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Securities and Exchange Commission

17 CFR Parts 230, 232, 239, 270 and 274

[Release No. 33-11238; 34-98438; IC-35000; File No. S7-16-22]

RIN: 3235-AM72

Investment Company Names

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending the rule under the Investment Company Act of 1940 ("Investment Company Act" or "Act") that addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The amendments to this rule are designed to increase investor protection by improving, and broadening the scope of, the requirement for certain funds to adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission is also adopting enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form N-PORT regarding compliance with the names-related regulatory requirements.

DATES: This rule is effective December 11, 2023.

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SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to 17 CFR 270.35d-1 ("rule 35d-1") under the Investment Company Act; amendments to Form N-1A [referenced in 17 CFR 239.15A and 17 CFR 274.11A], Form N-2 [referenced in 17 CFR 239.14 and 17 CFR 274.11a-1], Form N-8B-2 [referenced in 17 CFR 274.12], and Form S-6 [referenced in 17 CFR 239.16] under the Investment Company Act and the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a *et seq*.]; amendments to Form N-PORT [referenced in 17 CFR 274.150] under the Investment Company Act; amendments to 17 CFR 232.11 ("rule 11 of Regulation S-T") and 17 CFR 232.405 ("rule 405 of Regulation S-T") under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq*.]; amendments to 17 CFR 230.485 ("rule 485") under the Securities Act; and amendments to 17 CFR 230.497 ("rule 497") under the Securities Act.

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I. INTRODUCTION AND BACKGROUND

The Commission is adopting rule and form amendments that are designed to modernize and enhance the protections that rule 35d-1 under the Investment Company Act, the "names rule," provides. This rule addresses the names of registered investment companies and business development companies ("BDCs") that the Commission defines as materially misleading or deceptive.[1] The amendments the Commission is adopting update the rule and other names-related regulatory requirements to improve the protections that the rule provides, and to address changes in the fund industry in the approximately 20 years since the rule was adopted.

In May 2022, the Commission proposed rule and form amendments that would update the regulatory requirements associated with funds' names.[2] The proposed amendments included an expansion of the names rule's scope, improvements to the requirements for funds' investment policies adopted under the names rule (including, among other things, specific requirements addressing temporary departures from these policies' requirements), updated notice

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[1] This release refers to registered investment companies and BDCs collectively as "funds."

[2] *See* Investment Company Names, Investment Company Act Release No. 34593 (May 25, 2022) [87 FR 36594 (June 17, 2022)] ("Proposing Release" or the "2022 Proposal"). The Commission voted to issue the Proposing Release on May 25, 2022. The release was posted on the Commission website that day, and comment letters were received beginning the following day. The comment period closed on August 16, 2022. We have considered all comments received since May 25, 2022.

requirements, and new recordkeeping requirements. The proposed amendments also effectively would have required that terms in a fund's name be consistent with those terms' plain English meaning or established industry use, and addressed materially deceptive and misleading use of environmental, social, or governance ("ESG") terminology in fund names. Finally, the 2022 Proposal included amendments that would require a fund to define the terms used in its name in its prospectus, and amendments to Form N-PORT to add several new names-rule-related reporting items.

The Commission received comment letters on the 2022 Proposal from a variety of commenters, including funds, law firms, investor advocacy groups, environmental advocacy groups, professional and trade associations, public policy research institutes, academics, and interested individuals.[3] Many commenters expressed support for the names rule generally, and the overall goals of improving and clarifying the regulatory framework related to fund names, with some commenters recognizing that the names rule has not been revisited since its implementation in 2001.[4] Comments on specific aspects of the proposed amendments, however, were mixed. While some commenters generally supported the proposed scope expansion, as well as the amendments addressing the operation of investment policies adopted under the names rule, many others expressed concerns with these aspects of the proposal or suggested certain

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3 The comment letters on the Proposing Release are available at https://www.sec.gov/comments/s7-16-22/s71622.htm.

4 *See, e.g.*, Comment Letter of Better Markets (Aug. 16, 2022) ("Better Markets Comment Letter"); Comment Letter of the Consumer Federation of America (Aug. 16, 2022) ("Consumer Federation of America Comment Letter") (each expressing support for the Commission's efforts to modernize the names rule, stating, respectively, that the rule has not been revisited since 2001, and it is "well past time" for the Commission to revisit and update the names rule); *see also* Comment Letter of the CFA Institute (Aug. 22, 2022) ("CFA Institute Comment Letter"); Comment Letter of the Teachers Insurance and Annuity Association of American and Nuveen, LLC (Aug. 16, 2022) ("TIAA-Nuveen Comment Letter").

modifications.[5] Comments on the proposed prospectus disclosure requirements were generally supportive, but comments on the proposed new Form N-PORT reporting items were mixed, with some largely objecting to these requirements or suggesting modifications and others arguing that the proposed new reporting items would help promote transparency and accountability.[6]

After considering the comments on the 2022 Proposal and as discussed in more detail below, we are adopting amendments to the names rule, with some modifications based on the comments we received.

A. Regulatory Context

Congress provided the Commission with rulemaking authority to address materially deceptive or misleading fund names, recognizing the concern that investors may focus on a fund's name to determine its investments and risks.[7] The names rule, in turn, responds to this concern by helping to ensure that investors' assets in funds are invested in accordance with investors' reasonable expectations based on the fund's name.

The role of the names rule remains important and distinct from other disclosure requirements. A fund's name is not meant to supplant other required fund disclosure, and a name cannot communicate everything about a fund's investments, risks, and other features. The Commission has historically stated that investors should not rely on an investment company's name as the sole source of information about a company's investments and risks.[8] We continue

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5 *See infra* discussion at sections II.A.1-II.A.4.

6 *See infra* discussion at sections II.B and II.E.

7 15 U.S.C. 80a-34(d); Pub. L. No. 104-290, § 208, 110 Stat. 3416, 3432 (1996).; *see also* S. Rep. No. 293, 104th Cong., 2d Sess. 8-9 (1996).

8 *See* Investment Company Names, Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)] ("2001 Names Rule Adopting Release") at nn.4-5 and accompanying text.

to encourage investors to look beyond a fund's name to other information, such as disclosure included in a fund's registration statement, to obtain a complete understanding of a fund's investment objective, policies, strategies, and risks, as several commenters suggested.[9] A fund's name, however, is unique in several respects. It is typically the first piece of information that investors receive about a fund.[10] Fund names offer important signaling for investors in assessing their investment options.[11] Relatedly, incentives exist for asset managers to include terminology in fund names that is designed to attract investor assets.[12]

Section 35(d) of the Act prohibits a registered investment company from adopting as part of its name or title any word or words that the Commission finds are materially deceptive or misleading.[13] This section of the Act further authorizes the Commission to define such names or titles as are materially deceptive or misleading. The Commission adopted the names rule in 2001 in exercise of this authority.[14]

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9 *See, e.g.*, Comment Letter of Massachusetts Financial Services Company (Aug. 16, 2022) ("MFS Comment Letter"); Comment Letter of Capital Research and Management Company (Aug. 16, 2022) ("Capital Group Comment Letter"); Comment Letter of the Cato Institute (Aug. 12, 2022) ("Cato Institute Comment Letter").

10 *See* Comment Letter of the North American Securities Administrators Association, Inc. (Aug. 16, 2022) ("NASAA Comment Letter"); *see also* Comment Letter of the Public Investors Advocate Bar Association (Aug. 15, 2022) ("PIABA Comment Letter") (stating that retail investors frequently base their purchase of funds solely upon the name of the fund and "do little to investigate" the portfolio holdings or the specific strategy of a fund beyond relying on the fund's name).

11 *See* Comment Letter of U.S. SIF: The Forum for Sustainable and Responsible Investment (Aug. 16, 2022) ("U.S. SIF Comment Letter").

12 *See* Proposing Release, *supra* footnote 2, at n.6; *see also, e.g.*, Comment Letter of the Center for American Progress (Aug. 16, 2022) ("Center for American Progress Comment Letter") (stating that the current investing environment creates strong incentives for investment companies to name funds in ways that will attract investors). *But see* Comment Letter of Benjamin Zycher, Senior Fellow, American Enterprise Institute (Nov. 1, 2022) ("Zycher Comment Letter") (arguing that "the implicit argument that firms or funds have incentives to mislead or to adopt deceptive names is not correct" because funds' reputations for honesty are in funds' long-term interests).

13 15 U.S.C. 80a-34(d). BDCs, which are not registered investment companies, are subject to the requirements of section 35(d) pursuant to section 59 of the Act [15 U.S.C. 80a-58].

14 *See* 2001 Names Rule Adopting Release, *supra* footnote 8.

The current names rule generally requires that if a fund's name suggests a focus in a particular type of investment, or in investments in a particular industry or geographic focus, the fund must adopt a policy to invest at least 80% of the value of its assets in the type of investment, or in investments in the industry, country, or geographic region suggested by its name.[15] Under the current rule, a fund generally may elect to make its 80% investment policy a fundamental policy (*i.e.*, a policy that may not be changed without shareholder approval) or instead provide shareholders notice at least 60 days prior to any change in the 80% investment policy.[16] An 80% investment policy relating to a tax-exempt fund, however, must be a fundamental policy.

Currently, a fund is required to invest in accordance with its 80% investment policy "under normal circumstances," and a fund must apply its policy at the time the fund invests its assets. If, subsequent to an investment, the fund's assets are no longer invested in accordance with the policy, the fund's future investments must be made in a manner that will bring it into compliance. The current rule also includes certain requirements for the notices that funds must send prior to a change in an 80% investment policy that is not a fundamental policy.

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15 The rule imposes a similar requirement for funds that have names suggesting that a fund's distributions are exempt from federal income tax or from both federal and state income tax ("tax-exempt funds").

16 Under the Act, a fund may not deviate from a fundamental policy unless it has been authorized by the vote of a majority of its outstanding shareholders. 15 U.S.C. 80a-13(a)(3). In this release, we refer to a policy that a fund must adopt under the names rule as an "80% investment policy" and the fund's investments invested in accordance with this policy, the fund's "80% basket." We are adopting a parallel definition of "80% basket" in the final amendments to the names rule, and when referring to the final amendments, references to a fund's "80% basket" refer to this definition. *See* final rule 35d-1(g) (defining "eighty percent (80%) basket"); *see also* proposed rule 35d-1(g)(1) (defining "80% basket," but otherwise identical to definition in final rule).

In adopting the names rule, the Commission made clear that it is not a safe harbor for materially deceptive or misleading names.[17] The prohibitions of section 35(d) and the anti-fraud provisions of the Federal securities laws regarding disclosures to investors continue to apply to funds notwithstanding their compliance with the names rule.[18] In addition, a fund must adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Federal securities laws generally, which—both currently, and following the Commission's adoption of amendments to the names rule—would include section 35(d) and the names rule.[19]

B. Developments and Analysis Informing Final Rule Amendments

The names rule has not been amended since its adoption in 2001. In past years, the Commission and staff have received input about the operation of the names rule, as well as areas for potential improvement, through a variety of venues. The Commission published a Request for Comment on Fund Names in March 2020.[20] The 2020 Request for Comment sought public comment on the framework for addressing funds' names, particularly in light of market and other developments since the rule's adoption. The Commission received broad comments in response to the 2020 Request for Comment and, as described above, in response to the 2022 Proposal. In addition, staff in the Commission's Division of Investment Management, particularly the Division's Disclosure Review and Accounting Office, receive input from funds on names rule

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17 *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at paragraph accompanying n.16; *see also* Proposing Release, *supra* footnote 2, at nn.13-15 and accompanying text.

18 *See* Proposing Release, *supra* footnote 2, at n.14 and accompanying text.

19 *See id.* at nn.16-17 and accompanying text (also addressing the requirement for fund compliance officers to discuss any material compliance matter involving the names rule in annual reports to the board on the operation of funds' compliance policies and procedures).

20 *See* Request for Comments on Fund Names, Investment Company Act Release No. 33809 (Mar. 2, 2020) [85 FR 13221 (Mar. 6, 2020)] ("2020 Request for Comment"); *see also* Proposing Release, *supra* footnote 2, at section I.B (describing the input commenters provided in response to the 2020 Request for Comment).

compliance issues regularly, for example during the course of staff's review of fund registration statements.

Commenters generally recognized that investors view a fund's name as an important piece of information that communicates the fund's objectives.[21] Several commenters expressed that asset managers have an incentive to create fund names that are designed to attract investors.[22] Many commenters, including funds and others, expressed their general agreement that the names rule provides important investor protections and that the rule has been largely effective in addressing misleading and deceptive fund names.[23] Commenters expressed support for a requirement, such as the rule's 80% investment policy provision, that requires a fund's underlying investments to correspond with the focus its name suggests in light of reasonable investor expectations.[24] One, for example, with respect to funds' use of ESG related terminology

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[21] *See, e.g.*, Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Aug. 16, 2022) ("SIFMA AMG Comment Letter"); NASAA Comment Letter; Consumer Federation of America Comment Letter; Comment Letter of Wellington Management Company (Aug. 16, 2022) ("Wellington Comment Letter"); Comment Letter of Adriana Z. Robertson and Jill E. Fisch (Apr. 20, 2023) ("Robertson-Fisch Comment Letter"); *see also* PIABA Comment Letter (asserting fund names are particularly important for 401(k) plan investments, which employers make available from a pre-determined list of options and comprise the entirety of retirement savings for many Americans).

[22] *See, e.g.*, Consumer Federation of America Comment Letter; Center for American Progress Comment Letter; CFA Institute Comment Letter.

[23] *See* Proposing Release, *supra* footnote 2, at n.20 and accompanying text; *see also, e.g.*, Comment Letter of Invesco Ltd. (Aug. 16, 2022) ("Invesco Comment Letter") ("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."); Comment Letter of the Investment Company Institute (Aug. 16, 2022) ("ICI Comment Letter I") The Investment Company Institute also submitted a separate comment letter dated December 6, 2022 ("ICI Comment Letter II"), a comment letter dated May 22, 2023 ("ICI Comment Letter III"), and a comment letter dated July 31, 2023 ("ICI Comment Letter IV"). Unless otherwise indicated, these letters are referred to collectively as if they were a single letter ("ICI Comment Letter").

[24] *See, e.g.*, Comment Letter of T. Rowe Price (Aug. 16, 2022) ("T. Rowe Comment Letter") (discussing effectiveness of current 80% investment policy requirement in aligning fund names with investor expectations); CFA Institute Comment Letter (stating that the terms used in fund names should reflect the fund's "investment objective, strategies, and types of securities held" and that the current names rule "provide[s] a level of assurance to investors").

in their names, stated that a naming requirement where "the underlying strategy and data must significantly support the name" is a "basic consumer protection."[25]

Some commenters expressed that certain changes to the names rule would be beneficial to ensure that the rule continues to serve its investor protection purposes. Some of these commenters expressed the view that the current scope of the rule does not cover all instances in which fund names create the reasonable expectation that a fund will invest in a certain way.[26] Some also expressed concern that the current rule's "under normal circumstances" standard increases the risk that a fund's investments will not be consistent with its name over an extended period and that investors will be misled.[27] Commenters also suggested other, more technical updates to the names rule, such as addressing how funds that use derivatives calculate compliance with their 80% investment policies, and updating the rule's notice provision to reflect technological changes over the past two decades.[28]

In considering updates to the names rule, both the Commission and commenters have taken into account developments in the fund industry since the rule was originally adopted. Registered investment companies manage considerably more assets today than they did in 2001 (with this amount nearly quadrupling), and the number of registered investment companies has

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[25] *See* Comment Letter of Amalgamated Financial Corp. (Aug. 16, 2022) ("Amalgamated Comment Letter").

