing in such funds. Our understanding is that investors typically interpret references to maturity in a fund's name to indicate the average time to maturity of a fund's overall portfolio. They expect a fund's investment adviser to build and manage a portfolio reflecting the indicated maturity profile in pursuit of achieving the fund's investment objectives. This interpretation aligns with the Commission's 2001 position, which appropriately reflected the typical shareholder expectation. It would also align with the current view of Commission Staff that funds with names that reference characteristics of a fund's portfolio "as a whole" or that suggest characteristics of the fund's "overall portfolio" would continue to not be subject to an 80% policy requirement.[15] Requiring these funds to now adopt an 80% policy would necessitate significant changes in the portfolios of certain funds without any measurable benefit or improvement in clarity or protection for investors. In fact, it would likely cause confusion among investors. Therefore, Invesco opposes the proposal to include these terms in the scope of the Names Rule and recommends that these terms continue to be treated in the manner they have been treated over the past two decades.

ESG-Related Strategies

Invesco generally supports the Commission's efforts to improve transparency and disclosure related to ESG investment strategies, reflected most recently in the proposed rules regarding environmental, social, and governance disclosures for investment advisers and investment companies (the "Proposed ESG Rules").[16] Like the Commission Staff and others in the industry, we are also concerned about "greenwashing."[17] As investors, we believe that access to reliable and meaningful disclosures on ESG is increasingly more important for investors and asset managers and, as we expressed in our comment letter on the Proposed ESG Rules,[18] we welcome initiatives to enhance the availability, quality and reliability of such disclosures. While we are supportive of the Commission's efforts to improve transparency and disclosure in this area, our view is the same now as we expressed in our May 2020 Comment Letter – we do not believe

[13] *See* the Names Rule FAQ at Questions 11 and 12, *supra* note 7.

[14] *Id.*

[15] Release at 24.

[16] *See* Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies, Release No. 34-94985 (May 25, 2022).

[17] Release at 14.

[18] *See* Letter from Jeffrey Kupor to Vanessa A. Countryman Re. Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (August 16, 2022).

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the Names Rule should apply to ESG-related terms that reflect an investment strategy. As discussed above, the Names Rule currently does not apply to terms that suggest an investment objective or strategy.[19] We believe, similar to "growth," "value," and "income," the term ESG and many of its related terms (collectively "ESG-related terms") often indicate a strategy of offering a particular focus to investing. An ESG-related strategy can apply to various types of investments and can be contrasted with the type of securities (e.g., equity, fixed income, or small-cap) in which a fund invests. In addition, ESG-related strategies can apply to the investment process in various ways, such as exclusionary or "negative" screens, "positive" screens in the form of a scoring system based on a set of established favorable factors, a holistic ESG-related assessment as part of a fundamental analysis of individual companies, or an ESG-related risk-based assessment. Therefore, consistent with our views above and in our May 2020 Comment Letter, we remain of the view that the Names Rule's 80% policy requirement should not apply to ESG-related terms that evidence an investment strategy instead of an investment type.

To ensure that fund names are appropriate with respect to ESG-related terms that reflect a strategy, we fully support transparent and robust disclosure in a fund's prospectus that explains the fund's strategy, the definition of key terms used in the fund's name, the manner in which the ESG-related strategy impacts the investment process, and the type, nature and amount of portfolio holdings that are subject to the strategy (if not all). The provisions in the Proposed Amendments that would require funds to define terms used in their names would address this and is, we believe, a better approach.[20] Furthermore, we believe that Commission Staff guidance concerning the disclosure of ESG-related investment strategies would be greatly beneficial. Form N-1A could be amended to enhance, for example, the instructions to Item 9(1)(b), which currently instruct funds in detail on the disclosure required in a fund's principal investment strategies. This would provide the industry with consistent principles and instruction regarding what disclosures are sufficient to make investors fully informed about the terms used in the fund's name and whether a fund's investment objective, strategies, and risks align with the investor's goals.

