

The Final Rule Marked to Show Changes from the Proposing Release

§ 270.35d-1 Investment company names.

(a) Materially deceptive and misleading fund names. For purposes of section 35(d) of the Act (15 U.S.C. 80a-34(d)), a materially deceptive and misleading name of a fund includes:

(1) Names suggesting guarantee or approval by the United States Government. A name suggesting that the fund or the securities issued by it are guaranteed, sponsored, recommended, or approved by the United States Government or any United States Government agency or instrumentality, including any name that uses the words “guaranteed” or “insured” or similar terms in conjunction with the words “United States” or “U.S. Government.”

(2) Names suggesting an investment focus. A name that includes terms suggesting that the fund focuses its investments in: a particular type of investment or investments; a particular industry or group of industries; particular countries or geographic regions; or investments that have, or whose issuers have, particular characteristics (*e.g.*, a name with terms such as “growth” or “value,” or terms indicating that the fund’s investment decisions incorporate one or more **ESG**environmental, social, or governance factors), unless:

(i) The fund has adopted a policy to invest, ~~except~~ under the normal circumstances ~~provided in paragraph (b)(1) of this section~~, at least 80% of the value of its assets in investments in accordance with the investment focus that the fund’s name suggests. For a name suggesting that the fund focuses its investments in a particular country or geographic region, investments that are in accordance with the investment focus that the fund’s name suggests are investments that are tied economically to the particular country or geographic region suggested by its name;

(ii) The policy described in paragraph (a)(2)(i) of this section is a fundamental policy, or the fund has adopted a policy to provide the fund’s shareholders with at least 60 days’ prior notice of any change in the policy described in paragraph (a)(2)(i) of this section, and any change in the fund’s name that accompanies the change, that meets the provisions of paragraph (e) of this section. ~~If the fund is a closed-end company or business development company, and the fund does not have shares that are listed on a national securities exchange, the fund’s policy is a fundamental policy;~~ and

(iii) Any terms used in the fund’s name that suggest that the fund focuses its investments as described in paragraph (a)(2)(i) of this section are consistent with those terms’ plain English meaning or established industry use.

(3) Tax-exempt funds. A name suggesting that the fund’s distributions are exempt from Federal income tax or from both Federal and State income tax, unless:

(i) The fund has adopted a fundamental policy:

(A) To invest, ~~except~~ under the normal circumstances ~~provided in paragraph (b)(1) of this section~~, at least 80% of the value of its assets in investments the income from which is exempt, as applicable, from Federal income tax or from both Federal and State income tax; or

(B) To invest, ~~except under the normal~~ circumstances ~~provided in paragraph (b)(1) of this section~~, its assets so that at least 80% of the income that it distributes will be exempt, as applicable, from Federal income tax or from both Federal and State income tax; and

(ii) Any terms used in the fund's name that suggest that the fund invests its assets as described in paragraph (a)(3)(i) of this section are consistent with those terms' plain English meaning or established industry use.

(b) Operation of policies and related recordkeeping.

(1) The requirements of paragraph (a)(2)(i) and (a)(3)(i) of this section apply at the time a fund invests its assets, provided that:

~~(i) A~~The fund ~~may temporarily invest less than 80% of the value of its assets in accordance with the fund's investment focus as otherwise required by~~must review its portfolio investments' inclusion in the fund's 80% basket, as defined in paragraph (g) of this section, at least quarterly. If, subsequent to an investment, the fund identifies that the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section in the circumstances described in paragraphs (b)(1)(i) through (iv) of this section, provided the fund brings its, as applicable, are no longer met, the fund must make future investments in a manner that will bring the fund into compliance with paragraph (a)(2)(i) or (a)(3)(i) those paragraphs as soon as reasonably practicable, and in all circumstances within 90 consecutive days of the fund's identification that those requirements are no longer met;

~~(i) As a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment, for no more than 30 consecutive days;~~

~~(ii) To address unusually large cash inflows or unusually large redemptions, for no more than 30~~If the fund departs from the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, in other-than-normal circumstances, the fund must come back into compliance with the requirements of those paragraphs within 90 consecutive days, measured from the time of the initial departure; and

