Ceres Accelerator
for Sustainable Capital Markets

December 2, 2022

VIA ELECTRONIC FILING

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

Re: Enhanced Disclosure by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Release No. IA-6034; IC-34594; File No. S7-17-22, and Investment Company Names, Release No. IC-34593; File No. S7-16-22

Dear Ms. Countryman,

Ceres, a nonprofit sustainability advocacy organization, respectfully submits this analysis of the public comments submitted in response to the Securities and Exchange Commission's ("SEC" or "Commission") proposals, *Enhanced Disclosure by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices* ("the ESG Proposal") and *Investment Company Names* ("the Names Proposal") (together, "the Proposals").

On August 16, 2022, we submitted our own comment letter in response to both proposals. We read every letter submitted as of September 12, 2022, in an effort to understand the views of the many investment professionals, academics, government officials, advocacy organizations, and individuals who provided feedback. We include the product of that analysis below.

Thank you in advance for your consideration of our comments. If you have questions or would like further information, please contact Steven Rothstein at [redacted] or Eric Pitt at [redacted].

Sincerely,

Steven Rothstein, Managing Director
Ceres Accelerator for Sustainable Capital Markets

Comment Analysis: SEC's ESG & Fund Names Rule Proposals

Becca Johnson and Eric Pitt, Ceres
November 8. 2022

Introduction

On May 25, 2022, the U.S. Securities and Exchange Commission (SEC) proposed two rules, *Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices* ("ESG Rule") and *Investment Company Names* ("Fund Names Rule"). Both proposals seek to address concerns about deceptive fund naming and marketing, often referred to as "greenwashing." The ESG Rule would require registered investment advisers and investment companies to provide further information about their environmental, social, and governance (ESG) practices. The Fund Names Rule would expand the scope of funds subject to the existing policy requiring a fund to invest at least 80% of their assets in investments that are consistent with the fund's name. It would also revise the treatment of derivatives under the rule and expand disclosure, notice, and recordkeeping requirements.

Summary findings

While the ESG and Fund Names proposals were met with varied responses, there was strong agreement that the SEC should address greenwashing. NGOs and individuals were quite supportive, with asset managers qualifying their support with recommendations that would simplify disclosure requirements and reduce the cost and risk of implementation. Several sustainability-focused asset managers had more nuanced suggestions intended to improve the efficacy of specific disclosures. In sum, the comment file suggests that the SEC should move forward with rules protecting investors from greenwashing with focus on the most decision-useful disclosures, and seek to simplify and streamline disclosures where possible without compromising investor protection.

Background

In March 2022, the SEC proposed *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, which would require public companies to disclose climate information including greenhouse gas (GHG) emissions. The proposal addresses overwhelming investor demand for clear, consistent, and comparable information on climate-related risks and opportunities. Ceres submitted this comment. While that proposal would regulate publicly traded companies, the ESG Rule and Fund Names Rule seek to address concerns about misleading or inadequate information from investment companies and investment advisers. They come at a time when investor interest in ESG is skyrocketing. They also come while the U.S. Department of Labor (DOL) has before it a proposed rule, *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, which would provide guidance on how plan sponsors can factor ESG considerations into retirement plan investments consistent with the Employee Retirement Income Security Act of 1974 (ERISA). Ceres also submitted a comment on that proposal. It is particularly important that the SEC and DOL harmonize their regulations to give clarity to ERISA plan sponsors who wish to add climate-aligned or other ESG investment options to their plans.

Methodology

During the 60-day comment period, which closed on August 16, 2022, the ESG Rule received a total of 204 submissions and the Fund Names rule received a total of 106 submissions. Twenty-two commenters submitted a single letter responding to both proposals—those submissions are individually counted below toward each proposal's total number of submissions. Ceres submitted its own comment letter to both rule proposals. This document presents our analysis of both comment files. Please do not rely on this for legal analysis or a comprehensive review of all material issues. It is a good faith effort to capture key issues. Our analysis followed this procedure:

1. Retrieved all 310 comment letters from sec.gov
2. Assigned each commenter to one of five categories: Academic / Law / Government; Asset Manager / Financial Services / Investor Organization; Individual; NGO; Self-Regulatory Organization (SRO) / Trade / Standards Organization
3. Removed duplicates and misfiled or unrelated comments, resulting in a total of 188 letters in the ESG Rule comment file and 100 letters in the Fund Names Rule comment file
4. Characterized each comment as being supportive of or opposed to the proposed rule(s), as well as those that took neutral or mixed positions
5. Noted positions on key issues outlined in the analysis below

In this analysis, we paid particular attention to topics regarding ESG and climate and did not necessarily address every issue covered by either the proposals or the comment files.