"Global" and "International"

We do not believe the Names Rule should apply to the terms "global" and "international." In our May 2020 Comment Letter, we reminded Commission Staff that it had historically taken the view that the terms "global" and "international" may describe a number of investment companies that have significantly different investment portfolios. Among other things, the number of countries in which an international or global investment company may invest at any one time may appropriately differ from fund to fund.[21] Furthermore, Commission Staff has also previously indicated its belief that a reasonable investor could conclude that these names suggest more than one investment focus.[22] As a result, funds with "global" and "international" in their name have not been subject to the Names Rule since the rule was adopted. In summary, the terms "global" and "international" apply to the overall portfolio investments of a fund rather than a characteristic of a

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[19] *See* the Names Rule FAQ, *supra* note 7.
[20] *See* note 11, *supra*.

[21] 2001 Adopting Release at n. 42. *See also* Names Rule FAQ at n. 11 and related text, *supra* n. 7.

[22] *See* Investment Company Names, Release No. IC-22530 (Feb. 27, 1997), at II.C.1.

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particular investment. Global and international funds implement investment strategies for building a portfolio reflecting overall global and international exposure; they are not merely investing in "global" and "international" securities. They implement their strategies in many different ways and funds using the terms in their names are already required to describe for investors how they obtain global and international investment exposure. Some funds, consistent with current Commission guidance, do so by disclosing a policy to invest, under normal market conditions, in at least three different countries and at least 40% of its assets outside the U.S. (or, if conditions are not favorable, invest at least 30% of its assets in countries outside the United States).[23] Other funds, consistent still with Commission guidance, describe their strategy by benchmarking intended global or international exposure to an index; while others describe other ways they intend to invest assets in investments that are tied economically to a number of countries throughout the world. Additionally, we note that global and international funds often disclose to investors their country allocations in the schedule of investments in their shareholder reports and on their websites.

We continue to think that the application of an 80% policy requirement to fund names that include "global" and "international" would be inappropriate and place too restrictive a box around the wide array of different investment strategies that funds using those terms in their names deploy across the industry. We believe application of the 80% policy to the terms "global" and international" could limit portfolio management flexibility, a limitation that Commission Staff sought to avoid twenty years ago when the Names Rule was adopted. Furthermore, we are concerned that imposing an 80% policy requirement on funds that are currently expressly excluded from the Names Rule could require a significant number of those funds to alter their portfolios so significantly that it negatively disrupts the portfolio management, performance, and overall investor experience of those funds. Moreover, given that the terms "global" and "international" can include both U.S.[24] and foreign issuers, it is not clear to us what the practical effect would be of subjecting fund names with those terms to an 80% policy.

We believe, as we indicated in our May 2020 Comment Letter, that the best approach with respect to funds with "global" or "international" in the name is to provide full, clear, and robust disclosure on how a fund intends to invest its assets to obtain global or international investment exposure. In this regard, we believe the requirements proposed in the Proposed Amendments to define terms used in fund names is a better approach than requiring an 80% policy. We would ask the Commission Staff to further consider what other refinements to Form N-1A could be made to enhance disclosure about global and international strategies that would address the concerns it believes these terms are raising.

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[23] *See* Memo dated June 4, 2012 from Mara Schrek, Associate Counsel, ICI, to Members Re: SEC Staff Comments on Fund Names Rule (35d-1).

[24] *See* the proposing release for Investment Company Names, supra note 22 at n. 38 (The Commission no longer distinguishes the terms "global" and "international" by suggesting that an investment company with "global" in its name invest in securities of countries that may include the United States and that an investment company with "international" in its name invest in securities of countries outside the United States). *See also* the original adopting release for Investment Company Names, Release No. IC-24828 (January 17, 2001), at n. 42 (reaffirming).

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Index Funds

Index fund names often include one or more key words from the name of a fund's underlying index, which can cause index funds to be subject to the Names Rule. Because underlying indexes are not subject to the Names Rule, situations may arise where an index fund is required to deviate from its investment objective to track its underlying index in order to comply with the Names Rule, which may increase tracking error. As we noted in our May 2020 Comment Letter, we believe a fund's naming convention that shares key terminology with a fund's index can provide important and valuable information to investors.[25] We also noted that the general test of Section 35(d) of the Investment Company Act is "whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments."[26] Accordingly, we continue to believe that imposing an 80% policy that would require a fund to invest differently than its underlying index would lead to increased investor confusion.