~~(iii) To take a position in cash and cash equivalents, or Government securities as defined in section 2(a)(16) of the Act, to avoid losses in response to adverse market, economic, political, or other conditions, for no more than 30 consecutive days; or~~

~~(iv) To~~(iii) A fund may temporarily invest less than 80% of the value of its assets in accordance with the fund's investment focus as otherwise required by paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, to reposition or liquidate the fund's assets in connection with a reorganization, to launch the fund, or when notice of a change in a fund's policy as described in paragraph (a)(2)(ii) of this section has been provided to fund shareholders.

(2) For the purpose of determining the fund's compliance with an investment policy adopted under paragraph (a)(2)(i) or (a)(3)(i)(A) of this section, in addition to any derivatives instrument that the fund includes in its 80% basket because the derivatives instrument provides investment exposure to investments suggested by the fund's name, a fund may include in its 80% basket a derivatives instrument that provides investment exposure to one or more of the

market risk factors associated with ~~investments suggested by~~ the investment focus that the fund's name suggests.

(3) A fund must maintain written records documenting ~~either~~ its compliance under paragraphs (a) and (b) of this section ~~or, if the fund does not adopt a policy under paragraphs (a)(2)(i) and (a)(3)(i) of this section, a written record of the fund's analysis that such a policy is not required under these paragraphs. Written records documenting the fund's compliance under paragraphs (a) and (b) of this section include: the fund's record of which investments are, as applicable. A fund must maintain written records, at the time a fund invests its assets, documenting: whether the investment the fund makes is~~ included in the fund's 80% basket and, ~~if so,~~ the basis for including ~~each~~ such investment in the fund's 80% basket; and the value of the fund's 80% basket, as a percentage of the value of the fund's assets; ~~the reasons, pursuant to paragraphs (b)(1) and~~ A fund must maintain written records documenting its review of its portfolio investments' inclusion in the fund's 80% basket, as described in paragraph (b)(1)(i), including whether each investment is included in the fund's 80% basket and the basis for including such investment in the 80% basket. If during the review of portfolio investments' inclusion in the fund's 80% basket or otherwise, the fund identifies that the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, for any departures as applicable, are no longer met, the fund must maintain written records documenting: the date this was identified; and the reason for any departure from the policies described in paragraphs (a)(2)(i) and (a)(3)(i); the dates of any departures of this section. If the fund departs from the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, in other-than-normal circumstances as described in paragraph (b)(1)(ii), or as described in paragraph (b)(1)(iii), the fund must keep records documenting: the date of any departure from the policies described in paragraphs (a)(2)(i) and (a)(3)(i); and of this section; and the reason for any such departure (including why the fund determined that circumstances are other-than-normal). A fund must maintain records of any notice sent to the fund's shareholders pursuant to paragraph (ed) of this section. Written records documenting the fund's compliance under paragraphs (a) and (b) of this section must be maintained for a period of not less than six years following the creation of each required record (or, in the case of notices, following the date the notice was sent), the first two years in an easily accessible place. ~~The written record made by a fund that does not adopt a policy under paragraphs (a)(2)(i) and (a)(3)(i) must be maintained in an easily accessible place for a period of not less than six years following the fund's last use of its name.~~

(c) Effect of compliance with policy adopted under paragraph (a)(2)(i) or (a)(3)(i) ~~of this section~~. A fund name may be materially deceptive or misleading under section 35(d) of the Act even if the fund adopts and implements a policy under paragraph (a)(2)(i) or (a)(3)(i) of this section and otherwise complies with the requirements of paragraph (a)(2) or (a)(3) of this section, as applicable.