Consistent themes

The two proposals received a total of 263 unique submissions, excluding misfiled comments, comments that did not directly address the proposals, and petitions. While the comments included a wide array of distinct points, a few themes were prevalent.

1. Support for SEC action on greenwashing

A significant majority of commenters expressed concern about greenwashing – disseminating false or misleading information to present an image of environmental responsibility – and impact washing, defined by Harvard Business School as overstating or falsely claiming "an investment's positive impact on the environment or society." Sixty-seven percent of letters expressed explicit support for the SEC's goals of creating market transparency and addressing greenwashing. Support was pervasive across organization types and from both those supportive of and opposing the proposals.

> "We appreciate the Commission's efforts to improve the transparency and relevance of fund names and agree that action is needed to address names that are ambiguous, confusing, misleading, or that suggest investment focuses, strategies, benefits, or types of holdings that do not align with a fund's holdings." (Paul P. Andrews, CFA Institute)

> "Fidelity agrees with the Commission that investor interest in ESG strategies has increased in recent years and is supportive of the Commission's goals of promoting consistent, comparable, and decision-useful information for investors on the ESG investment practices of funds and advisers." (Cynthia Lo Bessette, Fidelity Management & Research Company)

> "Greenwashing is a persistent problem. Recent reports show that the twenty largest ESG funds hold investments in seventeen fossil fuel producers on average. More than 70 percent of general ESG funds and over 50 percent of climate-themed funds are misaligned with global climate emissions targets as laid out by the Paris Agreement." (Americans for Financial Reform Education Fund)

Commenters from the asset manager community noted that increased popularity of and demand for ESG in the market has incentivized some to exaggerate the extent to which they apply ESG considerations in their investment strategies. According to a recent survey from PwC, 71% of institutional investors are "in favor of strengthening ESG regulatory requirements for asset managers" in the hopes that these rules "can act as an important lever to build trust and decrease the risk of mislabeling."

2. Call for global harmonization

Many asset managers conduct business across multiple jurisdictions. In March 2021, the European Commission's Sustainable Finance Disclosure Regulation (SFDR) took effect across the European Union (EU). The SFDR requires asset managers and investment advisers to disclose certain ESG information through a system of fund categorization. Additional regulations have followed including the EU Taxonomy, which went into effect in January 2022 and established a list of criteria to define environmentally sustainable economic activities. The SFDR has many similarities to the SEC's proposals, including their general adherence to the guidance of the Task Force on Climate-Related Financial Disclosures (TCFD) and the Partnership for Carbon Accounting Financials (PCAF) for reporting climate-related data. Other jurisdictions are putting such rules in place. In December 2021, the UK's Financial Conduct Authority published rules on ESG disclosure. In January 2022, Canadian securities regulators published guidance on ESG-related disclosure. As fund managers operating in other jurisdictions must already comply, or will soon need to comply, with these other rules, the cost of compliance with the SEC's proposed rules will be far lower than if those other regulations did not exist.

Twenty-nine comments stressed the importance of alignment with existing voluntary standards and regulatory frameworks, while no comments disagreed with this. Thirteen of those comments were from asset managers or investor organizations. Of the remaining 16, seven were from financial services providers, four from advocacy/NGOs, two from self-regulatory organizations, one from a standards organization, one from a public pension, and one from a law firm. Commenters implore the Commission to prioritize alignment to reduce complexity and fragmentation for registrants navigating cross-border compliance. As PRI stated, "In the Institute of International Finance (IIF) - European Banking Federation Global Climate Finance Survey of 70 financial institutions, 65% of institutions reported that 'green' regulatory market fragmentation was a major obstacle and would have a material impact on the market for sustainable finance." As global ESG reporting standards rapidly evolve, interoperability is imperative to improving consistency in disclosure and reducing compliance costs for investment companies. Ceres notes that while harmonization is critical, there has been mixed feedback on SFDR, which is the most mature of these rules, and appreciates the SEC's efforts in designing a less prescriptive framework. We hope that rule makers around the world will continue to collaborate and share learnings so that ESG disclosures and labeling schemes converge over time.