[26] *See, e.g.*, Consumer Federation of America Comment Letter (stating that "significant gaps and loopholes" exist in the current rule); Center for American Progress Comment Letter; *see also infra* section IV.D (estimating that approximately 62% of funds have names that implicate the current 80% investment policy requirement).

[27] *See, e.g.*, NASAA Comment Letter; Comment Letter of the Environmental Defense Fund (Aug. 16, 2022) ("Environmental Defense Fund Comment Letter").

[28] *See* Proposing Release, *supra* footnote 2, at section I.B; *see also, e.g.*, ICI Comment Letter; Comment Letter of J.P. Morgan Asset Management (Aug. 16, 2022) ("J.P. Morgan Asset Management Comment Letter").

also increased—by close to 20%—in the two decades following the names rule's adoption.[29] Similarly, over this time period, it has become more likely that retail investors access the markets through registered investment companies than through direct ownership of stocks and bonds.[30] Although the increase in the number of registered investment companies is modest compared to the increase in registered investment companies' assets under management, the number of funds tells only part of the story about the breadth of fund investment options currently available. The range of fund investment strategies has become notably more diverse over the past two decades.[31]

For example, the number of equity mutual funds and exchange-traded funds ("ETFs") that are sector funds (*e.g.*, consumer, financial, utilities) increased by nearly 70% from 2001 to 2021.[32] Mutual fund and ETF assets in "thematic" strategies have surged over the past three years, with data from Morningstar Direct identifying a record 589 thematic mutual funds and

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29 *See* Investment Company Institute, 2022 Fact Book (2022) ("2022 ICI Fact Book"), *available at* https://www.icifactbook.org/pdf/2022_factbook.pdf. In 2001, there were 8,860 registered open-end and closed-end management investment companies, representing approximately $7.15 trillion in assets under management. In 2021, there were 10,450 registered open-end and closed-end management investment companies, representing approximately $28.2 trillion in assets under management. *See also* Fund Industry Overview at *infra* section IV.C.1 (discussing fund industry statistics as of Dec. 2022).

30 *See* Federal Reserve Bulletin, Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances (Sept. 2020), *available at* https://www.federalreserve.gov/publications/files/scf20.pdf; Federal Reserve Bulletin, Recent Changes in U.S. Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances, *available at* https://www.federalreserve.gov/econres/files/2001_bull0103.pdf. The percentage of U.S. families holding stocks and bonds directly decreased from 24.9% in 1992 to 16.3% in 2019. The percentage of U.S. families holding pooled investment funds and retirement accounts (including individual retirement accounts, Keogh accounts, and certain employer-sponsored accounts such as 401(k) and 403(b) accounts) increased from 33.3% in 1992 to 59.5% in 2019. Mutual funds made up a significant portion of defined contribution plan assets (58%) and IRA assets (45%) at year-end 2021. In addition, the share of defined contribution plan assets held in mutual funds has grown over the past two decades, from 44% at year-end 2001 to 58% at year-end 2021. *See* 2022 ICI Fact Book.

31 *See* Proposing Release, *supra* footnote 2, at nn.21-22 at accompanying text.

32 *See* 2022 ICI Fact Book, *supra* footnote 29. In 2001, there were 452 sector equity mutual funds and ETFs; in 2021, there were 757.

ETFs debuting globally in 2021.[33] As of December 2022, Morningstar data categorized 334 domestic funds (including mutual funds, ETFs, and registered closed-end funds) as thematic funds, comprising 4 "broad themes" (broad thematic, physical world, social, and technology), 27 "themes" (*e.g.*, artificial intelligence and big data, food, space, and wellness), and 150 "subthemes" (*e.g.*, health innovation, next gen auto, millennials and "Generation Z," cannabis, robotics, and travel/tourism).[34] While fund managers and others understand certain of these thematic names to be included in the current scope of the names rule, there can be questions about whether certain thematic terms suggest a focus in a particular type of investment, or in investments in a particular industry or group of industries. As fund managers have incentives to include "buzzwords" in their names to attract assets, and the current market for funds includes a substantially broader variety of names suggesting a particular focus than two decades ago, a rule providing specific requirements to address deceptive and misleading fund names for any fund name that suggests a particular investment focus is even more relevant now than it was when it was adopted.[35]

Funds that consider ESG factors in their investment strategies comprise a thematic area that entails unique considerations, and that involves the use of terminology that may be especially powerful in fund names to attract investors. The use of ESG or similar terminology

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33 *See* Sonya Swink, *Thematic Assets Have Surged – And Are Here to Stay*, Ignites (Dec. 22, 2022), *available at* https://www.ignites.com/c/3870954/500734/thematic_assets_have_surged_here_stay?referrer_module=issueHeadline&module_order=1. These strategies are dominated by technology-related themes, such as internet, blockchain, cloud computing, and cybersecurity (based on staff analysis of data obtained from Morningstar Direct as of Dec. 15, 2022).

34 *Id.*

35 *See supra* footnote 12; *see also* NASAA Comment Letter (discussing the application of the names rule to names suggesting a focus on "trendy 'thematic areas,' . . . including cybersecurity, blockchain/digital assets, and artificial intelligence").

(such as "sustainable," "green," or "socially responsible") in fund names may present particular investor protection concerns for several reasons. Investor interest in—and funds that offer—ESG strategies have rapidly increased in recent years.[36] Asset managers have created and marketed funds that consider ESG factors in their selection process, and these funds can attract significant interest and stand out to investors by using ESG and related terms in their names. Approaches to ESG investing vary, however, and funds that consider ESG factors have strategies that vary in the extent to which ESG factors are considered versus other factors. The breadth of ESG-related terms, as well as evolving investor expectations around terms like "sustainable" or "socially responsible," compound the possibility of investor confusion and potential "greenwashing" in fund names.[37]

In consideration of the broad public input the Commission has received on fund names, our analysis of this input, the Commission and staff's experience with the names rule over the past two decades, developments in the fund industry, and the growth of the fund industry and families' investments in funds during this time period, we are adopting amendments to the names

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[36] *See* Proposing Release, *supra* footnote 2, at n.120 and accompanying text. *See also*, *e.g.*, Letter from Morningstar to Chair Gary Gensler (June 9, 2021) attaching, *Sustainable Funds U.S. Landscape Report --- More funds, more flows, and impressive returns in 2020*, Morningstar Manager Research (Feb. 10, 2021), *available at* https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf; *ESG in 2021 So Far: An Update*, M. Gerber, G. Norman, and S. Toms, Harvard Law School Forum on Corporate Governance (Sept. 18, 2021), *available at* http://corpgov.law.harvard.edu/2021/09/18/esg-in-2021-so-far-an-update/; *ESG assets may hit $53 trillion by 2025, a third of global AUM,* Bloomberg Intelligence (Feb. 23, 2021), *available at* https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/; Amalgamated Comment Letter, NASAA Comment Letter, U.S. SIF Comment Letter, CFA Institute Comment Letter (all discussing investor interest in funds with ESG strategies and names).

[37] "Greenwashing" involves the risk that funds marketing ESG strategies may exaggerate their ESG practices or the extent to which their investment products take into account ESG factors. *See, e.g.*, Comment Letter of Public Citizen (Aug. 15, 2022) ("Public Citizen Comment Letter") (discussing evolving investor expectations around ESG terms). *But see* Robertson-Fisch Comment Letter ("interrogating the concept of greenwashing" and comparing the portfolios of funds with ESG terminology in their names to the portfolios of "sister funds" – "the non-ESG fund in the same fund family most comparable to the ESG fund" – with the authors concluding that little evidence of greenwashing exists).

rule (and related disclosure and reporting requirements) to modernize the rule and to enhance the investor protections it currently provides. First, it is in investors' interests to align the rule's scope and requirements better with the policies and purposes underlying the rule. The Commission has stated that the 80% investment policy requirement "will provide an investor greater assurance that a [fund's] investments will be consistent with its name."[38] This requirement addresses circumstances in which a fund's name may be materially deceptive or misleading, in exercise of the Commission's rulemaking authority under section 35(d). The amendments we are adopting address fund names that are not currently within the scope of the rule, or where the current scope of the rule has created interpretive issues.[39] These names may entail a capacity to deceive or mislead because they suggest a particular investment focus, which in turn offers an important signal, or entry point, to investors that are researching their investment options.[40] For these names—like the names currently within the rule's scope—the 80% investment policy requirement would provide investors greater assurance that these funds' investments are consistent with the manner in which a fund defines the terms in its name, which must be consistent with plain English or established industry use and disclosed in its prospectus. We therefore anticipate that including these names in the names rule's scope will bring more

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38 *See* 2001 Names Rule Adopting Release, *supra* footnote 8.

39 For example, the Commission has previously taken the position that fund names that incorporate terms such as "growth" and "value" connote an investment objective, strategy, or policy (*i.e.*, "investment strategies") and are therefore not within the scope of the 80% investment policy requirement. This has resulted in some fund names being excluded from this requirement because the name contains a term suggesting an investment strategy, even if the name also suggests an investment focus to investors. *See* Proposing Release, *supra* footnote 2, at paragraph accompanying n.23; *see also infra* section II.A.1.

40 *See* In the Matter of the Private Investment Fund for Governmental Personnel, Inc., Investment Company Act Release No. 2474 (Jan. 18, 1957) (the Commission has historically expressed that, in considering whether a name is deceptive or misleading, "[a]ctual deception of investors need not be shown, it is sufficient if the name of the company is found to have a tendency or capacity to deceive or mislead").

discipline to fund naming practices and more meaningful names that convey the funds' investment focuses, while allowing funds the flexibility to ascribe reasonable definitions for the terms used in their names.[41] That is, the decision to include terms in a fund's name that suggest an investment focus, including a focus in investments that have or whose issuers have particular characteristics, will now require the fund to adopt an 80% investment policy and to define the terms used it its name.[42]

Similarly, these amendments are designed to promote greater specificity in the operation of funds' 80% investment policies to enhance investor protection by helping to ensure that funds' names are not misleading as their portfolios may shift over time—either because of inadvertent portfolio "drift" or intentional departures from the 80% requirement.[43] When an investor chooses to invest in a fund, that person has made an intentional decision to invest in, for example, the type of asset class, industry, or sector in which the fund's name suggests an investment focus. That investor has a reasonable expectation that the fund's investments will generally remain focused in the area that the fund's name indicates.[44] We appreciate, however, that a naming rule that requires unwavering adherence to a particular investment threshold risks harming funds and

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41 *See* NASAA Comment Letter; *see also* CFA Institute Comment Letter. *But see, e.g.*, *infra* footnote 75 and accompanying text.

42 *See infra* sections II.A.1 and II.B.

43 *See, e.g.*, Consumer Federation of America Comment Letter (discussing the risk of funds changing their portfolios such that the portfolios are no longer accurately reflected by the funds' names).

44 *See, e.g.*, Center for American Progress Comment Letter (stating that investors' expectations and investment practices often assume that investments in a fund will remain consistent with the name over the longer term, and investors who wish to change their own mix of investments typically do so by changing funds).

investors.[45] This rigidity ultimately could result in investor harm if portfolio managers were not permitted to depart from their 80% investment policy for a limited time to manage their funds appropriately in response to changing circumstances.[46] The amended rule enhances investor protection by requiring funds to conduct at least quarterly reviews of their portfolio investments for consistency with the 80% investment policy requirement, and by adopting time frames to remedy departures from 80% that seek to balance investors' reasonable expectations with appropriate flexibility for advisers, consistent with their fiduciary duty, to manage funds' portfolios.

Our disclosure and reporting framework can provide additional tools, in connection with technological developments over the past two decades, to augment investors' and other market participants' understanding of fund names and to increase transparency of how a fund's investment portfolio reflects the investment focus that its name suggests. In the years since the names rule was adopted, the Commission has adopted requirements to modernize reporting requirements for registered investment companies, which build on significant advances in the technology that can be used to report and analyze information—namely, the use of structured data language.[47] We recognize that there are many types of fund names for which understanding additional detail about how name terms are defined, and about the types of investments that the

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45 *See, e.g.*, ICI Comment Letter; J.P. Morgan Asset Management Comment Letter; Comment Letter of Dimensional Fund Advisors LP (Aug. 16, 2022) ("Dimensional Comment Letter"); Comment Letter of Dechert LLP (Aug. 16, 2022) ("Dechert Comment Letter"); *see also infra* section II.A.2.

46 *See, e.g.*, SIFMA AMG Comment Letter; T. Rowe Comment Letter.

47 Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] ("Investment Company Reporting Modernization Adopting Release"); *see also* Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)]; Proposing Release, *supra* footnote 2, at n.115 and accompanying text (generally discussing rules requiring funds registering on Forms N-1A and N-2 to submit certain information using Inline XBRL format).

term describes, would provide greater clarity to an investor about the fund's investment focus. This may be helpful if, for example, fund names that incorporate terms that may reflect new themes or technologies become more prevalent. The final rules' enhanced prospectus disclosure and reporting provisions, which require information to be disclosed in structured data language, are designed to address this goal.

Finally, we are incorporating certain updates to the names rule to address industry and technological developments over the past two decades, and to address names-rule-related recordkeeping.

C. Overview of the Final Rules

1. Final Rules' Principal Elements

We are adopting amendments to the names rule, as well as related disclosure and reporting requirements, in consideration of the issues discussed above.

- *Expansion of Scope.* We are adopting, substantially as proposed, amendments to the names rule that expand the rule's 80% investment policy requirement beyond its current scope, to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. This coverage will include, for example, fund names with terms such as "growth" or "value," or terms indicating that the fund's investment decisions incorporate one or more ESG factors. These names will be added to the names that are currently within the scope of the 80% investment policy requirement—that is, generally, fund names that suggest a focus in a particular type of investment, or investments in a particular industry or geographic focus, and fund names suggesting that a fund's distributions are tax-exempt.

- *Temporary Departures from the 80% Investment Requirement*. In a change from the proposal, under which funds would have been permitted to depart from the fund's 80% investment policy only under certain specified circumstances, the final amendments retain the names rule's current requirements for a fund to invest in accordance with its 80% investment policy "under normal circumstances" (the "80% investment requirement"), and for the 80% investment requirement to apply at the time a fund invests its assets. Also, in a change from the proposal, the final amendments add a new provision that requires a fund to review its portfolio assets' inclusion in its "80% basket" at least quarterly.[48] Like the proposal, the final amendments include specific time frames—generally 90 days, as opposed to 30 days as proposed—for getting back into compliance if a fund departs from the 80% requirement as a result of drift or in other-than-normal circumstances.

- *Derivatives*. Consistent with the proposal, the final amendments generally require funds to use a derivatives instrument's notional amount to determine the fund's compliance with its 80% investment policy, with certain adjustments. In a change from the proposal, the final amendments include a limited modification to this approach that would exclude certain currency hedges from the names rule compliance calculation. As proposed, we are also amending the names rule to address the derivatives instruments that a fund may include in its 80% basket.