The Commission Staff has interpreted the Names Rule to require certain index funds to observe specific tests to ensure that their holdings satisfy the Names Rule. As we noted in our May 2020 Comment Letter, in circumstances where an index fund tracks an index focused on a particular industry or sector, we have encountered circumstances in which the Commission Staff has required a fund to separately evaluate the index constituents in the fund's portfolio to determine whether such constituents derive a substantial percentage of their revenues (i.e., 50%) from the applicable industry/sector, in order to ensure that the fund satisfies its own 80% policy. However, indexes may utilize a variety of different methodologies to identify and weight their constituents, and these methodologies may not always align with a specific revenue-based or other compliance test imposed at the fund level. These compliance tests are not uniformly observed across the industry and can be operationally burdensome.

Further, we believe that the imposition of an 80% policy on index funds may result in index providers rebalancing their indexes on a more frequent basis in an effort to reduce a fund's tracking error. However, such additional rebalancing will result in increased transaction costs that are ultimately borne by investors, and may result in increased realization of capital gains and adverse tax consequences.

In light of index funds' stated investment objectives to track a specified index and the variety of other information available to investors regarding the composition of an index and the holdings of an index fund, we believe that many of the concerns that underpinned the adoption of the Names Rule are not applicable to index funds. Accordingly, we urge the Commission to either (i) consider a tailored exemption from the Names Rule for index funds, or (ii) specify that index funds be allowed to comply with the Names Rule by investing at least 80% of their assets in the securities included in their underlying index.

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[25] *See* May 2020 Comment Letter at 4.

[26] *See* the 2001 Adopting Release at text accompanying n. 44.

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B. Temporary Departures from the 80% Investment Requirement

The Names Rule should retain the current "under normal circumstances" and "at the time of investment" standards. To further support the current standards, we believe that funds should follow adopted policies and procedures and internal board of trustees/directors (a "board") reporting requirements if a fund departs from its 80% policy for an extended period of time, such time to be determined by the fund's policies/procedures and the board. The Proposed Amendments would allow a departure from a fund's 80% policy only in certain circumstances: (1) as a result of market fluctuations, or other circumstances 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, fund launch, or when notice of a change in the fund's 80% policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule. The Proposed Amendments would allow temporary departures from the 80% policy for a maximum of only 30 days, except in cases of a fund launch (in which case, the maximum period of time would be 180 days) or reorganizations (in which case, the rule currently does not specify a maximum number of days) or where a 60-day notice has been provided to shareholders. In all cases, a fund must come back into compliance "as soon as reasonably practicable," even if that is before the maximum number of days allowed.[27]

Under the current Names Rule, a fund's 80% policy applies "under normal circumstances," leaving it to a fund's portfolio management team, as overseen by its board, to determine what constitutes a circumstance that is not normal in light of market events and other circumstances, the fund's investment objective, and its investment strategy. The current rule provides funds with the flexibility to manage their portfolios while also requiring that they normally invest 80% of their assets consistent with their 80% policy. Compliance with the 80% investment policy is determined at the time of investment under the current Names Rule, a requirement designed to avoid requiring a fund to rebalance its investments if the fund's portfolio was no longer invested in accordance with the fund's 80% policy as a result of, for example, market movements or an influx of cash from new investors.[28] Under the current Names Rule, if after an investment is made a fund's 80% policy requirement is no longer met, the fund's future investments must be made in a manner that will bring the fund back into compliance with the 80% policy.[29]

The Proposed Amendments regarding temporary departures from a fund's 80% investment policy has the potential to harm shareholders. A portfolio manager's ability to exercise judgment about the circumstances under which the fund would need to temporarily depart from its 80% policy is critical to his or her ability to manage the fund in response to abnormal and often unforeseen market events. We think the "normal circumstances" and "at time of investment" standards strike the right balance between giving portfolio managers the flexibility to manage their portfolios in the best interest of shareholders during abnormal circumstances while also requiring

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[27] Release at 33-34.