Strong support for the proposals from individuals and NGOs

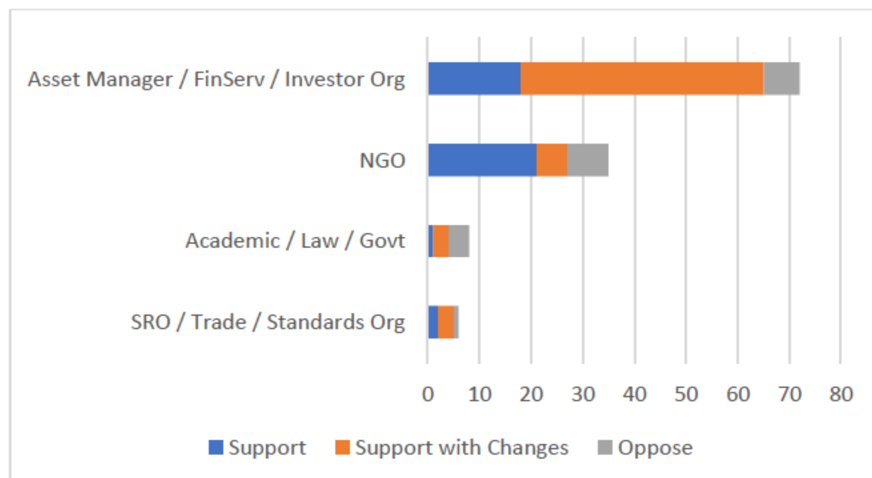
Three petitions signed by over 32,000 individuals were submitted, all expressing strong support for the proposals. They were organized by: Americans for Financial Reform (AFR) and Public Citizen (with 19,390 names); Sierra Club (6,079); and U.S. Public Interest Research Group (7,093). The petitions emphasize the public's desire for the SEC to address greenwashing and misleading fund names.

> "By setting a clear standard for asset managers to use fund labels and disclose data about their handling of climate risk and other ESG matters, this rule will provide investors with the vital information they need to protect their financial futures. I applaud the Commission for addressing major gaps in asset manager transparency and fulfilling its mission to protect investors." (Sierra Club Petition)

Two group letters, also in strong support of the proposals, were signed by 187 NGOs. These were organized by 198 Methods and Americans for Financial Reform Education Fund. There were no petitions or group letters filed in opposition to the proposals.

The ESG Rule

Across all submissions that expressed a clear position, and counting signatures of the petitions individually, support for the proposal is above 99%. Excluding individuals, but including each NGO that signed the group letters, 74% supported the proposal as written, 19% were supportive but recommended significant modifications, and 7% opposed the proposal. Excluding the group letters, of the 121 unique letters submitted by institutions, 35% were supportive, 49% were supportive with changes, and 17% opposed the proposal. The chart below shows breakdowns by category excluding group letters and petitions.



Several asset managers expressed support for the comments submitted by the Investment Company Institute, which criticized certain aspects of the proposal while agreeing with the need to address greenwashing in the market.

Key issues

1. Fund categories

In the ESG Rule proposal, the SEC defines three categories of ESG funds corresponding to varying levels of disclosure requirements: integration, ESG-focused, and impact.

Type	Definition	Disclosure Requirement
Integration fund	• Considers one or more ESG factors alongside other, non-ESG factors in investment decisions • ESG factors may be considered in the investment selection process but are generally not dispositive compared to other factors when selecting or excluding a particular investment	• Required to describe how they incorporate ESG factors in the process
ESG-focused fund	• Focuses on one or more ESG factors by using them as a significant or main consideration in selecting investments or in engaging with portfolio companies • Factors can include screens for carbon emissions, board or workforce diversity and inclusion, industry-specific issues, and even engagement through proxy voting or direct engagements	• Required to provide detailed disclosure in their statutory prospectuses, including a standardized ESG strategy overview table • Explanation of how they incorporate ESG factors in their investment decisions and how they voted proxies or engaged with companies about ESG issues
Impact Fund	• Sub-category of ESG-focused funds • Has a stated goal that seeks to achieve a specific ESG impact or impacts that generate specific ESG-related benefits	• Subject to all the same disclosure requirements as ESG-focused funds as well as disclosing how they measure progress in both quantitative and qualitative terms