- *Unlisted Registered Closed-End Funds and BDCs*. Consistent with the proposal, the final amendments generally prohibit an unlisted registered closed-end fund or BDC that is required to adopt an 80% investment policy from changing that policy without a shareholder

[48] *See* final rule 35d-1(g) (defining "80% basket" generally as investments that are invested in accordance with the investment focus that the fund's name suggests).

vote. In a modification from the proposal, the final amendments permit these funds to change their 80% investment policies without such a vote if: (1) the fund conducts a tender or repurchase offer with at least 60 days' prior notice of the policy change, (2) that offer is not oversubscribed, and (3) the fund purchases shares at their net asset value.[49]

- *Enhanced Prospectus Disclosure*. Substantially as proposed, we are adopting amendments to funds' prospectus disclosure requirements that will require a fund to define the terms used in its name, including the criteria the fund uses to select the investments that the term describes.

- *Plain English Requirements for Terms Used in Fund Names*. The final amendments to the names rule, as proposed, effectively require that any terms used in the fund's name that suggest either 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.

- *Form N-PORT Reporting Requirements*. Consistent with the proposal, we are adopting amendments to Form N-PORT for funds to report the value of the fund's 80% basket, and whether an investment is included in the fund's 80% basket. In a change from the proposal, the final amendments also include a new reporting item to include the definition(s) of terms used in the fund's name. Funds will have to report this information for the third month of every quarter, instead of for each month as proposed.

- *Recordkeeping*. Consistent with the proposal (but with conforming changes to address the final rules' approach to temporary departures from the 80% investment requirement),

[49] *See infra* footnote 292 (discussing the use of net asset value in the event of a tender offer, as well as a repurchase offer).

the final rules include recordkeeping provisions related to a fund's compliance with the rule's requirements. The final rules do not, however, include the proposed requirement for funds that do not adopt an 80% investment policy to maintain a record of their analysis that such a policy is not required.

2. Other Aspects of the Proposal

We are not taking action on the proposed approach regarding the use of ESG terms in the names of ESG "integration funds" at this time. Under the proposed approach, the names of ESG "integration funds" would have been defined as materially deceptive and misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors.[50] Under the proposal, integration funds were described as funds that consider one or more ESG factors alongside other, non-ESG factors in the fund's 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. Such funds may select investments because those investments would meet other criteria applied by the fund's adviser (*e.g.*, investments selected on the basis of macroeconomic trends or company-specific factors like price-to-earnings ratio). This description of integration funds in the names rule proposal mirrored the definition of an integration fund in the Commission's ESG Disclosure Proposal.[51]

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[50] Proposed rule 35d-1(d).

[51] *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Investment Company Act Release No. 34594 (May 25, 2022) [87 FR 36654 (June 17, 2022)] ("ESG Disclosure Proposal"), at section II.A.1.

The proposed approach to integration funds in the names rule was designed to target misleading fund names by making clear that it would be materially misleading for a fund for which ESG factors are generally no more significant than other factors in the investment selection process to include ESG terminology in its name. The proposed approach would have addressed the Commission's concern that such funds have the potential to overstate the importance of ESG factors in the fund's investment selection process.[52]

Commenters offered mixed feedback on the names rule's proposed approach to integration fund names. Some commenters that supported the proposed approach stated that it would help prevent investors from believing that ESG factors play a more significant role than they actually do in the investment process – *i.e.*, protect investors from greenwashing.[53] Other commenters, however, questioned the Commission's proposed approach, stating that the proposed approach could act as a disservice to investors because, for example, it could result in investors believing that integration funds do not consider ESG factors when they actually do, or that the proposed approach could hinder innovation.[54] Because the proposed provision in the names rule mirrored the separate proposed definition of an integration fund in the ESG Disclosure Proposal, we are continuing to consider comments and are not adopting the proposed

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[52] *See* Proposing Release, *supra* footnote 2, at section II.D.

[53] *See, e.g.*, Comment Letter of Ceres (Aug. 16, 2022) ("Ceres Comment Letter"); Consumer Federation of America Comment Letter; Comment Letter of Evergreen Action (Aug. 15, 2022) ("Evergreen Action Comment Letter").

[54] *See, e.g.*, Cato Institute Comment Letter; Comment Letter of Mutual Fund Directors Forum (Aug. 16, 2022) ("MFDF Comment Letter") (suggesting that the marketplace has been dynamic in developing different approaches to bringing an ESG lens to various investment strategies, and that the proposed rule, as the commenter understood it to largely limit the use of ESG terms in fund names to funds that use inclusionary or exclusionary screens (as well as to funds that employ impact or proxy-voting strategies), risks hindering further innovation in the fund space as ESG strategies continue to evolve); Comment Letter of Minerva Analytics (Aug. 16, 2022) ("Minerva Comment Letter").

approach to integration fund names at this time. As discussed above, however, the final amendments' expanded scope of the 80% investment policy requirement includes fund names with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics—including terms indicating that the fund's investment decisions incorporate one or more ESG factors.[55]

II. DISCUSSION

A. 80% Investment Policy Requirement

1. Names Suggesting an Investment Focus

Consistent with the proposal, we are adopting amendments that broaden the scope of the names rule's 80% investment policy requirement to apply also to fund names that include terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics.[56] These amendments will apply in addition to the existing 80% investment policy requirement for funds whose name suggests a focus in a particular type of investment, industry, country, or geographic region, or those whose name suggests certain tax treatment. The purpose of the names rule is to prevent fund names from misrepresenting the fund's investments and risks.[57] The expanded scope of the final amendments furthers this objective by ensuring that a fund's investment activity is consistent with the investment focus its name communicates.

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[55] *See supra* section I.C.1; *see also* final rule 35d-1(a)(2).

[56] As used in this release, consistent with rule 35d-1(a)(2), "investment focus" means a focus 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.

[57] *See* Proposing Release, *supra* footnote 2, at n.5 and accompanying text.

a) General Discussion

The Commission proposed to expand the 80% investment policy requirement to apply to fund names that include terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics, whether or not such terms connote an investment strategy. In response to the proposal, commenters expressed that the names rule, as currently constituted, fails to capture a large segment of funds because the rule makes a distinction between terms that reference a type of investment and an investment strategy.[58] These commenters supported the proposed scope expansion, asserting that terms in fund names that reference an investment strategy often communicate to investors an investment focus, thus creating a reasonable expectation among investors that the fund will hold investments that support that focus.[59] These commenters suggested that expanding the scope of the rule to include any term in a fund's name that communicates an investment focus, whether or not that term references an investment strategy, is necessary to modernize the rule and is a logical step to help ensure that investment companies cannot circumvent the intent of the rule when naming funds.[60] Some commenters also asserted that the proposed expansion of the scope would bring more "discipline and clarity" to fund naming practices and, in turn, help investors make more informed

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58 *See*, *e.g.*, Consumer Federation of America Comment Letter; Center for American Progress Comment Letter; NASAA Comment Letter; *see also* Proposing Release, *supra* footnote 2, at n.23 and accompanying text (discussing that the Commission has historically taken the position that fund names that incorporate terms that connote an investment objective, strategy, or policy are not within the scope of the 80% investment policy requirement).

59 *See*, *e.g.*, NASAA Comment Letter; Comment Letter of Principles for Responsible Investment (Aug. 16, 2022); ("PRI Comment Letter"); Comment Letter of Soundboard Governance (Aug. 16, 2022) ("Soundboard Governance Comment Letter") (focusing particularly on the inclusion of ESG-related terms in the proposed scope expansion).

60 *See*, *e.g.*, Consumer Federation of America Comment Letter; Center for American Progress Comment Letter.

investment decisions.[61] In particular, many commenters asserted that the expanded scope would improve the ability of investors to discern between funds in the ESG investment industry and better protect investors looking for exposure to ESG investments.[62] In addition, one commenter suggested that the Commission provide more clarity on whether the expanded scope would cover names suggesting a focus on "thematic" areas."[63]

In contrast, many commenters objected to the proposal because, in their view, the expansion of the 80% investment policy requirement would lead to interpretive challenges and added compliance costs for fund advisers without providing commensurate benefit to investors.[64] In particular, they stated that the expanded scope incorporates a vague standard that is more subjective than the current scope of the names rule which, in contrast with the proposal, they believed applies a more objective and intuitive framework that sufficiently ensures that fund assets are invested in accordance with reasonable expectations based on a fund's name.[65] They

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[61] *See* NASAA Comment Letter; Better Markets Comment Letter; Consumer Federation of America Comment Letter.

[62] *See*, *e.g.*, Comment Letter of Sierra Club (Aug. 16, 2022) ("Sierra Club Comment Letter"); Better Markets Comment Letter; Evergreen Action Comment Letter.

[63] *See* NASAA Comment Letter (expressing that funds with names that suggest a focus on "trendy" thematic areas in particular should be required to adopt an 80% investment policy and stating that investors, funds, and regulators would "be well served by greater clarity" on whether the proposed expansion would thematic fund names); *see also* Comment Letter of Seward & Kissel LLP (Aug. 16, 2022) ("Seward & Kissel Comment Letter") (stating that that the tension between words suggesting a "type of investment" versus those suggesting an "investment strategy" has resulted in the [names rule] being inconsistently applied, especially with respect to funds using thematic strategies.").

[64] *See*, *e.g.*, Comment Letter of Stradley Ronon (Aug. 16, 2022) ("Stradley Comment Letter"); SIFMA AMG Comment Letter; TIAA-Nuveen Comment Letter; Comment Letter of Calamos Investments (Aug. 16, 2022) ("Calamos Comment Letter").

[65] *See*, *e.g.*, Calamos Comment Letter; Invesco Comment Letter; Comment Letter of Federated Hermes, Inc. (Aug. 16, 2022) ("Federated Hermes Comment Letter"); MFS Comment Letter; Comment Letter of Nationwide Funds Group (Aug. 16, 2022) ("Nationwide Comment Letter"); Robertson-Fisch Comment Letter (discussing these points in the context of ESG funds); T. Rowe Comment Letter; *see also* PRI Comment Letter (supporting the proposed scope expansion, but requesting that the Commission provide a definition of "characteristics" in the proposed language expanding the scope).

questioned whether the names included in the expanded scope effectively communicate any real investment focus to investors, absent further information about a fund's objectives.[66] Because these names are vague, they asserted, investors would still need to review a fund's disclosures to understand how the investment strategy is executed for these newly included terms, limiting the value of the rule.[67] These commenters contended that the proposed expansion of the 80% investment policy requirement has limited investor protection benefits because it overemphasizes the importance of a fund's name, and thus disincentivizes investors from looking beyond the name to review information in fund prospectuses and related disclosures.[68] In addition, several commenters questioned whether the Commission adequately articulated how terms that would be included in the proposed scope have led to investor confusion, deception, or harm such that they should be subject to the rule.[69]

Commenters also suggested that this vagueness would result in the costs of implementation of the proposed amendments being high relative to what they stated would be minimal value to investors. Commenters stated that interpretive issues relating to the proposed scope's vagueness would result in a number of adverse consequences, including inconsistent application of the 80% investment policy requirement, uncertainty in determining whether a term

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66 *See*, *e.g.*, MFS Comment Letter; ICI Comment Letter; Capital Group Comment Letter; Cato Institute Comment Letter.

67 *See* SIFMA AMG Comment Letter; ICI Comment Letter (comparing the uniformity of an 80% investment policy for funds with "equity" in their name to the potential inconsistency in 80% investment policies for funds with "growth" in their name).

68 *See*, *e.g.*, MFS Comment Letter; Capital Group Comment Letter; Cato Institute Comment Letter.

69 *See*, *e.g.,* Comment Letter of WisdomTree Asset Management (Aug. 16, 2022) ("WisdomTree Comment Letter"); SIFMA AMG Comment Letter; Invesco Comment Letter; Dechert Comment Letter. Commenters also pointed to the lack of enforcement cases charging rule 35d-1 or shareholder suits in this area as a reason to not expand the scope. *See*, *e.g.*, Nationwide Comment Letter; Capital Group Comment Letter; ICI Comment Letter IV.

suggests a particular investment focus, and, where a fund has adopted an 80% investment policy, whether a particular investment is consistent with that policy.[70] Commenters also suggested that it would be challenging to establish automated compliance monitoring solutions for terms in fund names where subjective criteria are part of the decision-making process.[71] As a result, commenters expressed that funds would need either to require portfolio managers to adhere to specific rigid criteria, stifling innovative investment strategies, or to engage in some level of manual review, significantly increasing the complexity and compliance burdens for funds.[72] Commenters also raised concerns that, for funds that would be within the scope of the 80% investment policy requirement, a portfolio manager's expectations with respect to investments that would qualify for inclusion in the 80% basket may ultimately prove wrong or change over time, which could make compliance with the names rule challenging.[73] Relatedly, commenters expressed the concern that the expanded scope could lead to retroactive second-guessing of portfolio managers' designations of investments by Commission staff.[74] To avoid these

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70 *See*, *e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; Invesco Comment Letter; Dechert Comment Letter; Comment Letter of Fidelity Management & Research Company LLC (Aug. 16, 2022) ("Fidelity Comment Letter"); Ceres Comment Letter.

71 *See, e.g.,* ICI Comment Letter; T. Rowe Comment Letter; SIFMA AMG Comment Letter; Invesco Comment Letter. Scalable and automatic compliance monitoring systems typically rely on third-party data providers to tag investments but such providers could vary their classification of investments and may not use the same classification as the fund. *See*, *e.g.*, Comment Letter of Freeman Capital Management (July 24, 2022) ("Freeman Capital Management Comment Letter"); Invesco Comment Letter; T. Rowe Comment Letter.

72 *See, e.g.,* Dechert Comment Letter; Invesco Comment Letter; TIAA-Nuveen Comment Letter; J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter; Wellington Comment Letter; ICI Comment Letter; Invesco Comment Letter; Freeman Capital Management Comment Letter.

73 *See, e.g.*, SIFMA AMG Comment Letter; Fidelity Comment Letter; J.P. Morgan Asset Management Comment Letter; Stradley Comment Letter (stating that "'equity' and 'fixed income' investments do not change their categorization due to market declines, cycles or volatility, as compared to a value stock, that, if subjected to only objective criteria, can and does migrate from one category to another").

74 *See, e.g.*, ICI Comment Letter; Federated Hermes Comment Letter; J.P. Morgan Asset Management Comment Letter.

implementation problems, commenters suggested funds may use broader, more generic names that convey less information to investors in order to avoid adopting an 80% investment policy.[75]

Many commenters expressed particular concern with the inclusion of the terms "growth" and "value" in the proposed scope.[76] Commenters asserted that there are no precise definitions or standardized criteria used to classify these types of investments.[77] Rather, commenters expressed that portfolio managers have unique qualitative and quantitative criteria that they evaluate when selecting growth or value investments, some of which rely on more subjective determinations that may vary among portfolio managers.[78] A few commenters suggested that investors invest in certain growth or value funds because they believe in a manager's unique analysis and conclusions for selecting investments.[79] Some commenters expressed that requiring growth or value funds to define terms in their name and disclose the criteria used to select investments would lead to more rigidity in investment selection, resulting in less flexibility for managers to implement investment strategies that traditionally have been managed with more nuance.[80]

To avoid these interpretative challenges and compliance burdens, a number of commenters suggested narrowing the scope of the final rule to that of the current rule or to exclude terms that do not readily reduce to measurable characteristics, and for which evaluations,

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75 *See, e.g.*, Dechert Comment Letter; ICI Comment Letter (asserting that the proposed amendments could also incentivize longer, more complex fund names that seek to capture the full range of investments reflected in a fund's investment strategy).