[28] *Id* at 35; see also 2001 Adopting Release, *supra* n. 1, at nn.37-40 and accompanying text.

[29] Release at 35.

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that they normally invest 80% of their assets consistent with their 80% investment policy. Replacing the current "under normal circumstances" standard with a list of specific circumstances for when a fund can depart from its 80% investment policy is problematic in two general ways. First, it saddles portfolio managers with an unreasonably short amount of time, 30 consecutive days, to manage the fund back into compliance. Second, it unduly restricts portfolio managers at times when it may be necessary to manage the fund under circumstances that may not be covered by those specified in the Proposed Amendments. The 30-consecutive day timeframe proposed by the Commission Staff is simply too short a period of time to be required to return to compliance because adverse market, political, and economic conditions, as well as large fund redemptions or large cash inflows, which can last much longer than 30 days for various reasons. A prime, current example of this is the Russia-Ukraine war (the effects of which have been exacerbated by related financial sanctions), now in its 173rd day of conflict as of the date of this letter. The 30-day requirement imposes upon portfolio managers an unworkable, and we believe, unnecessary regulatory fence which restricts flexibility to exercise investment decisions in shareholders' best interests consistent with portfolio managers' basic fiduciary duties. As a result, shareholders could potentially be harmed in instances where the requirement would force a sale or purchase of investments at undesirable or inopportune times and prices, resulting in increased transaction costs, unwanted capital gains and potentially adverse tax consequences.

Furthermore, if the Proposed Amendments are adopted and terms such as "growth" and "value" are required to maintain compliance with an 80% policy on a current day basis (as opposed to compliance at the time of investment) with a 30-day period to cure, then some of the benefits of being a long-term investor may be lost. Depending on the definition, as discussed above, market movements may cause a growth or value stock to move from one category to the other overnight and then back again in, for example, two weeks. The Proposed Amendments may inadvertently require a manager to pivot quickly within 30 days to divest these stocks, only to find those same stocks return to a growth (or value, as the case may be) stock because of subsequent market movements. This is costly to shareholders and can undercut the returns that the portfolio managers are currently able to achieve for shareholders. Additionally, a portfolio manager may also simply have a hard time in an abnormal market environment finding investments that fit his or her process; in such an environment, increasing existing holdings to bring the fund back into compliance may not make sense from a portfolio management perspective. Under the Proposed Amendments, there is no way to navigate these scenarios in a way that removes the potential harm to shareholders. We believe the Proposed Amendments would effectively replace the investment judgment of fund portfolio managers and their boards with that of the Commission. We do not believe Commission Staff intended this result.

We believe the better and more practical approach is to rely on the board oversight and reporting structure that funds already have in place. Under this approach, when a fund is out of compliance with its 80% policy for a period of time reasonably established by the board and the relevant policies/procedures, we believe that fact should be reported to the board and the portfolio manager then be required, consistent with adopted policies/procedures, to establish a plan to bring the fund back into compliance as soon as reasonably practicable while taking into consideration the individual facts and circumstances of the abnormal circumstance(s) and the mitigation of potential harm to shareholders. This approach maintains flexibility, significantly reduces potential harm to shareholders, ensures the board's engagement and consideration of temporary departures that go beyond an established departure period, and ultimately leverages a governance structure

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that is already in place and uniquely qualified to review issues related to a fund's temporary departure.

Lastly, we request that Commission Staff clarify that a repositioning of a fund's portfolio in connection with a significant strategy change whereby the fund changes its investment focus, 80% policy, related principal investment strategies, and its portfolio of investments, is treated the same as a "fund launch" for purposes of the 180-day period required to come into compliance with its new 80% policy.