Some commenters stated that the proposal was not clear on how funds would be assigned to a category. Most commenters assumed that the category would be determined through analysis of the fund's investment policies and procedures. Some expressed concerns over the costs of this analysis, and, in particular, the potential legal liability of mis-categorizing a fund, given that the boundaries between the categories are open to interpretation. Eleven letters suggested that the SEC should base categorization on how a fund markets itself, which would be simpler than an analysis of policies and procedures but could still lead to ambiguity.

Another solution, proposed by Ceres, would be to allow funds to opt into a particular category. The category selected would then dictate both how a fund would be allowed to market itself and a set of required disclosures. (The ICI letter includes a similar suggestion in section 2.1). In a series of conversations undertaken since the comment period closed, many NGOs and asset managers have expressed support for this approach, which would minimize the overhead involved in determining which category a given fund belongs to, both for the investment company and for the Commission. Additionally, some commenters pointed out that any review of a fund's marketing need not be backward looking, but only apply to marketing activities after the fund has elected its category. We note that, should the Commission take this approach, it should retain the requirement that ESG-focused funds make ESG factors a significant or main consideration. As several letters recommend, ESG integration funds should not be allowed to use ESG terms in their marketing materials.

While 19 letters suggested dropping the categories entirely, most comments accepted the utility of organizing funds into discrete categories. At least 36 letters suggest dropping the integration category. ESG considerations are now so widespread that the integration category, as defined, would be so inclusive as to be almost meaningless. If the final rule bases categories on investment policies and procedures, it would be very difficult to police the boundary between non-ESG funds and integration

funds. If, however, the Commission adopts the opt-in approach, this ambiguity is resolved in that the investment company simply elects its category, and if it chooses to be an integration fund, it must make the associated disclosures.

At least six letters comment that the proposed integration fund disclosures should apply to all funds, some arguing that all fiduciaries have a responsibility to consider financially material ESG factors. Doing so would also protect investors who wish to avoid funds that consider ESG factors because even funds that do not opt-in to an ESG category would have to explicitly state whether they consider ESG factors in their investment selection or engagement. We would encourage the Commission to consider subsequent rulemaking to extend the scope of applicability for these disclosure requirements, as we would not want to see the finalization of these rules have a chilling effect on ESG investing.

Several letters argue that screens, proxy voting, and engagement strategies alone should not be sufficient for an ESG-focused fund. Additionally, at least 10 letters suggested that impact funds should not be a subcategory of ESG-focused funds, but rather be its own category, with all the disclosure requirements of ESG-focused fund as well as the additional proposed disclosures specific to impact funds.

2. New disclosure requirements

At least 118 letters agreed on the need for specific disclosure requirements for ESG funds. However, 22 letters expressed concern that the imposed costs would be burdensome, while eight letters emphasized that the disclosure requirements as proposed are confusing. Streamlining the required disclosures could potentially make them more decision-useful to investors while also addressing concerns about the costs of implementation.

i. Greenhouse gas (GHG) disclosure

Fifty-eight letters discussed the GHG disclosures. Of these, 24 support the disclosures as proposed, while 26 support them with qualifications. Seven letters state that these GHG disclosures should apply only to funds that affirmatively identify as climate-focused funds (as opposed to the proposed double negative – all funds with an environmental focus that do not state that they do not consider GHG emissions). Of the 20 letters that addressed the topic of scope 3 emissions, 10 letters support their inclusion and 10 oppose. Ceres sees these disclosures as particularly critical, as portfolio emissions represent transition risk, and it is essential for investors to have transparent reporting on risks of this scale and scope.