76 *See*, *e.g.*, ICI Comment Letter; Dechert Comment Letter; T. Rowe Comment Letter.

77 *See*, *e.g.*, Fidelity Comment Letter; Nationwide Comment Letter; Stradley Comment Letter.

78 *See*, *e.g.*, Wellington Comment Letter; MFS Comment Letter; ICI Comment Letter.

79 *See* Stradley Comment Letter; SIFMA AMG Comment Letter.

80 *See, e.g.*, Wellington Comment Letter; Nationwide Comment Letter; Stradley Comment Letter.

opinions, and views reasonably may vary.[81] Separately, some commenters urged the Commission to require enhanced disclosure in a fund's registration statement when its name indicates an investment strategy, rather than expanding the scope to mandate an 80% investment policy for these funds.[82] Several commenters expressed that investor access to disclosures and information about funds is widespread and easily accessible, making an investor's need to rely on a fund name to evaluate the fund's strategy less necessary than when the Commission adopted the names rule.[83]

After considering comments, we are adopting, substantially as proposed, amendments that expand the rule's 80% investment policy requirement to apply to any fund with terms in its name that suggest that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. We recognize that some commenters expressed concerns about perceived vagueness associated with the "particular characteristics" language in the proposed rule.[84] The amended rule provides, as proposed, an illustrative parenthetical that is designed to give non-exclusive examples of terms that suggest that the fund focuses in investments that have,

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81 *See*, *e.g.*, ICI Comment Letter; Invesco Comment Letter; Federated Hermes Comment Letter; Dechert Comment Letter; TIAA-Nuveen Comment Letter; *see also* Calamos Comment Letter (asserting that, if the expanded scope is adopted, the Commission should consider excluding existing funds from the rule's requirements because compliance may be costly and have unanticipated effects for existing funds that are not currently subject to the rule).

82 SIFMA AMG Comment Letter; Invesco Comment Letter; Comment Letter of Calvert Research and Management (Aug. 16, 2022) ("Calvert Comment Letter"); CFA Institute Comment Letter (recommending that when a fund's name suggests an investment focus, the investment focus must be consistent with the key factors in the principal investment strategies that are disclosed in the fund's registration statement). *See also* ICI Comment Letter IV (asserting that the proposed amendments are unnecessary because existing prospectus disclosure requirements and other regulatory obligations, such as rules 482 and 156 under the Securities Act of 1933 and FINRA Rule 2210, provide a sufficient framework to ensure that fund communications are clear and not misleading).

83 *See* SIFMA AMG Comment Letter; Dechert Comment Letter; T. Rowe Comment Letter.

84 *See, e.g.*, Stradley Comment Letter; TIAA-Nuveen Comment Letter; Cato Institute Comment Letter.

or whose issuers have, particular characteristics. The parenthetical provides as examples the terms "growth" or "value," or terms indicating that the fund's investment decisions incorporate one or more ESG factors.[85] We are not defining the term "particular characteristics" in the rule, as suggested by a commenter, because we believe that this term will be adequately understood to mean any feature, quality, or attribute.[86] We are adopting this approach, rather than an approach that provides an enumerated list of terms included in the expanded scope, in light of the broad diversity of fund investment strategies and fund names, and to ensure that the rule remains evergreen. Based on our understanding of the fund industry and current practice, however, we anticipate that the primary types of names that the expanded scope will cover will be names that include the terms "growth" and "value," terms with ESG- or sustainability-related characteristics, or terms that reference a thematic investment focus.

We recognize that many commenters opposed expanding the scope of the rule, and the inclusion of terms such as "growth" and "value" in particular. While we appreciate these commenters' concerns, it is important to balance these concerns with the investor protection goals that underlie the names rule and section 35(d) of the Investment Company Act. Although there have been limited Commission enforcement cases citing section 35(d) of the Act, Commission and staff's experience with the names rule over the past two decades and developments in the fund industry during this time period, including the increase in fund assets

[85] *See infra* sections II.A.1.d) and II.D.

[86] *See supra* footnote 65.

under management and the proliferation of diverse fund strategies, lead us to modernize and enhance the names rule to further the investor protection goals of section 35(d).[87]

We are adopting amendments that do not distinguish between a type of investment and an investment strategy because a fund name might connote a particular investment focus and result in reasonable investor expectations regardless of whether the fund's name describes a strategy as opposed to a type of investment. We understand that funds typically include certain terms in their name to communicate an investment focus and to appeal to investors choosing among available investment options.[88] As some commenters believed, the names included in the expanded scope can serve as the initial bases upon which investors make investment decisions and create reasonable expectations that funds that use those terms will focus on investments and issuers that have the specified characteristics that a fund's name suggests.[89] For example, terms like "growth" and "value" create reasonable expectations among investors that funds with those terms in their name will invest predominantly in companies that exhibit "growth" or "value" characteristics. By expanding the scope of the 80% investment requirement to include these names, the final amendments will help ensure that these types of funds have portfolios that reflect the investment focus their name suggests. Further, the expanded scope in the final

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[87] *See infra* at footnote 494 and accompanying text (asserting that the lack of Commission enforcement actions citing section 35(d) of the Act is evidence that the general framework of the rule is effective, not that further enhancements to the rule are unnecessary).

[88] For example, funds have increasingly chosen names that include terms that reference popular industry themes, business sectors, or investment strategies. *See supra* footnote 33 and accompanying text (discussing the increase in filings over the last few years by funds with names that reference popular industry themes and business sectors, providing some evidence that investors are attracted to these fund names). *See also supra* footnote 36 (suggesting that ESG terminology in fund names is effective in attracting inflows).

[89] *See* NASAA Comment Letter; Consumer Federation of America Comment Letter; PIABA Comment Letter.

amendments will reduce the existing inconsistencies in the application of the rule by eliminating the need for fund managers to determine whether their name references a type of investment or an investment strategy.

The Commission staff has observed an increase in filings by funds that use "thematic" terms in their name.[90] We understand that fund managers and others would consider certain of these thematic names to be included in the current scope of the names rule. For instance, certain terms may be viewed as clearly suggesting a focus in a type of industry or group of industries (*e.g.*, terms suggesting a focus in cybersecurity, health and wellness, or travel and tourism).[91] There could be reasonable questions, however, about whether other thematic terms suggest a focus in a particular type of investment, or in investments in a particular industry or group of industries. This could occur, for example, because a thematic term may be narrower or more expansive than an "industry" may be commonly understood (*e.g.*, drones, "smart cities," metaverse, "big data"). And there are certain thematic terms that we believe most practitioners would not consider to suggest a focus in a type of investment, or a focus in a particular industry or group of industries (*e.g.*, terms suggesting demographic characteristics such as "millennial" or "Gen Z," or political, economic, or historical themes such as "biothreat," "gig economy," "meme stocks," or "post-Corona"). The effect of the scope of the final amendments is that, to the extent a fund uses a term in its name that suggests an investment focus, including any term that

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[90] *See supra* footnote 33 and accompanying text.

[91] In cases where certain terms that suggest a focus in a type of industry have been coupled with the word "strategy," some funds have argued that the name suggests a focus in an investment strategy and not a type of investment, and therefore should not be within the scope of the 80% investment policy requirement. As discussed above, the expansion of the scope of the 80% investment policy requirement includes terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics, whether or not such terms connote an investment strategy.

references a thematic investment focus, the fund will be required to adopt an 80% investment policy, which in turn will help ensure it will invest in accordance with the investment focus its name suggests.

We understand that certain terms used in fund names may have more objective or standardized criteria than other terms. For instance the term "equity" generally has a more standardized definition, whether based on plain English principles or established industry use, compared to terms like "growth" and "value." However, not all names that fall within the scope of the current rule have precise definitions or standardized, objective criteria. For instance, for fund names that reference a particular region or country, it is often not immediately apparent based on the terms in a fund's name whether the fund invests in issuers that are domiciled in the specific region, have a large presence in the region, or have some other nexus to the region. An investor may generally understand what constitutes "Latin America," and seek out a "Latin American" fund, but different portfolio managers may apply different definitions of what specifically "Latin America" means in practice for their fund because definitions of "Latin America," using plain English or industry use of the term, can reasonably differ.

This variation is evident based on the principal investment strategies disclosed in fund prospectuses. For example, a "Latin America" fund offered by one adviser has an 80% investment policy to invest in securities of issuers that derive at least 50% of revenue from Latin American markets (defined to include Spanish-speaking islands in the Caribbean), without consideration of the issuers' domicile, headquarters, or primary trading market. In contrast, another "Latin America" fund managed by a different adviser has a policy to invest at least 80% in securities of issuers that are domiciled in Latin America (defined to exclude Mexico and Caribbean islands), that derive significant revenues from Latin America, or the securities trade

on exchanges located in Latin America. Each of these examples is consistent with the plain English or industry use of the term and demonstrates the flexibility the final amendments will provide to fund managers in developing definitions of the terms used in a fund's name. Moreover, given the proliferation of the diversity of fund investment strategies and fund names since the rule was originally adopted, retaining the current rule's scope or excluding terms that do not always neatly reduce to measurable characteristics, as suggested by commenters, would undermine the investor protection purposes of the rule.

The final rule also is not as rigid as many commenters seem to contend when, for example, they suggested that a rule that requires pre-determined definitions of certain terms could lead to retroactive second-guessing by Commission staff and result in funds adopting more generic names or could create incentives for longer, more complex names. The amended rule provides fund managers with flexibility to ascribe reasonable definitions for the terms used in a fund's name and flexibility to determine the specific criteria the fund uses to select the investments that the term describes.[92] We understand that different funds and various third-party data providers may use different definitions for the same term in order to best reflect a particular investment strategy. The amended rule is designed for funds to retain reasonable discretion in establishing their 80% investment policies, which allows funds to implement nuanced and innovative investment strategies.[93] We also appreciate, for many terms, there will be various

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92 *See infra* section II.C. This flexibility also means a fund would not be required to include proprietary information in its 80% investment policy. *See* Stradley Comment Letter (asserting that providing meaningful distinctions among funds may require over-disclosing the criteria used to select investments, which investment advisers may be hesitant to provide to avoid giving away proprietary information).

93 As a result of this flexibility, we disagree with commenters that asserted that the expanded scope would effectively penalize funds that invest in a security that initially displays particular characteristics but where

reasonable means of implementing an 80% investment policy that incorporates a definition or understanding of terminology that differs from another fund whose name incorporates the same terminology. For example, different funds may have "growth" in their name, and each of these funds may have portfolio managers who have different approaches to selecting investments that have growth characteristics. In such circumstances, two funds would naturally have different policies that reflect their portfolio managers' distinct approaches to growth investing. In this example, each of these funds would describe to investors how it defines "growth," provided the definitions are consistent with the term's plain English meaning or established industry use, and then invest 80% of their investments in accordance with their description.[94]

In addition, we understand that the expansion of the rule's scope will involve operational costs for many funds, particularly those that are not currently subject to the rule.[95] In a modification from the proposal, however, the amended rule will no longer require a fund to re-assess its portfolio investments continuously to determine compliance with its 80% investment policy, but will instead require reassessment of each portfolio investment on an at-least quarterly basis.[96] This modification will address concerns commenters raised related to cost burdens associated with the proposed scope expansion, to the extent that those concerns largely related to

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those characteristics evolve over time. *See supra* footnote 73. However, to the extent that a fund identifies as part of the final rule's quarterly review requirement that the characteristics of an existing investment in the fund's portfolio are inconsistent with the fund's 80% investment policy as a result of, for example, market declines, cycles, or volatility, the fund must address this in accordance with the rule's requirements for temporary departures from the 80% investment requirement. *See infra* footnote 185 and accompanying paragraph; *see also* section II.E.1.

94 *See also infra* paragraph accompanying footnotes 153-154; *infra* paragraph accompanying footnotes 357-358.

95 *See infra* sections IV and V.

96 *See infra* section II.A.2.

the costs of continuous monitoring and assessment of a fund's 80% investment policy.[97] Moreover, considering that not all terms that fall within the scope of the current rule have standardized and objective definitions (*e.g*., "Latin America" funds as discussed above), existing compliance monitoring for these funds likely necessitates some form of manual review to ensure that investments are consistent with the manner in which the fund defines a given term. The assessment that funds would have to undertake to ensure that portfolio investments are consistent with their 80% investment policies under the final rules would entail this same aspect of current fund practices.[98]

The final amendments' approach, which combines an expanded 80% investment policy requirement with additional disclosure and reporting requirements, reflects that certain terms used in a fund's name can simultaneously communicate an investment focus while also reflecting nuance that should be further discerned after reviewing the fund's prospectus disclosure.[99] The Commission has historically encouraged investors to look beyond a fund's name and to review a fund's underlying disclosures to gather information about the fund's investment activity and objectives, and we continue to encourage this.[100] We understand that such disclosures are easily accessible for most investors and that the current regulatory framework is designed to help ensure that fund disclosures, marketing materials, and other communications are clear, informative, and not misleading. We agree, however, with

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[97] *See infra* section IV.D.2.

[98] *See infra* section II.A.2.a) (discussing compliance monitoring and portfolio investment assessment and re-assessment requirements under the final amendments and how these requirements compare to current names rule requirements).

[99] *See infra* sections II.B and II.E.

[100] *See supra* footnote 9.

commenters who stated that, despite this accessibility, fund names can play a critical role in investment decisions. Congress provided the Commission with rulemaking authority to address materially deceptive or misleading fund names, recognizing the concern that investors may focus on a fund's name and what it communicates about the fund's investments and risks despite the information included in fund prospectuses and related disclosures.[101] Accordingly, the final amendments require funds that use terms that communicate an investment focus to adopt an 80% investment policy, in furtherance of the investor protection objectives of the names rule, to provide greater assurance that a fund's investments will be consistent with its name.

Separately, a few commenters questioned the Commission's authority to adopt the proposed amendments under section 35(d) of the Investment Company Act.[102] For instance, one commenter asserted that the Commission lacks authority to adopt the amendments, as "[t]here is a significant difference between a name based on investors' reasonable expectations and a name that is materially deceptive or misleading."[103] Another commenter suggested that neither the current rule nor the proposed amendments are consistent with the authority that section 35(d) grants, as neither incorporates a finding by the Commission that a particular and identified word or words are materially deceptive or misleading.[104] Lastly, one commenter asserted that the proposed amendments would have associated costs and burdens, and suggested that Congress did

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101 *See supra* footnote 7.

102 *See*, *e.g.*, ICI Comment Letter; Stradley Comment Letter; Seward & Kissel Comment Letter.

103 ICI Comment Letter I; *see also* ICI Comment Letter IV (asserting that "the Commission lacks authority to adopt the [proposed amendments] under [section 35(d)]" because the proposed amendments are "too vague and ambiguous," and do not satisfy the "materiality" requirement in section 35(d)).