III. Unlisted Closed-End Fund and BDCs

Invesco strongly opposes proposed amendments that would require an unlisted registered closed-end fund or business development company ("BDC") to adopt a fundamental 80% policy tied to the fund's name that cannot be changed without a shareholder vote (a "fundamental investment policy"). While we understand the Commission Staff's concern that a shareholder in an unlisted closed-end fund or BDC is limited in their ability to redeem or quickly sell their shares if the fund were to change its investment policy, requiring these funds to adopt a fundamental investment policy when other registered investment companies do not have a similar requirement adds significant costs to shareholders, disadvantages these funds in the marketplace to the benefit of registered open-end funds that can make changes with 60 days' notice, and unduly impedes the ability of their boards to make determinations about the 80% policies in the best interests of the fund and its shareholders. Necessitating a shareholder vote to approve the policy change is unduly burdensome and expensive for the fund and its shareholders and is often uncertain. Adjournments and additional solicitation are an expensive drain on fund resources.

To address the Commission's concern, we recommend lengthening the existing 60-day notice period to be a timeframe that encompasses a scheduled repurchase or tender offer, but in no event less than 60 days (i.e., it must be the next scheduled repurchase or tender offer after the 60th day, so that a shareholder who no longer wishes to remain invested in the fund is notified and has the opportunity to redeem their shares prior to the policy change. We believe this approach is simple, less burdensome operationally, and requires no additional costs or fund resources. Importantly, it maintains a level playing field for unlisted closed-end funds and BDCs while allowing the fund's board the ability to make determinations about maintaining or changing an 80% policy in the best interests of the fund and its shareholders as is the case for open-end registered funds.

IV. N-PORT Reports

We do not believe Form N-PORT should be amended to require a fund subject to the Names Rule to indicate, with respect to each portfolio investment, whether the investment is included in the fund's 80% policy bucket. This requirement would impose a significant administrative and operational burden on fund companies without yielding any substantial corresponding increase in investor protection or understanding. Furthermore, the Proposed Amendments could confuse investors because different funds subject to the Names Rule may tag the same security differently. This could be the case even within the same fund complex, where (as discussed above) a security considered to be a "growth" company by one fund may be

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considered a "value" company by another fund, depending on the respective portfolio manager's view of that company, selection criteria and investment process. Furthermore, because the holdings on N-PORT filings are of a date that is only a snapshot in time, it provides shareholders with no additional context to indicate why an individual security is or is not part of the 80% policy bucket. It is not clear to us how providing such information will help further the protection of investors or help market participants make more informed decisions about a fund. A quarterly data point that shows that one fund complies 81% with its 80% policy whereas another fund complies 91% with its 80% policy may not necessarily be a meaningful or helpful data point to an investor. In fact, such information, without surrounding context and explanation, could be misinterpreted to mean that one fund is "better" or "worse" than another fund when in fact one fund could be outperforming the other for reasons that are wholly unrelated to the percentage at which it complies with its 80% policy. Without appropriate context, the result could be shareholder confusion and misunderstanding.

In many fund complexes, the compliance monitoring tools used by compliance departments to indicate whether a security is part of a fund's 80% policy bucket can be a relatively manual process that does not provide transparency or connectivity between compliance staff and financial reporting staff, the team of people typically responsible for preparing and filing Form N-PORT. A requirement to tag securities to reflect their inclusion in the 80% policy bucket will result in the need to create and program systems to allow individual 80% bucket-designating data to be shared across various teams. This would be a labor-, time-intensive and costly undertaking without a corresponding benefit to shareholders.

For these reasons, we oppose the Proposed Amendments that would require funds subject to the Names Rule to tag individual securities on their N-PORT filings to indicate securities included in the 80% policy bucket. We believe the aim of the Proposed Amendments could be accomplished more efficiently with much less administrative and operational burden and cost if the Proposed Amendments required the fund to disclose, annually on Form N-CEN or in a fund's annual and/or semiannual report, the number of days that the Fund was out of compliance with its 80% policy and the reason(s) for the departure.