Under the proposed GHG disclosure requirements, if derivatives instruments are used to obtain exposure to a portfolio company, the derivatives instrument would be treated as an equivalent to investment in securities in the portfolio company in the calculation of GHG metrics. Ceres and AFR expressed support for the proposed treatment of derivatives, while SIFMA and the International Swaps and Derivatives Association (ISDA) argue against the inclusion of derivatives instruments in GHG emissions disclosure. Industry standards for the treatment of derivatives – and also short positions – in carbon accounting have not yet developed. PCAF or another organization might consider addressing this through public consultations.

ii. Engagement

The proposal would require funds that use issuer engagement as a significant part of their ESG strategy to report the number of ESG-related engagement meetings held or the percentage of the companies in their portfolio with which they met. Some commenters objected to this metric on the grounds that 1) it would encourage managers to focus on the number of meetings scheduled rather than outcomes in working with target companies, 2) it does not capture other forms of engagement such as submitting shareholder resolutions or working with industry groups and 3) it would favor large asset managers with resources to engage across a wide array of companies. As Boston Trust Walden wrote, "The proposal's definition of engagement with issuers, and its narrow focus on ESG engagement meetings, is too limiting, and inappropriately undervalues the diversity of engagement tactics and communication modes employed by investors." Several comments cited that engagement tends to be managed across all the funds managed by an asset manager, and not separately for each fund, making fund-level engagement reporting less appropriate. Commenters that supported this metric, including Ceres, felt that it was important to have some quantitative and verifiable disclosure, even if it is not perfect. Many asset managers noted their support for more qualitative disclosures. We encourage the SEC to work with the industry on the development of more structured and standardized forms of engagement reporting in the hopes that such disclosures will become increasingly decision useful over time.

iii. Proxy voting

The proposal would require funds that use proxy voting as a significant part of their ESG strategy to disclose in their annual report the percentage of ESG-related voting matters for which the fund voted in adherence to its ESG strategy. Some commenters expressed concern that this oversimplifies good stewardship, stating that each proposal must be evaluated on its merits, and cautioning against creating an incentive to vote on issues without regard for the specifics of each proposal.

iv. Summary ESG disclosures for individual investors

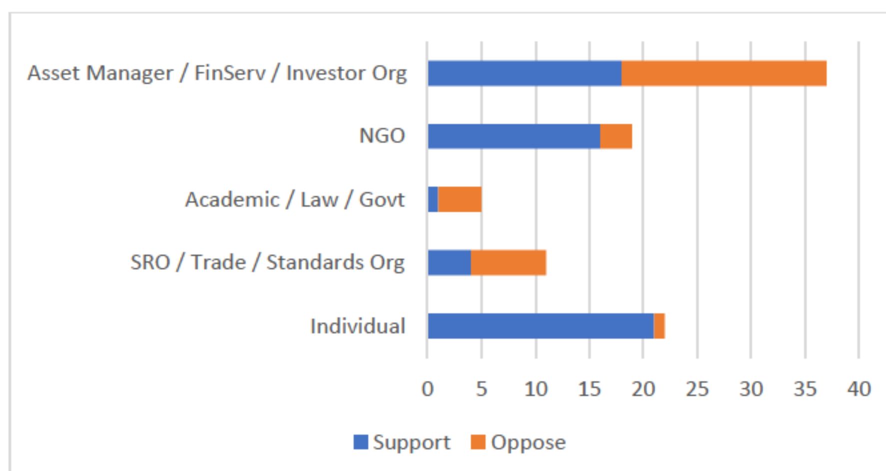
Many asset managers (who would be responsible for these new disclosures) and the trade groups that represent them articulated concern that the proposed disclosure requirements were too complicated to be useful to individual investors and burdensome to implement. Investors would benefit from increased disclosures about ESG criteria, objectives, engagement, and impact for ESG funds – particularly individual investors, who spoke out in great numbers via the petitions. However, as the CFA Institute letter points out, under the proposal certain information would need to be included in five different locations. The Commission may wish to respond to this concern by consolidating disclosures into fewer separate locations.

On October 26, 2022, the Commission adopted the final rule Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds, which requires "open-end management investment companies to transmit concise and visually engaging annual and semi-annual reports to shareholders that highlight key information that is particularly important for retail investors to assess and monitor their fund investments. Certain information that may be more relevant to financial professionals and investors who desire more in-depth information will no longer appear in funds' shareholder reports but will be available online." In her statement of support for this rule, Commissioner Crenshaw wrote "Simplicity is a goal unto itself… I view today's rule as one aimed at achieving this lofty goal of simplifying disclosures for investors without sacrificing the important information they need and on which they rely… It is crucial that shareholder reports contain concise, salient, and accessible information about their

investments. The layered disclosure approach to shareholder reports adopted today strives to do just that." The Commission may wish to consider including summary ESG information in these reports, consolidating key elements of the many detailed disclosures, or otherwise require such a summary that would best serve the investing public, while retaining its proposed detailed disclosures in the filings intended for investment professionals.