104 Seward & Kissel Comment Letter (stating that "[w]e think the appropriate reading of Section 35(d) is that . . . funds subject to the prohibitions of the statute (and any regulations adopted thereunder) could provide, through the notice and comment process, comments on the specific "word or words" proposed by the Commission to be deemed materially deceptive or misleading").

not intend for section 35(d) to authorize the Commission to impose significant burdens that would have a material economic impact on funds and their investors.[105]

We disagree with the views expressed by these commenters. Congress, in enacting amended section 35(d) of the Act, reaffirmed its concern that investors may focus on a fund's name to determine the fund's investments and risks, and recognized that investor protection would be improved by giving the Commission rulemaking authority to define materially deceptive or misleading fund names.[106] Before this amendment, the Commission was required to "declare by order that a particular name was misleading and, if necessary, obtain a federal court order prohibiting further use of the name."[107] In light of this "cumbersome process,"[108] Congress gave the Commission the power to act by "rule, regulation, or order."[109] Congress further gave the Commission the authority to "*define* such names or titles as are materially deceptive or misleading," not "list" or another similar word, and whether any "word or words" are materially deceptive or misleading is a determination that necessarily is made with reference to additional facts and circumstances.[110]

Relying on this authority, the Commission in 2001 adopted the names rule to "address certain investment company names that are likely to mislead an investor about a company's

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105 SIFMA AMG Comment Letter; *see also* Calamos Comment Letter.

106 2001 Names Rule Adopting Release, *supra* footnote 8, at section I.

107 *See id.* at text proceeding footnote 3.

108 S. Rep. No. 293, 104th Cong., 2d Sess. 8-9 (1996) ("Enforcing the Act entails a cumbersome process—the Commission must first find, and declare by order, that a fund's name is deceptive or misleading, and then bring an action in federal court to enjoin the use of the name").

109 15 U.S.C. 80a-34(d).

110 *Id.* (emphasis added); *see also* 80a-34(a) & (b) (making it unlawful for certain persons to "represent or imply" that a security is guaranteed or approved by the U.S. government or a bank, but not listing every specific statement that would do so).

investment emphasis," which would "guard against the use of misleading investment company names," "provide an investor greater assurance that the company's investments will be consistent with its name," and "reduce confusion."[111] Similarly here, the Commission in adopting rule amendments is exercising its authority under section 35(d) to "define," "by rule," "such names or titles as are materially deceptive or misleading" and is doing so based on consideration of the broad public input the Commission has received on fund names, our analysis of this input, the Commission and staff's experience with the names rule over the past two decades, and developments in the fund industry during this time period.[112] In the years since the Commission has adopted the names rule, it has observed certain general trends—specifically as discussed above, a significant broadening of fund investment options currently available, the growth of fund assets in sector funds and thematic strategies, and a growth in investor interest in funds with ESG strategies—that have caused us to believe that targeted action in this area is necessary.[113]

Although we acknowledge that the final amendments may impose additional costs and burdens relative to the current rule, we have made changes to the proposed amendments that have the result of mitigating the burdens associated with the final amendments compared to the proposal. The costs and burdens associated with the final amendments are carefully considered by the Commission, and such costs and burdens are justified given the investor protection objectives that underlie section 35(d) and that would be achieved through the amendments.

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111 *See id*.

112 *See supra* section I.B; *see also, e.g.*, Environmental Defense Fund Comment Letter; Comment Letter of Sierra Club (Aug. 16, 2022) ("Sierra Club Comment Letter"); Ceres Comment Letter (all discussing the proposed amendments as within the Commission's authority to define materially deceptive and misleading names under section 35(d) of the Act).

113 *See supra* footnote 33 and accompanying text.

Further, another commenter asserted that application of the proposed amendments to terms that suggest investments with particular characteristics would violate the First Amendment, as this "operates as a restriction on funds' ability to speak through their names."[114] We disagree that this aspect of the amendments violates the First Amendment. As we have explained elsewhere in this release, as Congress recognized by adopting section 35(d), fund names can provide important information to investors regarding the nature of the fund and therefore the nature of their potential investment. And names that do not necessarily fall under the existing rule can create reasonable investor expectations by suggesting a particular investment focus. The amendments adopted today will help align fund names and investor expectations by applying the 80% requirement to all names that suggest a particular investment focus, reducing the extent to which funds can choose names that are materially misleading or deceptive. Rather than barring the use of any particular name, the amendment imposes certain requirements when the name a fund has selected communicates specific and important information about the fund. Further, the amendments allow funds the flexibility to ascribe reasonable definitions for the terms used in their names.[115] The amendments are therefore appropriately tailored to serve Congress's significant interest in preventing investors from being deceived or misled.[116]

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[114] ICI Comment Letter IV.

[115] *See supra* footnote 92 and accompanying text.

[116] For similar reasons, we disagree with the commenter who asserted that certain proposed reporting requirements on Form N-PORT violate the First Amendment. ICI Comment Letter IV. These requirements do not require reporting of "subjective information on which investment managers may appropriately disagree," (*id.*) but instead provide important information to investors regarding whether and how a fund's investments align with reasonable expectations created by the fund's name and 80% investment policy.

b) Names That Do Not Suggest an Investment Focus

The 2022 Proposal acknowledged that there would continue to be fund names that would not require the fund to adopt an 80% investment policy because the names would not connote an investment focus.[117] In particular, the Commission stated that terms in a fund's name that reference characteristics of the fund's portfolio as a whole, such as a name indicating the fund seeks to achieve a certain portfolio "duration" or that the fund is "balanced," would not require the fund to adopt an 80% investment policy.[118] The Commission stated that in such cases a term may indicate a fund's objectives without communicating to investors the specific type of investments, or the particular characteristics of investments, that the fund will acquire.[119] Commenters generally agreed that such terms would not require an 80% investment policy under the proposal and that this treatment was appropriate.[120]

Many commenters, however, sought additional clarity on terms – such as "growth" and "value" – that commenters stated can reference either the characteristics of a fund's investments or the intended result of a fund's portfolio investments in the aggregate.[121] One commenter focused in particular on ESG "uplift" funds, where the fund begins with a given universe of

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117 *See* Proposing Release, *supra* footnote 2, at n.49 and accompanying text.

118 *Id*.

119 Regardless of whether a fund is required to adopt an 80% investment policy under the rule, a fund must, consistent with rule 38a-1, adopt and implement written policies and procedures reasonably designed to prevent violations of the Federal securities laws, which includes section 35(d). *Id.* at n.50 and accompanying text.

120 *See*, *e.g.*, J.P. Morgan Asset Management Comment Letter; Fidelity Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter.

121 *See*, *e.g.*, TIAA-Nuveen Comment Letter; Calamos Comment Letter; T. Rowe Comment Letter; WisdomTree Comment Letter; ICI Comment Letter (stating that "[t]erms that could refer to either a particular investment or the portfolio as a whole are *per se* not misleading or deceptive because they do not create an affirmative impression in one way or another").

investments and does not add new investments to this universe but systematically over- or underweights investments within the given universe based on ESG criteria, with the objective of achieving a more favorable ESG profile at an aggregate fund level as compared to the benchmark or investment universe, within a specific tracking error target.[122] The fund is investing on a relative basis at the portfolio level, rather than focusing its investment in companies that objectively exhibit strong ESG characteristics, and includes terms in the fund's name intended to communicate this investment approach to investors (such as ESG "Aware"). Commenters also expressed concern with the proposal's discussion of maturity-related terms that describe certain bond funds' holdings.[123] These commenters agreed with the Commission that the term duration should not require an 80% investment policy because it refers to a portfolio-wide analysis; however, they further asserted that terms like "intermediate-term (or similar) bond" are likewise used by funds and understood by investors similarly to refer to the portfolio's duration (*i.e.*, the portfolio's sensitivity to interest rate changes). Commenters also suggested that terms like "global" and "international" should continue to be outside of the scope of the 80% investment policy requirement because these terms reference the portfolio as a whole.[124]

Conversely, several commenters urged that certain terms may not connote particular characteristics of a fund's portfolio investments, but nonetheless should require an 80% investment policy when those terms clearly communicate that the fund is managed in a particular

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[122] *See* Comment Letter of BlackRock, Inc. (Dec. 19, 2022) ("BlackRock Comment Letter"); *see also* Robertson-Fisch Comment Letter (discussing ESG "tilt" strategies).

[123] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Invesco Comment Letter.

[124] *See, e.g.*, Dechert Comment Letter; ICI Comment Letter; Invesco Comment Letter; Seward & Kissel Comment Letter.

way (*e.g.*, terms like "balanced," "hedged," and "managed risk").[125] Relatedly, one commenter suggested that the rule should explicitly subject funds with allocation designations in their name (*e.g.*, 60/40 Target Allocation Fund) to the 80% investment policy requirement.[126]

After considering comments, we continue to recognize that there are certain terms that do not communicate to investors the particular characteristics of investments that will make up the fund's portfolio and for which an 80% investment policy will not be required. Such names include, for instance, names that suggest a portfolio-wide result to be achieved, such as "real return," "balanced," or "managed risk," names that reference a particular investment technique, such as "long/short" or "hedged," and names that reference asset allocation determinations that evolve over time, such as a retirement target date or "sector rotation" funds."[127] In each of these examples, the fund's name communicates information to investors about the overall characteristics of the fund's portfolio, rather than particular investments in the portfolio, and therefore will not necessitate an 80% investment policy under the amended rule. Likewise, terms like "intermediate term (or similar)," in describing a "bond" fund, also will not require an 80% investment policy under the final amendments in addition to the 80% investment policy that

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125 *See* Dogwhistle Comment Letter; PIABA Comment Letter (also recommending that the rule prohibit the use of terms of well-known organizations, affinity groups, or the reference to a specific population of investors (*e.g.,* "veterans" or "municipal employees") in fund names). *See also* Consumer Federation of America Comment Letter (additionally recommending that the rule should prevent single-state tax exempt funds from investing substantially in securities issued by another municipality). The Commission did not propose amendments that addressed the scope of tax-exempt funds whose names require them to adopt an 80% investment policy, or the investments that would be included in a fund's 80% basket under such policy, nor do the final amendments address these points. *But see infra* footnote 155.

126 *See* Better Markets Comment Letter.

127 A target date fund's name communicates an investment approach to investors, but does not communicate the composition of the fund's portfolio at any particular point in time, as the fund's investments will change over time in accordance with the fund's glide path. Similarly, "sector rotation" funds seek to shift their portfolio in and out of sectors over time as the economy moves through the different phases of a business cycle. In each of these cases, an 80% investment policy would not be appropriate for the fund because the fund's name connotes portfolio-wide asset allocation determinations that evolve continuously over time.

would be required due to the fund's use of "bond" in its name in this example. We do not view these types of names as being distinct from names that describe portfolio-wide characteristics, such as names that describe portfolio duration. Additionally, names including the terms "global" and "international," without an additional term that suggests an investment focus such as "fixed income" or "growth," will not require an 80% investment policy under the final rule. These terms describe a fund's approach to constructing a portfolio, but do not communicate the composition of the fund's portfolio with any particularity (unlike, say, "Japan" or "Europe") and therefore on their own suggest no particular investment focus.[128] Therefore, requiring such funds to adopt an 80% investment policy would produce fewer investor protection benefits relative to names that communicate to investors the particular characteristics of investments that will compose the fund's portfolio. Names with terms that do not communicate the particular characteristics of investments composing the fund's portfolio will continue to be subject to section 35(d)'s prohibition on materially misleading or deceptive names.[129] Funds with these names likewise will continue to be subject to the anti-fraud provisions of the Federal securities laws regarding disclosures to investors.

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[128] Similarly, funds that use terms in their name that indicate that the fund uses a negative or exclusionary screening process for investments (*e.g.*, "fossil fuel-free") may not require an 80% investment policy because such terms generally provide insight into what is precluded from the fund's portfolio, but these terms do not communicate to investors the particular investment focus of the fund's portfolio. In any case, a fund with a name like "fossil fuel-free" that indicates the fund will not invest at all in fossil fuels in this example will be materially deceptive or misleading for purposes of section 35(d) if the fund invests in companies that are not fossil fuel-free as defined by the fund in its prospectus (*e.g.*, issuers with fossil fuel reserves).

[129] For instance, terms used in fund names that reference well-known organizations, affinity groups, or that reference a specific population of investors may not communicate the particular characteristics of investments composing the fund's portfolio and therefore may not require an 80% investment policy under the amended rule. Such funds, however, will continue to be subject to section 35(d)'s prohibition on materially misleading or deceptive names.

In response to commenters seeking additional clarity about the terms growth and value, we understand, based on staff review of fund disclosure, that it is not typical in current practice for growth and value funds to implement their strategies on a portfolio-wide basis, as opposed to a selection process based on the growth or value characteristics of the fund's component portfolio investments. If terms in a fund's name can reasonably be understood to reference either the characteristics of a fund's individual investments or the intended result of a fund's portfolio investments in the aggregate, the fund will be required to adopt an 80% investment policy, consistent with the proposal. We disagree with the commenter who asserted that such terms are *per se* not misleading.[130] It would be confusing to investors if the same term in a fund's name required an 80% investment policy in some cases and not in others. In addition, the rule provides funds sufficient flexibility to design and implement an 80% investment policy in these circumstances. We do not agree that the ESG uplift strategies identified by one commenter require an 80% investment policy, however, because the particular strategies identified by the commenter are solely executed on a relative basis at the portfolio level, as described in more detail above, *and* include terms in the fund's name associated with this investment strategy to signal this different approach to investors.[131]

c) Investments Included in a Fund's 80% Basket

Regarding the application of the proposed amendments, the Commission stated in the 2022 Proposal that when determining whether a particular asset is invested in accordance with the investment focus that the fund's name suggests (*i.e.*, qualifies for inclusion in a fund's 80%

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[130] ICI Comment Letter.

[131] BlackRock Comment Letter.

basket), there must be a meaningful nexus between the given investment and the investment focus suggested by the name.[132] The Commission discussed that a fund may define the terms used in its name in a reasonable way, allowing for flexibility in determining whether a nexus exists between a given security and the focus the fund's name suggests. For instance, the Commission stated it would be reasonable for a fund to determine a sufficient nexus between certain securities and a given industry if the securities are issued by companies that derive more than 50% of their revenue or income from, or own significant assets in, the industry. However, the Commission also explained that the use of text analytics to assign issuers to industries based on the frequency of particular terms in an issuer's disclosures was not, in and of itself, sufficient to create a reasonable nexus.

Commenters expressed that a 50% revenue test is not always the most appropriate way to determine whether a company is part of a given industry, particularly for new companies and nascent industries and business sectors.[133] These commenters urged the Commission to clarify the reasonableness standard as it applies to designating investments in a fund's 80% basket, urging that advisers need the flexibility to evaluate investments based on a totality of criteria beyond revenue tests. Some commenters asserted that funds with certain business or industry-adjacent investment strategies face particular difficulties adopting an 80% investment policy because their investments often vary in terms of industries, capitalization ranges, revenue sources, asset classes, geographies, and other key characteristics, making it challenging to pinpoint confidently a reasonable nexus between the fund's investments and the investment

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132 *See generally* for this discussion Proposing Release, *supra* footnote 2, at nn.51-52 and accompanying text.