V. Recordkeeping

The proposed recordkeeping requirements included in the Proposed Amendments also impose new and significant compliance burdens for all funds, regardless of whether they are subject to an 80% policy, and provide no clear benefit to funds or their shareholders not otherwise accomplished by less onerous means. As such, Invesco is strongly opposed to imposing the new requirements. If the Proposed Amendments are adopted, funds that are subject to the Names Rule would be required to maintain records documenting their compliance with the rule, including recording which investments are counted towards the fund's 80% policy and the basis for their inclusion towards the policy, as well as the reasons for any departures from the policy, dates of such departure, and any related shareholder communications.[30] Funds already have mechanisms in place for monitoring compliance with 80% investment policies. Building the functionality to capture and maintain these records, particularly those proposed for every investment in a fund's 80% basket, will be a costly undertaking for a fund and its shareholders and will place significantly

[30] *Id* at 103.

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increased administrative and operational burdens on a fund's compliance personnel that will likely result in adding additional resources. Moreover, it will require a substantial transition period to both enhance automation and engage additional human resources. The result will be a reduction in the capacity of a fund's compliance function to focus on other important aspects of fund compliance.

The proposal also would require a fund that does not adopt an 80% investment policy to maintain a written record of the fund's analysis that such a policy is not required under the new rule.[31] Invesco strongly believes that funds should not be required to maintain written records concerning a rule that does not apply to them when there is no meaningful shareholder benefit to the maintenance of such a record.

Commission Staff indicates in the Proposed Amendments that these new requirements would allow it to understand and evaluate a fund's operation of its investment policy better, understand whether the fund is adhering to the proposed amendments, as well as allow the Commission Staff to better identify and assess violations. Commission Staff has also said that it believes that this recordkeeping requirement would increase the effectiveness of the Commission's oversight of the fund industry, which will, in turn, benefit investors.[32] To the extent Commission Staff wishes to have conveniently made available to it information for purposes of its oversight, we believe the current Commission exam function and other means of inquiry have historically facilitated, and continues to facilitate, efficient acquisition of this information in the normal course of an exam or inquiry. We also believe that investors want the benefits that come with strong performance at reasonably competitive expenses, coupled with strong board oversight policies and transparent disclosure. We fail to see why funds and their advisers should bear the extra expenses associated with these new and significant requirements when there are mechanisms already in place to acquire this information in the current normal course established through the Commission's various functions and departments.

We believe a less intrusive, more pragmatic, and simpler approach is to require funds to have policies and procedures in place reasonably designed to address the areas the Commission Staff deems to be problematic. We believe that with appropriate and thoughtful guidance provided by the Commission, funds' boards, their management staff, and their advisers are more than adequately experienced and capable of implementing such policies and procedures. However, if the Commission ultimately decides to adopt the proposed new recordkeeping requirements, it must provide clearer guidance as to the form of the records so required, particularly with respect to records substantiating the inclusion of a particular investment in a fund's 80% bucket. We also believe that additional guidance regarding the frequency of when such records are made will need to be issued by the Commission. The new recordkeeping requirements will necessitate a substantial investment of resources by fund complexes. Before initiating these changes, the Commission should provide the industry with clarity as to the expected form and frequency of the required records.

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[31] *Id* at 106-107.

[32] *Id* at 104.

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VI. Unit Investment Trust

We believe the unique nature of unit investment trusts ("UITs") necessitates two exceptions from the Proposed Amendments to the Names Rule. As the Commission noted in the Proposing Release, UITs are not currently subject to any tagging requirements using Inline XBRL.[33] Accordingly, this requirement would introduce a new cost on UITs. We do not believe these costs to shareholders are outweighed by the potential benefit to shareholders, as most unitholders are not familiar with Inline XBRL and, we believe, are not likely to use it to extract or search for disclosures or compare against prior periods and/or other funds. There may be certain investors and market participants who currently utilize XBRL to review and compare disclosures; however, we believe the amount of such investors who would benefit from the enhanced requirement would be minimal in comparison to the cost. Further, we believe the Commission Staff overestimates the benefit of such tagging to UIT investors. As UITs are not currently subject to any tagging requirements, UIT investors would not expect the 80% policy to be tagged and are unlikely to use such information.