The Fund Names Rule

Of the 100 letters analyzed, 63 expressed support for the proposal with a range of requested modifications and clarifications. Forty-three letters mentioned the issue of greenwashing with 86% of those letters agreeing that greenwashing is a concern that should be addressed.



Opposing comments argued that the proposal is unnecessary and there is not a problem to address; the ESG Rule is sufficient to address concerns about greenwashing; the proposal is burdensome; increasing complexity and costs; or expressed concerns around sequencing of the SEC's current proposals.

As with the ESG proposal, many asset managers conveyed their support for the Investment Company Institute's submission, which offered several recommended changes while criticizing the proposal overall suggesting the Commission could use current resources and other proposals under consideration to address their intended goal of clarifying fund names.

Key issues

The core assertion of the proposal is that terms used in the name of a fund must mean what they say, be consistent with the plain English definition of those terms, and that managers should disclose the criteria they use to support those terms if they suggest a particular characteristic of the fund. The overwhelming majority of letters that address this requirement support it.

1. Expansion of 80% policy

In 2001, the SEC adopted rule 35d-1, the Names Rule under the Investment Company Act of 1940. The rule generally requires that if a fund's name suggests a focus in a particular type of investment, industry, or geographic location, then the fund must invest at least 80% of its AUM in assets suggested by its

name. The proposed amendment would expand the scope of the policy to include any fund name that suggests the fund has particular characteristics such as "ESG" or "growth."

Of the 41 letters that specifically addressed this expansion in scope, 17 letters supported it as written. Four letters supported expanding the policy only to bring in ESG-related terms. Two commenters supported the expansion for only non-ESG characteristics such as "growth" or "value." Finally, 18 letters opposed the expansion of the rule to bring in any characteristics. Of those 24 letters that opposed or suggested modifications to the expansion of the rule, 18 commenters noted concerns about the subjectivity of terms like ESG, growth, value, or global, which may not have universally agreed upon definitions.

Of the 35 letters that addressed these provisions in their comments, 14 supported the proposal that only ESG-focused funds may use ESG terms in their name, and 16 letters emphasized that an integration fund should be prohibited from use of ESG terms in its name. Five letters expressed opposition to limiting the use of ESG terms in a name only to ESG-focused funds and/or prohibiting integration funds from using those terms in their name.

2. Deviation policy and compliance guidelines

The current Names rule requires that funds comply with the 80% policy "at the time of investment" and "under normal circumstances." The proposed amendments instead allow temporary departures from the 80% policy under specified circumstances while requiring that a fund must come back into compliance within 30 days. Funds would be required to perform daily tests to assess compliance.

As previously mentioned, 63 letters expressed support for the rule overall with most of those offering blanket support for the amendments as proposed, implicitly supporting the updated deviation policy. Three letters specifically endorsed the deviation policy. Twenty-five commenters expressed opposition. Eleven of the 25 commenters explicitly requested that the Commission retain the "at the time of investment" language and 13 requested that the Commission retain the "under normal circumstances" language. Concerns about the policy mentioned the burden of daily testing, but mainly focused on the potential danger of forced sales to remain compliant.

> "As a result of the proposed continuous testing regime, a fund may be forced to sell securities at undesirable prices and inappropriate times. Such transactions could generate unwanted capital gains, increase transaction costs, reduce diversification, and impose longer-term negative consequences on a portfolio. This could occur, for example, when an issuer in a fund's portfolio grows successfully, such as when a small-cap issuer becomes a mid-cap issuer." (Dechert LLP)

Eleven of the opposing comments presented workable alternatives to the deviation policy as proposed. Suggestions included requiring additional disclosures about the potential for a fund to drift from compliance or signaling the potential for departure by including the word "managed" in the fund's name. Several letters suggested including an element of board oversight:

> "We recommend the SEC adopt an approach incorporating board oversight of extended policy departures. Specifically, we recommend that for temporary departures that exceed 30 days… the fund board or a designated subcommittee of the board should receive a report within 5 days (i.e., within 35 days after identification of the departure from the 80 percent policy)." (George C.W. Gatch, JPMorgan Asset Management)

The suggested solutions to concerns over the policy present a feasible path for the Commission to adopt a final rule that would garner more support. The rule also proposes a one-year transition period for funds to come into compliance with the proposed amendments upon their adoption. Ten commenters opposed this timeline, mainly asset managers and trade associations. Several of the commenters suggested a two- or three-year transition period instead.

