

Final Rules: Amendments to the Fund “Names Rule”



The Securities and Exchange Commission adopted amendments to rule 35d-1 under the Investment Company Act of 1940, the fund “Names Rule.” The amendments will better serve the Commission’s mission of investor protection by:

- Improving and broadening the scope of funds that must comply with the current requirement to adopt a policy to invest at least 80 percent of their assets in accordance with the investment focus the fund’s name suggests;
- Providing enhanced disclosure and reporting requirements related to terms used in fund names; and
- Establishing additional recordkeeping requirements.

Why This Matters

The name of a registered investment company or business development company (“BDC”) communicates information about the fund to investors and is an important marketing tool for the fund. The purpose of the Names Rule is to prevent fund names from misrepresenting the fund’s investments and risks. Typically, a fund’s name is the first piece of information that investors receive about a fund and fund names offer important signaling for investors in assessing their investment options. However, because of developments in the fund industry since the adoption of the Names Rule in 2001 – including the increase in fund assets under management and the proliferation of diverse fund strategies, such as those with thematic and environmental, social, or governance (“ESG”)-related objectives – the Commission is modernizing and enhancing the Names Rule and other names-related regulatory requirements to further its investor protections goals.

What’s Required

Modernization of the 80 Percent Investment Policy Requirement

The amendments to the Names Rule will apply the rule’s 80 percent investment policy requirement to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. The primary types of names that the amended rule is anticipated to cover include fund names with terms such as “growth” or “value” or certain terms that reference a thematic investment focus, including terms indicating that the fund’s investment decisions incorporate one or more ESG factors. To address the rule’s application to derivatives instruments, the amendments will require funds with derivatives in their holdings to use the derivatives’ notional amount, rather than

their market value, for the purpose of determining the funds’ compliance with their 80 percent investment policy, with certain adjustments.

Enhanced Prospectus Disclosure, Form N-PORT Reporting, and Recordkeeping

The amendments will update funds’ prospectus disclosure requirements to require a fund with an 80 percent investment policy to define the terms used in its name, including the criteria the fund uses to select the investments that the term describes. The rule will require that any terms used in the fund’s name that suggest an investment focus, or that the fund’s distributions are tax-exempt, must be consistent with those terms’ plain English meaning or established industry use. In addition, the amendments to Form N-PORT will enhance transparency regarding how funds’ investments reflect their investment focus as required under the rule. Lastly, the amendments include new recordkeeping provisions related to a fund’s compliance with the Names Rule’s requirements.

Temporary Departures from a Fund’s 80 Percent Investment Policy

The amendments will retain the Names Rule’s current requirements for a fund to invest in accordance with its 80 percent investment policy “under normal circumstances,” and for the 80 percent investment requirement to apply at the time a fund invests its assets. The amendments will include a new requirement that a fund review its portfolio assets’ treatment under its 80 percent investment policy at least quarterly. In addition, the amendments will include specific time frames—generally 90 days—for getting back into compliance if a fund departs from its 80 percent investment policy.

Unlisted Closed-End Funds and BDCs

The amendments will generally prohibit a registered closed-end fund or BDC whose shares are not listed on a national securities exchange from changing its 80 percent investment policy without a shareholder vote. This will help ensure that such fund investors could vote on a change in investment policy given their limited options to exit their investments prior to the change. However, the amendments will permit such a fund to make changes to its 80 percent investment policies without a shareholder vote if the fund conducts a tender or repurchase offer in advance of the change, subject to certain conditions.

Modernization of Notice Requirement

The amendments will retain the current rule’s requirement that, unless the 80 percent investment policy is a fundamental policy of the fund, 60 days’ notice must be provided to fund shareholders of any change in the fund’s 80 percent investment policy. The amendments will update the Names Rule’s notice requirement to expressly address funds that use electronic delivery methods to provide information to their shareholders and incorporate additional specificity about the content and delivery of the notice.

What’s Next

The rule amendments will become effective 60 days after publication in the Federal Register. Fund groups with net assets of \$1 billion or more will have 24 months to comply with the amendments, and fund groups with net assets of less than \$1 billion will have 30 months to comply.