To the extent that the Commission adopts as proposed the temporary departure requirements discussed above in Section II.B., we believe the Commission Staff should adopt an exception for UITs. UITs are structured such that the portfolio generally remains static throughout the life of the trust. Investors have full transparency of the portfolio at the time of purchase and understand that UITs are not actively managed. Accordingly, to the extent that a UIT's portfolio "drifts" due to market movement or otherwise, UIT investors have no expectation that the UIT sponsor would sell investments to align the portfolio with the 80% investment policy. Additionally, the Commission previously has taken the position that a trust would fail to qualify as a UIT under Section 4(2) of the Investment Company Act if it has the ability to change the portfolio other than in very limited circumstances such as a credit rating downgrade.[34] Further, IRS regulations generally prohibit UITs structured as Grantor Trusts from engaging in portfolio transactions without losing pass-through tax status.[35] Accordingly, application of the proposed temporary departure requirements to UITs may result in conflicting regulatory obligations.

VII. Transition Period and Compliance Date

Commission Staff proposes a one-year compliance period for the Proposed Amendments to the Names Rule to provide time for funds to bring their fund names and disclosures into conformity with the amendments.[36] If adopted, that transition period would run from the date of the publication of the final rule amendments in the Federal Register. We understand this transition period to mean that on or before one year after publication in the Federal Register, any fund impacted by the adopted amendments would have to comply with the amended Names Rule.

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[33] *Id* at 76, n. 113.

[34] *See, for example,* PaineWebber Equity Trusts, SEC No-Action (pub. avail. July 19, 1993).

[35] *See* 26 CFR § 301.7701-4(c) (Certain Investment Trusts) ("…will be classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders").

[36] Release at 111.

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Invesco believes strongly that a one-year transition period is not enough time for the industry to come into compliance with the requirements set forth in the Proposed Amendments. Such a short transition period is problematic, especially if the rule is finalized substantially as proposed. This is particularly true for large fund complexes. The amended Names Rule would, if adopted as proposed, require the adoption of, or revisions to, the 80% policies of a very large number of funds; board review and approval of those changes; related prospectus disclosure changes; review, approval and adoption of any new policies and procedures resulting from the new requirements; and the implementation of any recordkeeping and N-PORT enhancements, as well as the compliance infrastructure necessary to implement and support those requirements, which by itself is a significant and costly operational and administrative lift. Third party data providers of funds' compliance reference data would have to work closely with advisers over time to understand the operational changes and impacts necessary to implement the new compliance requirements. An assessment of the necessary enhancements to compliance systems as a result of the expanded Names Rule and the subsequent preparation of reliable cost estimates alone would take months.

Ideally, funds would implement any changes resulting from the adopted rule as they update their registration statements on a rolling basis in line with normal annual update schedules. Changes to 80% policies would require a 60-day notification supplement to inform shareholders of any changes; however, updating on a rolling basis on a normal schedule could prevent the proliferation of off-cycle prospectus printing, thus saving supplement and associated costs that would be required if funds are not allowed to comply with adopted amendments on a rolling annual update basis. Because large fund complexes typically stagger fiscal years ends throughout the year to balance out workflow, updates on a rolling basis would necessarily go beyond a year. When adopted in 2001, the Names Rule accorded fund companies 18 months to comply. There, the Commission had originally proposed to allow investment companies up to one year from the effective date of the proposed rule to comply with the rule's requirements. However, the Commission was subsequently persuaded by commenters that additional time may be required to "make portfolio adjustments; internal compliance system changes; and, for those companies that do not wish to be subject to the rule, to adopt name changes."[37] The Proposed Amendments are no less a high hurdle, indeed more so given its coverage of new terms and additional recordkeeping and N-PORT requirements than the original Names Rule. Invesco believes that the transition period for compliance with the Proposed Amendments should be no less than two years.

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[37] *See* the 2001 Adopting Release, *supra* note 1.

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Invesco appreciates the opportunity to comment on this important matter and the Commission's consideration of our comments. We are available to discuss our comments or provide any additional information or assistance that the Commission might find useful.

Sincerely,

Invesco Ltd.

Jeffrey H. Kupor

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