3. Disclosure and recordkeeping requirements

   i. Defining terms used in a fund's name

Commenters expressed strong support for the requirement that terms used in a fund's name be defined in its prospectus along with any criteria used in the selection of its investments. Funds would be required to define terms in a way that is consistent with their plain English meaning or established industry use. Of the proposed requirements, enhancing prospectus disclosures is the most broadly supported, even by those who oppose the rule proposal overall. Twenty-five letters acknowledged the importance of requiring a fund to define in the prospectus the terms used in its name. Twenty-seven letters expressed support for using plain English meanings or established industry uses as guidance for the definitions.

> "It is currently common practice for Fidelity's mutual funds to include prospectus disclosure that describe their 80% investment policies and that define any terms that their names include in plain English, including funds whose names do not currently require such disclosures. We fully support incorporating such a requirement into the instructions to Form N1A and Rule 35d-1, for all funds to help investors better understand the 80% policy." (Cynthia Lo Bessette, Fidelity Management & Research Company)

   ii. Form N-PORT and recordkeeping requirements

The proposal would amend Form N-PORT to require that any fund subject to the 80% policy must report (1) the value of the fund's 80% basket as a percentage of the value of the fund's assets, and (2) if applicable, the number of days that the value of this basket fell below 80% of the fund's AUM during the reporting period. The proposal would also introduce a new requirement that funds maintain a written record of the fund's compliance with the 80% policy, or if not subject to the policy, a record of their analysis that such a policy is not required.

While six letters, mostly from NGOs, indicated support for the N-PORT requirement, 13 letters were opposed. The opposition was mainly from asset managers with some trade associations and law firms weighing in. Unlike the N-PORT requirements, the recordkeeping requirement garnered some support from the investor community who agree that the records would provide the Commission with useful information to understand and evaluate a fund's compliance with the rule. However, in comparison to three comments expressing support, ten letters expressed opposition to the proposal, mainly from asset managers and trade associations.

Opposition letters toward both cited concerns including significant operational burdens and costs, skepticism about the benefits to investors, and lack of justification for the requirements. Several commenters present alternatives that could reduce burdens and achieve similar goals such as a) moving

the disclosure requirement to the annual Form N-CEN or b) amending Form N-1A to include a required section on "Graphical Information of Holdings" as of period end.

4. Derivatives

The proposal specifies that in calculating the value of a fund's assets for purposes of compliance with the Names Rule, a fund must value a derivatives instrument by its notional amount rather than its mark-to-market value. Seven letters expressed support for this approach to derivatives. Only one letter directly opposed the proposed approach, while 11 letters requested clarification or alterations.

5. Business development companies (BDCs) + closed-end funds (CEFs)

Under the current Names Rule, funds can elect to make 80% policy a fundamental policy (a policy that cannot be changed without shareholder approval) or instead notify shareholders at least 60 days prior to any change in the 80% policy. The proposed amendment would require all BDCs and CEFs to make it a fundamental policy. Seven commenters discussed this provision specifically. One commenter expressed support for the proposed BDC and CEF requirement, while six argued against it on the grounds that it would place these funds at a disadvantage in the marketplace and impede board oversight.

> "Perhaps most importantly, the proposed requirement would hamstring a fund's ability to make strategy changes even when deemed in the best interest of a fund and its shareholders and would increase fund expenses when such a change is unavoidable."
> (Lindsey Weber Keljo, SIFMA)

Notwithstanding the industry resistance to this new language, it may have value due to the more limited liquidity available in trading most BDCs and CEFs.

Ceres appreciates the hard work of the Commission and its staff in drafting these rules. We hope that this analysis proves helpful as the Commission and general public seek to understand the key issues raised in the comments from interested parties. For more information, please contact Eric Pitt at [redacted] or Becca Johnson at [redacted].