133 *See*, *e.g.*, SIFMA AMG Comment Letter; BlackRock Comment Letter; Seward & Kissel Comment Letter; WisdomTree Comment Letter.

focus suggested by its name.[134] Moreover, one commenter expressed particular concern with the proposal's discussion of the processing of text analytics, suggesting that the tool is a useful method for facilitating forward-looking analysis of companies and industries.[135] Separately, two commenters suggested that the Commission should permit fund managers to use forward-looking assessments or future-based methodologies to analyze investments when determining whether they fit in a given industry or sector, on the condition that such funds use a modifying indicator like "emergent" or "future" in their names to signal to investors that their analysis of investments is not completely based on current characteristics of the issuer.[136]

We appreciate commenters' concerns regarding potential challenges in determining whether a particular asset is invested in accordance with the investment focus that the fund's name suggests, particularly with respect to thematic investment strategies. Consistent with the 2022 Proposal, the plain English and established industry use requirements in the final amendments are intended to provide flexibility for funds to determine what qualifies as a reasonable nexus between a security and a given investment focus.[137] Similar to the Commission's discussion in the Proposing Release regarding the application of the final amendments, it would generally be reasonable for a fund to determine that a sufficient nexus exists between certain securities and a given industry if the securities are issued by companies that derive more than 50% of their revenue or income from, or own significant assets in, the industry. There also may be instances where the percentage could be smaller, such as where a

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[134] *See*, *e.g.*, ICI Comment Letter; Dechert Comment Letter; Minerva Comment Letter.

[135] SIFMA AMG Comment Letter.

[136] *See* SIFMA AMG Comment Letter; BlackRock Comment Letter.

[137] *See* final rule 35d-1(a); *see also infra* section II.C.

large company is a dominant firm in a given industry (*e.g.*, the firm is an acknowledged leader in the industry). Further, the use of text analytics to assign issuers to industries based on the frequency of particular terms in an issuer's disclosures is not, in and of itself, sufficient to create a reasonable nexus because it is not reasonable to conclude that an issuer is in a given industry solely because the issuer's disclosure documents frequently include words associated with the industry.[138] These examples are not meant to serve as an exhaustive list of acceptable methods of qualification in a fund's 80% basket. Given the breadth of fund names and strategies, it is not possible to provide an enumerated list of circumstances in which a nexus exists between a security and an industry or a particular investment focus.

Further, as raised by commenters, advisers may offer funds with strategies that seek exposure to long-term investment opportunities or that seek to identify issuers that are likely to generate significant amounts of revenue from certain industries or business sectors in the future. As commenters expressed, it may be challenging for these types of funds to find a reasonable nexus between their investments and a given investment focus based on current characteristics of the issuer. In these circumstances, funds may signal to investors, through the use of "emergent," "future," or some other similar term in the fund's name, that the fund considers some future-based methodology when assessing whether a nexus exists between a given security and the investment focus suggested by the fund's name (*e.g.*, "XYZ Emergent 3D Printing Technology

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[138] The advent and growth of advanced technologies have made increasing use of natural language processing that can significantly enhance the scale and scope of text analytics. Funds may be able to use these types of technologies to aid a determination that a nexus exists between a given security and the focus that a fund's name suggests that involves analysis going beyond the frequency with which a word or phrase appears in a document.

Fund"). More generally, we recognize that overall context is important in how an investor interprets a fund's name. For instance, descriptive terms such as "aggressive," "conservative," or "strategic," when paired with another term that is covered by the scope of the rule can modify an investor's expectations with respect to the fund's investment focus. The rule is designed to give fund managers reasonable discretion to define terms in a fund's name, and to allocate investments reasonably into the 80% basket in accordance with the investment focus the name conveys, which can be dependent on the context of the terms in a name. In particular, the final amended rule requires that terms within a fund's name must be consistent with the plain English meaning or established industry use. We are including these provisions in the final amended rule to provide fund managers with sufficient flexibility.

Separately, as discussed in the 2022 Proposal, when a fund's name includes terms suggesting an investment focus that has multiple elements, the fund's 80% investment policy must address all of the elements in the name (as all of the elements would be reflected in the investment focus that the fund's name suggests).[139] The Commission noted, however, that a fund can take a reasonable approach in specifying how the fund's investments will incorporate each element. Commenters expressed broad support for the Commission's approach, asserting that it retains the appropriate level of flexibility for advisers to determine how best to allocate investments under an 80% investment policy.[140] Where a fund's name suggests an investment focus that has multiple elements, the fund's 80% investment policy must address each of those

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[139] *See* Proposing Release, *supra* footnote 2, at nn.50-51 and accompanying text; *see also* final rule 35d-1(a)(2) (this provision reflects that a fund's name may include multiple "terms" suggesting that the fund focuses its investments in a particular way).

[140] Fidelity Comment Letter; CFA Institute Comment Letter; Seward & Kissel Comment Letter.

elements. For instance, a fund with a name that references two or more distinct investment focuses (*e.g.*, "XYZ Technology and Growth Fund") could have an investment policy that provides that each security included in the 80% basket must be in both the technology sector and meet the fund's growth criteria. Alternatively, such a fund could instead have an investment policy that provides that 80% of the value of the fund's assets will be invested in a mix of technology investments and growth investments, with some technology investments, some growth investments, and some investments in both of these categories, with no minimum or maximum investment requirements specified for either category. In addition, any fund that has a name that suggests an investment focus would be required to adopt an 80% investment policy even if the fund's name also contains a term that does not suggest an investment focus. For example, the "XYZ Technology and Real Return Fund" would be required to adopt an 80% investment policy to invest 80% of the value of its assets in the technology sector despite the phrase "real return" also appearing in the name.

Moreover, it would generally be reasonable for a fund of funds or other acquiring fund to include the entire value of its investment in an appropriate acquired fund when calculating compliance with the 80% investment requirement without looking through to the acquired fund's underlying investments. For example, a fund of funds with the name "XYZ Industrials Fund" with an 80% investment policy to invest in the industrials sector could count the entire value of its investments in the "ABC Automotive Fund" when calculating compliance with the 80% investment requirement, provided that the ABC Automotive Fund has an 80% investment policy to invest in its subsection of the industrials sector. It would not be reasonable, however, for an acquiring fund in these circumstances to ignore situations where the acquiring fund knows that

an underlying fund is not investing consistent with the acquiring fund's investment focus.[141] In such cases, the acquiring fund should take actions to address this departure as it otherwise would to resolve a temporary departure from the 80% requirement under the final amendments.

d) ESG-Related Terms

Consistent with the proposal, the final amendments will apply the requirement to adopt an 80% investment policy to fund names that suggest an investment focus, including names with terms indicating that the fund's investment decisions incorporate one or more ESG factors.[142] Many commenters supported the inclusion of ESG terms in the expanded scope.[143] Some of these commenters expressed concerns related to "greenwashing" among funds that have, or purport to have, ESG- or sustainability-related characteristics.[144] Many of these commenters asserted that given the developing market interest in, and regulatory and public scrutiny of, funds that incorporate ESG factors in their investment objectives, to the extent a fund uses an ESG-related term in its name, the fund should be required to adopt an 80% investment policy that ensures it will invest in accordance with the investment focus its name suggests.[145]

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141 An acquiring fund is not required to continuously monitor the investments of the underlying fund for purposes of compliance with the amended names rule. For example, the XYZ Industrials Fund may rely on the ABC Automotive Fund to comply with the ABC Automotive Fund's 80% policy.

142 *See* final rule 35d-1(a)(2).

143 *See*, *e.g.*, U.S. SIF Comment Letter; SIFMA AMG Comment Letter; Sierra Club Comment Letter; Public Citizen Comment Letter; Comment Letter of Bonwood Social Investment (Aug. 16, 2022) ("Bonwood Comment Letter").

144 *See* NASAA Comment Letter; J.P. Morgan Asset Management Comment Letter; U.S. SIF Comment Letter; Comment Letter of LTSE Services, Inc. (Aug. 16, 2022) ("LTSE Comment Letter"); CFA Institute Comment Letter.

145 *Id*.

Conversely, several commenters opposed including names with ESG terms in the expanded scope of the 80% investment policy requirement.[146] Many of these commenters expressed similar concerns to those discussed above opposing the expanded scope in general, including potential interpretive issues resulting from the perceived subjectivity of certain ESG-related terms, and potential increased compliance burdens.[147] Some commenters also articulated concerns that are unique to funds that use ESG terms. For instance, several commenters expressed that the Commission's ESG Disclosure Proposal would be better suited to address investor understanding of ESG considerations than the proposed names rule scope expansion.[148] These commenters generally expressed more support for a disclosure-based framework rather than a mandated 80% investment policy for fund names that communicate an ESG focus. In addition, a few commenters expressed that certain terms, depending on the context, may not be solely used for ESG investment strategies (*e.g.,* "sustainable" or "impact"), or when read together may provide a different meaning than when presented individually (*e.g.*, "XYZ Sustainable Growth Fund").[149]

We recognize that "ESG" and similar terms are expansive, incorporating three broad categories of interest (environmental, social, and governance issues) for investors and asset managers, with differing levels of focus on each particular issue, and different perspectives on

146 *See*, *e.g.*, ICI Comment Letter; Calvert Comment Letter; Cato Institute Comment Letter; Invesco Comment Letter; Robertson-Fisch Comment Letter.

147 *See*, *e.g.*, TIAA-Nuveen Comment Letter; Calvert Comment Letter; ICI Comment Letter, Robertson-Fisch Comment Letter. *See generally supra* section II.A.1.a) (responding to concerns from commenters related to interpretive challenges and compliance costs connected to the proposed expansion of the 80% investment policy).

148 *See* ICI Comment Letter; TIAA-Nuveen Comment Letter.

149 *See* ICI Comment Letter; Dechert Comment Letter.

what attributes of an issuer or investment fit within this terminology.[150] The breadth of ESG-related terms, as well as evolving investor expectations around terms like "sustainable" or "socially responsible," compound the possibility of investor confusion and potential "greenwashing" in fund names.[151] Moreover, concerns regarding materially deceptive and misleading fund names are particularly important for funds that incorporate ESG factors in their investment decisions because, unlike many other non-ESG investment strategies, some ESG-related strategies are not well-established or commonly understood to the investing public.[152] ESG terms in fund names communicate to investors that the fund will invest in issuers that have particular characteristics, like other terms that are covered by the expanded scope. Accordingly, there is not a principled basis to treat ESG terms differently than other terms that have the potential to be materially deceptive and misleading, as suggested by a few commenters that requested a purely disclosure-based framework for funds that use ESG terms in their name. The final amendments thus require funds that use ESG terms in their name to adopt an 80% investment policy.

We recognize, as with fund names that do not include ESG terms, that the general context of a name with terminology that could connote an ESG focus is critical in how an investor interprets such a name.[153] For instance, a name such as "XYZ Sustainable Growth Fund" could

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[150] *See* Robertson-Fisch Comment Letter (arguing that because ESG is a "big tent" term, the use of ESG terminology in fund names "does not convey very much information" to investors).

[151] *See supra* footnote 37 and accompanying discussion.

[152] *See* Center for American Progress Comment Letter (stating that "[t]here is more variability in investors' understanding of what many ESG terms mean than with terms like "growth" or "global" because the use of ESG terms is relatively new and their use often is not tied to specific information about their meaning.").

[153] *See* Robertson-Fisch Comment Letter (discussing different hypothetical ESG-related funds that could deliver very different results to investors, but could be presumably sold under the same name).

reasonably be interpreted as a fund that employs a strategy that seeks growth that is sustainable over time (*i.e.*, growth that will be maintained at a certain level), or a fund that incorporates ESG factors into its decision making. In this example, the fund would require an 80% investment policy regardless, but the fund manager has discretion to reasonably define the terms in the fund's name, and to allocate investments into the 80% basket in accordance with the investment focus the name suggests.[154]

2. Temporary Departures from the 80% Investment Requirement

The final rules we are adopting permit temporary departures from the 80% investment requirement by allowing a fund temporarily to invest less than the required 80% of the value of the fund's assets in accordance with the investment focus or tax treatment its name suggests.[155] Under the final amendments, we are retaining the current rule's requirement that a fund must determine at the time that it invests whether the investment is in the fund's 80% basket ("time-of-investment test").[156] We are adopting a new requirement that, at least quarterly, funds subject to the 80% investment requirement must review the fund's portfolio investments to determine whether the fund's investments continue to be consistent with the fund's 80% investment policy.[157] Funds must comply with the 80% investment requirement "under normal circumstances," leaving to funds the determination of what constitutes something other than a normal circumstance. If, subsequent to an investment, the 80% investment requirement is no

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154 *See also supra* footnote 94 and accompanying text; *supra* paragraph accompanying footnote 132.

155 The amendments to the temporary departure provision are applicable not only to funds whose name suggest a particular investment focus, but also to tax-exempt funds that are required to invest their assets in accordance with the provisions of rule 35d-1(a)(3).

156 *See* final rule 35d-1(b).

157 Final rule 35d-1(b)(1)(i).

longer met, the fund's future investments (that is, any portfolio assets it acquires) must be made in a manner that will bring the fund into compliance with that requirement within the time period specified in the rule.

A fund may, in other-than-normal circumstances, choose to invest in a manner that is not consistent with the fund's 80% investment requirement for a limited period of time.[158] The final amendments include specific time frames—generally 90 consecutive days, as opposed to 30 days as proposed—for getting back into compliance if a fund departs from the 80% requirement, either intentionally in other-than-normal circumstances, or as identified by the fund as a part of its quarterly review or otherwise. Funds are permitted under the final rules to temporarily depart from the 80% investment requirement in connection with a reorganization (for which the final rule does not specify a required time frame for accompanying temporary departures) or a fund launch (departure not to exceed the period of 180 consecutive days) or when a notice of a change in a fund's policy in certain circumstances has been provided to fund shareholders.[159]

Under the proposed amendments, funds would have been permitted to depart from the fund's 80% investment policy only under certain specified circumstances.[160] When a fund departed under the specified circumstances, the proposed amendments would have required

[158] Final rule 35d-1(b)(1)(ii).

[159] Final rule 35d-1(b)(1)(iii); *see also* rule 35d-1(g) (defining "launch" as a period, not to exceed 180 consecutive days, starting from the date the fund commences operations).

[160] Temporary departures under the proposed amendments would have been permitted only: (1) 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; (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, to launch the fund, or when notice of a change in the fund's 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule.

funds to come back into compliance with the 80% investment requirement within 30 consecutive days after the initial departure. Departures from names rule compliance for fund launches would not have been permitted to exceed a period of 180 consecutive days. The proposed amendments did not specify a required time frame for temporary departures that were the result of reorganizations or where the 60-day notice has been provided to shareholders. In all cases, the proposed amendments would have required that a fund would have to come back into compliance as soon as reasonably practicable.

We received comment letters both supporting and opposing the Commission's proposed approach for temporary departures. Among the primary reasons commenters supported the proposal was their belief that the proposed amendments brought more certainty to the current rule's approach to temporary departures from 80% and would require funds to be more vigilant with respect to their names rule compliance.[161] In particular, several commenters supported the goal of bringing the rule in line with investors' expectations by ensuring that the investments made by the fund remain consistent with the fund's name and the investor's investment preferences over the long-term life of the fund.[162]

The Commission, however, did receive many comments requesting that we reconsider the proposed approach to temporary departures. The Proposing Release sought to permit appropriate flexibility to depart temporarily from the 80% investment requirement in particular, time-limited circumstances when doing so would be beneficial to the fund and its shareholders,

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161 *See, e.g.*, NASAA Comment Letter; PRI Comment Letter; Consumer Federation of America Comment Letter; Environmental Defense Fund Comment Letter.