~~(d) Use of ESG terms in fund names. If a fund considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio, the use of terms in the fund's name indicating that the fund's investment decisions incorporate one or more ESG factors is materially deceptive and misleading.~~

(ed) Notice. A policy to provide a fund's shareholders with notice of a change in a fund's policy as described in paragraph (a)(2)(ii) of this section must provide that:

(1) The notice will be provided in plain English separately from any other documents (provided, however, that if the notice is delivered in paper form, it may be provided in the same envelope as other written documents);

(2) The notice will contain the following prominent statement, or similar clear and understandable statement, in bold-face type: “Important Notice Regarding Change in Investment Policy [and Name]”, provided that

(i) If the notice is provided in paper form, the statement also will appear on the envelope in which the notice is delivered; and

(ii) If the notice is provided electronically, the statement also will appear on the subject line of the email communication that includes the notice or an equivalent indication of the subject of the communication in other forms of electronic media; and

(3) The notice must describe, as applicable, the fund’s policy adopted under paragraph (a)(2)(i) of this section, the nature of the change to the policy, the fund’s old and new names, and the effective date of any policy and/or name changes.

~~(fe)~~ Unit ~~Investment Trusts~~investment trusts. The requirements of paragraphs (a)(2)(i), (a)(3)(i), and (b)(3) of this section shall ~~not~~ apply to any unit investment trust (as defined in section 4(2) of the Act (15 U.S.C. 80a-4(2)) ~~that has made an initial deposit of securities prior to [EFFECTIVE DATE OF FINAL RULE] unless the unit investment trust has already adopted a policy under paragraph (a)(2) or (3) of this section or was required to adopt such a policy~~only at the time of the initial deposit of portfolio securities.

(f) Unlisted registered closed-end funds and business development companies. Notwithstanding the requirements of paragraph (a)(2)(ii) of this section, if the fund is a closed-end company or business development company, and the fund does not have shares that are listed on a national securities exchange, any policy adopted pursuant to paragraph (a)(2) of this section can be changed only if authorized by the vote of the majority of the outstanding voting securities of such fund unless:

(1) The fund conducts a tender or repurchase offer to allow shareholders to redeem shares, in accordance with all applicable Commission rules, in advance of any change in such policy;

(2) The fund provides the fund’s shareholders with at least 60 days’ prior notice of any change in such policy in advance of the tender or repurchase offer described in paragraph (f)(1) of this section;

(3) The tender or repurchase offer described in paragraph (f)(1) of this section is not oversubscribed; and

(4) In the event of a tender offer, the fund purchases shares at their net asset value.

(g) Definitions. For purposes of this section:

~~(2)~~ *Assets* means net assets, plus the amount of any borrowings for investment purposes. In determining the value of a fund’s assets for purposes of this section, a fund must value each derivatives instrument using the instrument’s notional amount (which must be converted to 10- year bond equivalents for interest rate derivatives and delta adjusted for options contracts) and must value each physical short position using the value of the asset sold short. The fund may reduce the value of its assets by excluding any cash and cash equivalents, and U.S. Treasury securities

with remaining maturities of one year or less, up to the notional amount of the derivatives instrument(s)- and the value of asset(s) sold short, and also exclude any closed-out derivatives positions if those positions result in no credit or market exposure to the fund. A fund must exclude from this calculation derivatives instruments used to hedge currency risks associated with one or more specific foreign-currency-denominated equity or fixed-income investments held by the fund, provided that such currency derivatives are entered into and maintained by the fund for hedging purposes and that the notional amounts of such derivatives do not exceed the value of the hedged investments (or the par value thereof, in the case of fixed-income investments) by more than 10 percent.

~~(3) Derivatives instrument~~ means any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument.

~~(4) ESG means environmental, social, and/or governance.~~

Eighty percent (80%) basket means investments that are invested in accordance with the investment focus that the fund's name suggests (or as described in paragraph (a)(3)(i) of this section).

~~(5) Fund~~ means a registered investment company or a business development company, including any separate series thereof.

~~(6) Fundamental policy~~ means a policy that a fund adopts under section 8(b)(3) of the Act (15 U.S.C. 80a-8(b)(3)) or, in the case of a business development company, a policy that is changeable only if authorized by the vote of a majority of the outstanding voting securities of the fund.

~~(7) Launch~~ means a period, not to exceed 180 consecutive days, starting from the date the fund commences operations.

Oversubscribed means shareholders have tendered or requested repurchase of a greater number of shares than the fund has offered to purchase in accordance with applicable Commission rules.