162 *See, e.g.*, Consumer Federation of America Comment Letter; Center for American Progress Comment Letter; NASAA Comment Letter.

while providing additional parameters designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time.[163] Commenters, as discussed in the next section, raised concerns that the proposed amendments were overly prescriptive, lacked flexibility, and were too limited in the amount of time funds would have to bring their investments back into compliance. In response to comments received, we are adopting an approach that modifies the proposed amendments, which seeks to balance the concerns raised by commenters and the goals of the proposal.

a) Time-of-Investment Test and Quarterly Review

Under the final amendments, as under the current names rule, a fund is required to determine at the time it invests whether the security is appropriately included in the fund's 80% basket.[164] This "time-of-investment test" was originally adopted to avoid requiring a fund to rebalance its investments if the fund's portfolio were no longer invested in accordance with the fund's 80% investment policy as a result of, for example, market movements or an influx of cash from new investors ("drift").[165] The proposal would have removed the time-of-investment test and instead would have required that a fund remedy drift within 30 days of the initial departure. In effect, the proposed rule would have required that funds engage in continual compliance testing to reassess the characteristics of investments in the fund's 80% basket—or even daily testing and reassessment for those funds making investments each trading day—to ensure that

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[163] *See* Proposing Release, *supra* footnote 2, at paragraph following n.35.

[164] *See* final rule 35d-1(b).

[165] *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at n.32 and accompanying text; *see also* Investment Company Names, Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955 (Mar. 10, 1997)], at n.28 and accompanying text.

they observe and correct any drift quickly in order to comply with the proposed requirement that the fund come back into compliance with the names rule within 30 days.

In response to comments we received, and as discussed in more detail below, we are not adopting a requirement for continual or daily monitoring to reassess the characteristics of the investments in the fund's 80% basket and are instead maintaining a time-of-investment test in the names rule. Under the final amendments, funds will instead be required to reassess their portfolio assets' inclusion in the fund's 80% basket at least quarterly. This change means that portfolio investments that are included in the 80% basket at the time of investment will continue to be considered to be consistent with the fund's 80% investment policy unless the fund identifies otherwise as part of its required quarterly reassessments, or outside of its required quarterly reassessments identifies that these investments' characteristics are inconsistent with the fund's 80% investment policy. This approach to assessing the characteristics of portfolio investments in the 80% basket, however, does not change the requirement for funds to maintain at least 80% of the value of their assets in 80% basket assets (as determined at the time of investment), unless the fund departs temporarily from 80% in accordance with the final amendments. As an example, when a fund acquires Investment A, the fund must assess the characteristics of that investment when the purchase is made to determine whether it should be included in the 80% basket. When a fund acquires a new investment, Investment B, the fund must assess the characteristics of Investment B when it invests to determine whether it should be included in the 80% basket. When determining whether 80% of the fund's assets are invested in the 80% basket when Investment B is made, the fund must consider the value of Investment A, but would not have to

re-assess the characteristics of Investment A. Each quarter, the fund must re-assess the characteristics of Investments A and B for consistency with the fund's 80% investment policy.

We received many comments supporting the retention of the time-of-investment test and urging the Commission not to adopt an approach that would require continual compliance monitoring.[166] Several commenters stated that the time-of-investment test is a standard that is used in other portfolio compliance tests under the Investment Company Act and that consistency with how fund holdings are measured across Investment Company Act rules would therefore be a preferable approach in the context of the names rule.[167] The proposed approach, which would have removed the time-of-investment test, would instead have effectively required that fund managers reassess portfolio investments' characteristics for consistency with the fund's 80% investment policy every time the fund makes a new investment, and to take corrective action almost immediately upon identifying any departure from 80%. The time-of-investment test affords some flexibility to fund managers by focusing on whether an asset is consistent with the fund's 80% investment policy at the time of investment, rather than requiring ongoing reassessments. In addition, commenters expressed concern that limitations on fund manager discretion prevent investors from having access to actively-managed funds that are subject to the names rule.[168] Commenters also supported retaining the time-of-investment test so that in the

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166 *See, e.g.,* ICI Comment Letter; Calamos Comment Letter; Seward & Kissel Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; T. Rowe Comment Letter; Nationwide Comment Letter; Cato Institute Comment Letter; Stradley Comment Letter; Dimensional Comment Letter; WisdomTree Comment Letter; MFS Comment Letter; Invesco Comment Letter; Capital Group Comment Letter.

167 For example, commenters pointed to time of acquisition tests in the 1940 Act, including, section 5 the anti-pyramiding provisions of section 12(d)(1) [15 U.S.C. 80a-12(d)(1)] and the limitations on investments in securities-related issuers in section 12(d)(3) [15 U.S.C. 80a-12(d)(3)]. *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; Seward & Kissel Comment Letter; Fidelity Comment Letter; Calamos Comment Letter; Nationwide Comment Letter.

168 *See* Dechert Comment Letter; ICI Comment Letter.

event that a fund's portfolio inadvertently drifts out of compliance with the 80% investment requirement because the characteristics of portfolio investments change, the fund would not be forced to sell a security that was originally purchased in compliance with the names rule in order to come back into compliance within a specific time frame (as proposed, generally 30 days).[169] Commenters were concerned the proposed approach would potentially force sales or purchases of portfolio assets at inopportune times with the potential to intensify the market conditions that prompted these transactions in the first place.[170]

Commenters also stated that there would be substantial burden on funds, their sponsors, and their administrators to implement a continual or daily program for re-assessing portfolio investments for names rules compliance purposes.[171] Commenters argued that the burden of implementing a continual monitoring program is not warranted given the asserted lack of identified significant harm to investors from portfolio drift and the burden of creating and maintaining such a program.[172] These commenters stated that the burdens associated with a continual monitoring program would be particularly high because assessing portfolio investments' consistency with a fund's 80% investment policy is not necessarily straightforward, particularly given the expanded scope of the names rule, which would include terms that are not

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169 *See, e.g.,* Stradley Comment Letter; ICI Comment Letter; Dechert Comment Letter; Seward & Kissel Comment Letter; Fidelity Comment Letter; Calamos Comment Letter; Nationwide Comment Letter.

170 *See, e.g.,* ICI Comment Letter; Dechert Comment Letter.

171 *See, e.g.,* ICI Comment Letter; Dechert Comment Letter; Seward & Kissel Comment Letter; WisdomTree Comment Letter.

172 *See, e.g.,* Seward & Kissel Comment Letter, Nationwide Comment Letter; Fidelity Comment Letter. *But see* Dogwhistle Comment letter (suggesting an annual compliance testing requirement and that daily compliance testing is too frequent, but a time-of-investment test is not appropriate).

readily quantifiable.[173] For example, commenters stated that some of the information that a fund would need to monitor whether a particular investment should be included in a fund's 80% basket may include metrics measured over a period of time that may be longer than the period of a single day.[174] Some funds, for instance, may adopt investment strategies that involve a multi-year concept that commenters stated cannot be assessed on a single day.[175] Commenters therefore urged the Commission to adopt a rule that would provide some discretion to determine whether a particular investment, evaluated over a period of time, is consistent with the fund's 80% policy.[176] Similarly, commenters raised concerns about continually monitoring compliance with respect to certain securities, such as growth or value investments, where the name characteristics could change frequently.[177] For example, securities may be bought that have characteristics meeting a particular fund's standards for inclusion in the fund's 80% basket at the time of purchase, but these characteristics may change from day to day. Commenters stated that assessing these securities' characteristics continually would require operational and compliance build-outs that would be substantial.[178]

After considering comments, we are retaining the current rule's time-of-investment test that requires a fund to determine, for purposes of names rule compliance, whether an investment

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173 *See, e.g.*, SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter; ICI Comment Letter; Dechert Comment Letter; Wellington Comment Letter.

174 *See, e.g.*, ICI Comment Letter; Wellington Comment Letter; Capital Group Comment Letter; SIFMA AMG Comment Letter.

175 *See, e.g.*, ICI Comment Letter; Wellington Comment Letter; Capital Group Comment Letter; SIFMA Comment Letter.

176 *See id.*

177 *See, e.g.*, ICI Comment Letter; Seward & Kissel Comment Letter; WisdomTree Comment Letter.

178 *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; Seward & Kissel Comment Letter; WisdomTree Comment Letter.

is within the fund's 80% basket at the time of investment. While the time-of-investment test must be conducted only at the time that the investment is made, the final rule incorporates a process for periodic reassessment of fund investments in order to ensure that that the fund is invested consistent with the focus the fund's name suggests. Rather than adopting a rule that effectively would require daily or continual compliance monitoring, the final rule requires that a fund review its portfolio investments on an at-least quarterly basis to determine whether it continues to comply with the 80% investment requirement.

The time-of-investment standard affords to the portfolio manager more flexibility than the proposed amendments, as we acknowledge that there may be certain fluctuations in a fund's portfolio and within the 80% basket that naturally occur over time, and that may not be outside of investors' reasonable expectations. For example, a mid-cap equity fund may hold securities that at the time of investment qualified under the fund's 80% investment policy as mid-cap, but that may temporarily move into the large-cap category and back again. We understand that this type of drift is a natural fluctuation in a portfolio, as certain characteristics of securities' may not be static. We also appreciate that, for certain funds that are subject to the 80% investment requirement, this drift may occur relatively frequently, and so a standard that would require daily or continual compliance monitoring could be particularly burdensome and require very frequent portfolio re-balancing.[179] While we recognize that drift may occur and that portfolio managers should have discretion in managing their portfolio in the best interest of the fund, we are adopting a quarterly review requirement to help ensure portfolio adjustments so that drift does not go unchecked. This quarterly time frame will require a fund to address drift more quickly,

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179 *See, e.g.*, SIFMA Comment Letter; J.P. Morgan Asset Management Comment Letter.

which in turn will help ensure greater consistency between the fund's investments and the focus its name suggests, as compared to a review period based on a longer periodic time frame (for example, an annual testing requirement as one commenter suggested).[180]

The combination of a time-of-investment test with a minimum quarterly review requirement balances the dynamic nature of funds' portfolio securities with compliance with the fund's 80% investment policy. The required time frame for review is consistent with the final rules' quarterly Form N-PORT reporting requirement, which requires funds (except in the case of money-market funds and BDCs) to report on Form N-PORT the value of the fund's 80% basket as well as each investment that is included in the fund's 80% basket.[181] The required minimum quarterly review helps ensure that funds are reviewing their portfolios for names rule compliance on a periodic basis so that instances of drift can be identified without the burden of assessing each investment's inclusion in the 80% basket every day. The final amendments are designed to balance the costs associated with monitoring fund investments' inclusion in the 80% basket with the harm to investors that could result if a fund were permitted a longer time frame for reviewing its portfolio.[182] The time-of-investment test coupled with a quarterly portfolio review is designed to ensure that a fund's name more accurately communicates to investors

[180] *See* Dogwhistle Comment Letter.

[181] *See infra* section II.E.

[182] *See infra* section IV.D.2.

important information about the fund's investments while providing funds with appropriate flexibility within a time-limited period.

One commenter also articulated concerns that are unique to funds that use the term "tax-exempt" in their name.[183] This commenter requested clarification on how tax-exempt funds that apply the income test under the names rule should measure compliance with the 80% investment policy requirement under the proposed amendments.[184] Specifically, this commenter urged the Commission to confirm that compliance with the income test would be based solely on income that the fund distributes. The final rule requires that a fund review its portfolio at least quarterly to determine whether it continues to comply with the 80% investment requirement. Accordingly, a tax-exempt fund applying the income test will be required to assess its portfolio on an at-least quarterly basis to determine whether the fund's assets are invested so that at least 80% of the income that it distributes will be exempt from federal income tax or from both federal and state income tax.

b) Investing Consistent with 80% Investment Policy "Under Normal Circumstances"

The final amendments, like the current names rule, require a fund to invest in accordance with its 80% investments policy "under normal circumstances." That is, under the final

[183] ICI Comment Letter III. The commenter also suggested that tax-exempt funds using an income test be permitted to count taxable market discount toward their 80% baskets. The treatment of such taxable market discount is outside the scope of this rulemaking, as it was not addressed in the proposal, and, therefore, not addressed in the final amendments.

[184] The names rule currently allows, and the final amendments will continue to allow, a fund with "tax-exempt" in its name to adopt either an asset test or an income test to satisfy its 80% investment policy requirement. The income test requires that a fund invest its assets so that at least 80% of the income that it distributes will be exempt from federal income tax or from both federal and state income tax. *See* final rule 35d-1(a)(3)(i)(B).

amendments, a fund's 80% policy applies under normal circumstances, but funds may depart from the fund's investment policy in other-than-normal circumstances. The proposed rule would have, in place of the rule's current standard that a fund's 80% investment policy apply "under normal circumstances," included specific exceptions that address circumstances where departures would be permitted.[185] Unlike the proposal, funds have flexibility under the final amendments to determine what constitutes other-than-normal circumstances where the fund could depart intentionally from the 80% requirement (for example, the reasons for departures that the proposed amendments included, or other circumstances where market conditions or fund operations are other-than-normal).[186] Under the final amendments, departure from the fund's 80% policy in other-than-normal circumstances is time-limited to 90 consecutive days from the initial departure, whereas the proposal would have required a fund to be back in compliance generally within 30 days.

The Commission received some comments supporting the proposed approach to change the current rule's "under normal circumstances" standard in favor of a more prescriptive approach. Commenters stated that the current standard has led to more uncertainty and less consistency in how fund investments correspond to a fund's name than the proposed approach would over extended periods of time.[187] Conversely, the Commission also received many

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185 Under the proposed rule, temporary departures would have been permitted only: (1) 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; (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 losses 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, to launch the fund, or when notice of a change in the fund's 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule. *See* proposed rule 35d-1(b).

186 *See supra* footnote 160.

187 *See, e.g.*, NASAA Comment Letter; Environmental Defense Fund Comment Letter.

comment letters opposing the proposed approach of permitting departure from the 80% investment requirement only under the circumstances that the proposed amendments specified.[188] Commenters stated that the proposed approach was overly prescriptive and would unnecessarily curb the ability of a fund's portfolio manager to act in the best interest of the fund.[189] For example, in an effort to bring a fund back into compliance within the proposed 30-day period, fund managers may feel compelled either to divest or purchase an investment that may not be strategically in the best interest of the fund. In addition, a commenter argued that the Proposing Release did not cite evidence that the "under normal circumstances standard" has been abused or has resulted in the use of materially deceptive or misleading names.[190] Commenters also argued that while the proposed amendments would permit departures from the 80% requirement only in the circumstances that the amendments specified, unforeseeable circumstances that the amendments did not contemplate—and that any enumerated list of circumstances could not contemplate in an evergreen way—may present reasons for departing

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188 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter; CFA Institute Comment Letter; Comment Letter of U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Aug. 12, 2022) ("USCOC Comment Letter"); Dimensional Comment Letter; WisdomTree Comment Letter; Calamos Comment Letter; MFDF Comment Letter; MFS Comment Letter; Capital Group Comment letter; Seward & Kissel Comment Letter; Fidelity Comment Letter; Comment Letter of Nasdaq, Inc. (Aug. 16, 2022) ("Nasdaq Comment Letter"); Dechert Comment Letter; T. Rowe Comment Letter; Nationwide Comment Letter; Cato Institute Comment Letter.

189 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter; Dimensional Comment Letter; MFS Comment Letter; Capital Group Comment letter; Fidelity Comment Letter; Dechert Comment Letter; T. Rowe Comment Letter; Calamos Comment Letter; Nationwide Comment Letter.

190 *See* Cato Institute Comment Letter.

that could be appropriate in the interests of the fund and consistent with the goals of the names rule.[191]

Fund managers are fiduciaries to the funds they manage. Commenters advocated that, as such, portfolio managers should have discretion in determining when a fund needs to depart from its 80% investment policy. Some commenters supported retaining the current rule's "under normal circumstances" standard in order to give portfolio managers flexibility to act in the best interest of the fund and its shareholders, which can include temporarily departing from the fund's 80% investment policy.[192] In addition, some commenters stated that they believe that some investors may prefer investing in funds where the portfolio manager has discretion to depart from the investment focus denoted by the fund's name when the portfolio manager believes the departure is in the best interest of the fund.[193]

Commenters suggested alternatives to the proposed approach, stating that if the Commission adopts a prescriptive list of permissible circumstances under which a fund may depart from the 80% policy, the list should be expanded, for example to permit departure for repositioning fund assets in connection with changes of sub-advisers and/or portfolio managers, and in periods leading up to material strategy changes.[194] These commenters suggested the inclusion of a "catch-all" provision, as well, permitting any departures the portfolio manager

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[191] *See, e.g.*, SIFMA AMG Comment Letter; Dechert Comment Letter; Fidelity Comment Letter.

[192] *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter; CFA Institute Comment Letter; Stradley Comment Letter; USCOC Comment Letter; Cato Institute Comment Letter; Dimensional Comment Letter; Federated Comment Letter; T. Rowe Comment Letter; WisdomTree Comment Letter.

[193] *See, e.g.*, SIFMA AMG Comment Letter; Dechert Comment Letter; Nationwide Comment Letter; T. Rowe Comment Letter; MFS Comment Letter; JP Morgan Asset Management Comment Letter.

[194] *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter.

believes are reasonable. Commenters also provided alternatives that would permit additional drift beyond the circumstances that the proposed amendments specified, so long as the fund provided additional disclosure for the reasons why the fund may drift.[195] Another suggested an alternative included allowing funds that use the term "managed" in their name to have greater flexibility to depart from the fund's 80% investment policy.[196]

After considering comments, we are adopting amendments that retain the current "under normal circumstances" provision. While we are retaining the current "under normal circumstances" standard, we are also adopting new limitations on how long a fund may depart from 80% under this provision, discussed below, which addresses the concerns raised by commenters that the current standard allows for investments not consistent with the fund's name over extended periods of time.[197] Retaining the current "under normal circumstances" provision is designed to provide fund managers with flexibility to manage their portfolios while requiring that funds normally invest 80% of their assets consistent with their 80% investment policy.[198]

We acknowledge that there could be circumstances when it is in the best interest of the fund and its investors for the portfolio manager to have discretion to depart from the fund's 80% investment policy. This interest must be balanced, however, with the need for a fund's name to convey accurately to investors the underlying investments that correspond with the focus the fund's name suggests. Rather than require additional disclosure that acknowledges drift or to

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195 *See, e.g.*, Capital Group Comment Letter; Nationwide Comment Letter

196 *See, e.g.*, ICI Comment Letter and SIFMA AMG Comment Letter.

197 Prolonged drift could result in fund names that have a tendency or capacity or deceive or mislead, regardless of whether such drift has resulted in actual deception of investors. *See, e.g.,* Cato Institute Comment Letter; *see also supra* footnote 40.

198 *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at nn.37-40 and accompanying text.

provide a separate standard for funds that include the term "managed" in their name, we are adopting a requirement to invest in accordance with the 80% requirement "under normal circumstances," combined with a set time frame to come back to 80%, to balance these concerns. We are adopting, therefore, a limit on the length of time that a fund may depart in other-than-normal circumstances to 90 consecutive days after the initial departure.

Although we are not adopting the proposed approach of delineating the circumstances in which a fund may depart intentionally from the 80% requirement, an intentional departure must be in other than "normal" circumstances, which could include but is not limited to the circumstances included in the proposed approach. These circumstances could include temporary departures that occur as a result of market fluctuations, index rebalancing, cash flows/inflows, or temporary defensive positions, among others.[199] These circumstances do not, however, represent the extent of events or circumstances where a fund, in considering its obligations under the names rule and the prohibitions of section 35(d), may determine that other-than-normal circumstances exist, warranting a departure from 80%. The final rules' approach provides flexibility to depart under circumstances that may not have been included in the proposal's delineated reasons for departures. Although the question of whether circumstances are "normal" is based on the facts and circumstances, if a fund were to deviate in purportedly other-than-normal circumstances serially or frequently, this may suggest that in fact those circumstances are "normal" and otherwise raise questions about the appropriateness of the fund's name under section 35(d) if the fund's portfolio is not invested consistent with its name for prolonged periods

[199] *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at text preceding footnote 39 ("[The "under normal circumstances" standard] will permit investment companies to take "temporary defensive positions" to avoid losses in response to adverse market, economic, political, or other conditions.").

of time.[200] When a fund deviates from the 80% investment requirement due to other-than-normal circumstances, as we discuss below, the fund is required to maintain a record documenting the date of the departure and the reason for the departure.[201]

c) Time to Come Back into Compliance

The final amendments require that funds come back into compliance with the 80% investment requirement as soon as reasonably practicable in the case of drift (*i.e.*, where the fund identifies that its investments are not consistent with this requirement under the names rule, for example, as a result of inadvertent drift identified as part of the fund's quarterly review).[202] In all circumstances, a fund must come back into compliance within 90 consecutive days, as measured from the time that the fund identifies a departure from the 80% investment policy (as part of its quarterly review or otherwise), or the time the fund initially departs, in other-than-normal circumstances, from the 80% investment policy.[203] Under the final amendments, consistent with the current rule, where a fund identifies that the 80% requirement is no longer met, the fund must make all future investments in a manner that will bring the fund into compliance with the fund's 80% investment policy. The Commission proposed to require funds to come back into

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200 *See infra* section II.A.5 text accompanying footnotes 318-321.

201 *See infra* section II.F (discussing the requirement under the final amendments for funds to maintain records documenting the reasons for each departure).

202 Final rule 35d-1(b).

203 *Id.* Although the temporal limits in the final amendments start from the time that a departure is identified, a fund may not avoid coming into timely compliance, if the fund failed to identify departures because the fund did not perform the required quarterly review, or if the fund failed to perform quarterly reviews that are reasonably designed to identify departures.

compliance with the 80% investment policy within 30 days from the initial departure from 80%. We are modifying the proposed approach to respond to concerns raised by commenters.

The Commission received some support for the proposed period for funds to come back into compliance.[204] The Commission received many comments, however, arguing that a 30-day period was not an appropriate time limit on departures.[205] While some commenters stated that a 30-day period may be appropriate for some asset classes or in certain market conditions, these commenters contended that a 30-day period may be too short in certain market conditions or in unanticipated extenuating circumstances.[206] For example, one commenter stated that while a fund may be able to remedy a departure from the 80% investment policy that is the result of unusually large flows within 30 days, a portfolio manager may need more time when divesting securities to accommodate when an index rebalances or where a strategy may need to be reconsidered given exogenous events.[207]

Commenters stated that the proposed 30-day time period may require a fund to make forced purchases and sales at potentially undesirable prices or at inappropriate times.[208] For

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204 *See, e.g.*, PRI Comment Letter.

205 *See, e.g.*, SIFMA AMG Comment Letter; ICI Comment Letter; CFA Institute Comment Letter; Dechert Comment Letter; Cato Institute Comment Letter; WisdomTree Comment Letter; NASAA Comment Letter; MFDF Comment Letter; MFS Comment Letter; J.P. Morgan Asset Management Comment Letter; Seward & Kissel Comment Letter; Fidelity Comment Letter; Nationwide Comment Letter; Dimensional Comment Letter; Wellington Comment Letter; Capital Group Comment Letter.

206 *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; Stradley Comment Letter; T. Rowe Comment Letter; MFDF Comment Letter; MFS Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter; WisdomTree Comment Letter; Dimensional Comment Letter.

207 *See* J.P. Morgan Asset Management Comment Letter.

208 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter; Dechert Comment Letter; Stradley Comment Letter; T. Rowe Comment Letter; USCOC Comment Letter; Cato Institute Comment Letter; Dimensional Comment Letter; Capital Group Comment Letter. Certain of these commenters stated that the 2001 Names Rule Adopting Release stated that funds should not be required to "sell portfolio holdings that have increased in value" in order to reattain compliance with their 80% policy. *See, e.g.,* Dechert Comment Letter; ICI Comment Letter.

example, if a small-cap security becomes a mid-cap security and therefore can no longer be included in the small-cap fund's 80% basket, the fund may be required to sell the holding within the proposed 30-day period, even though the portfolio manager believes that it is in the best interest of the fund to hold the security for a longer period.[209] Commenters stated that forced purchases or sales could lead to additional adverse consequences for a fund, including the risks of front running from other market participants, unwanted capital gains or assorted tax efficiency implications, increased transaction costs, reduced diversification, fire sales, homogenization across funds with similar names, and an overall negative impact on fund performance, as well as market liquidity and market stability more largely.[210]

The current names rule effectively requires that funds make all future investments consistent with the fund's 80% policy once the fund identifies that its portfolio is out of compliance with the 80% investment requirement. Some commenters urged the Commission to reconsider the proposed 30-day period and instead maintain the current standard.[211] Additionally, commenters suggested alternative time periods to require funds to come back into compliance with the 80% investment policy, *e.g.*, 180 days.[212]

Several commenters suggested an alternative approach that would require funds to notify their board of directors if the fund falls out of compliance with the 80% investment policy for

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209 These circumstances would arise only where, in the given example, the security grew sufficiently to become a mid-cap security, the fund manager preferred to continue to hold the security, and the fund manager had already made similar determinations with respect to other securities which collectively made up 20% of the value of the fund's assets.

210 *See, e.g.*, Dechert Comment Letter; Stradley Comment Letter; Nationwide Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; T. Rowe Comment Letter; Dimensional Comment Letter; Nationwide Comment Letter; Fidelity Comment Letter; WidsomTree Comment Letter; Wellington Comment Letter.

211 *See, e.g.*, Calamos Comment Letter; Nationwide Comment Letter.

212 *See, e.g.*, Fidelity Comment Letter.

more than a specified period of time (*e.g.*, 30, 60, or 90 days etc.).[213] Some commenters suggested that after a certain period of time following a departure from 80%, a fund must provide a report to the board detailing how the fund will come back into compliance. Commenters stated that other rules under the Investment Company Act have similar board reporting requirements, which recognize the value of a board's oversight of fund management and the best interest of fund shareholders, and that the names rule may benefit from such a requirement.[214] Under this alternative, commenters stated that they believed that funds would have more flexibility than under the proposed approach and that the board would be in the best position to judge whether a departure is reasonable.[215]

The amendments we are adopting are designed to help ensure that a fund will not stray from the investment focus its name suggests for a protracted period of time, regardless of external events or other circumstances that could affect the fund's portfolio investments. Investors' expectations for funds' investment focuses may not depend on whether market events negatively affect the investments in a fund's portfolio. For example, investments in passively-managed funds, such as index-based mutual funds and ETFs, have increased substantially in the past two decades, indicating that investors seek investment products that permit them to obtain

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[213] *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; Stradley Comment Letter; Dimensional Comment Letter; SIFMA AMG Comment Letter; MDFS Comment Letter; MFS Comment Letter; Invesco Comment Letter.

[214] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter; MFS Comment Letter; *see also* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] ("Liquidity Adopting Release") and Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)] ("Derivatives Adopting Release").

[215] *See, e.g.*, Dimensional Comment Letter; SIFMA AMG Comment Letter; ICI Comment Letter.

specific types of investment exposure for their portfolios.[216] Although investors may have different expectations regarding how long a fund may drift from the fund's investment focus, a prolonged period of drift would be inconsistent with the investor protection concerns that underlie the names rule and section 35(d) of the Investment Company Act.

Taking these concerns into account, while considering comments received, we are extending the proposed time period that funds have to come back into compliance with the names rule from 30 to 90 consecutive days after the fund either identifies a departure or, in other-than-normal circumstances, departs from the 80% investment requirement. We recognize, as certain commenters raised, that some investors may prefer allowing a fund to depart from its investment focus for longer than 30 days to avoid any losses that the fund may incur to come back into compliance within that time period. The final amendments provide funds with more flexibility and time both to recognize when a fund has drifted out of compliance and to correct the departure. This 90-day review period is also consistent with the quarterly Form N-PORT reporting requirement discussed below. The final amendments require a fund to assess whether the fund's portfolio is in compliance at least quarterly and provide the fund with an additional quarter to rectify any departure from the 80% investment requirement. At some point, however, departures may begin to change the nature of the fund fundamentally, which would undermine

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216 Proposing Release, *supra* footnote 2, at n.61 and accompanying text. As another example, consistency in investment companies' investments with their names and investors' reasonable expectations may be particularly important to retirement plan and other investors who place great emphasis on allocating their investment company holdings in well-defined types of investments, such as stocks, bonds, and money market instruments. *See id.*; *see also* 2001 Names Rule Adopting Release, *supra* footnote 8, at n.8 and accompanying text.

investor expectations created by the fund's name. The time limits we are adopting are designed to prevent such a fundamental change without investor notification.

We are not adopting, as suggested by some commenters, a board reporting obligation that would effectively provide additional time to resolve departures from the 80% requirement. Rather, the final approach directly provides funds with additional time, compared to the proposal, both to identify drift in their portfolios and to rectify departures from 80%. The increased flexibility for temporary departures that the final amendments afford to funds, compared to the proposed approach, addresses many of the concerns raised by commenters recommending that we adopt a board reporting obligation instead of setting specified time periods for funds to come back into compliance with the names rule. These comments were generally framed in terms of providing additional flexibility, as opposed to suggesting that a fund's board should have a specific oversight role when a fund departs from 80% for an extended period. The requirement that funds review their portfolios for names rule compliance quarterly in addition to a 90-day period to come back into compliance increases the flexibility of funds to accommodate instances of fund drift and intentional departures. This requirement also still includes a time certain for funds to resolve these departures in recognition of investors' reasonable expectation that a fund's investments will generally remain focused in the area that the fund's name indicates. In addition, a fund can seek exemptive relief from the Commission if the fund believes it would be appropriate and consistent with the protection of investors for the fund to depart for a limited additional period past 90 days. Any request for an exemptive order will be evaluated based on its particular facts and circumstances and must meet the standard under section 6(c) of the Investment Company Act, including that the exemption is necessary or

appropriate in the public interest and consistent with the protection of investors.[217] One example of an instance in which a fund might consider seeking relief would be where the fund anticipates resolving the departure, but cannot do so within 90 days and seeks to avoid changing the fund's name only to change it again in a short period of time.

In instances where the fund identifies that its investments are not consistent with this requirement under the names rule (for example, as a result of inadvertent drift identified as part of the fund's quarterly review), we are retaining the requirement that a fund must make all future investments in a manner that will bring the fund back into compliance with the 80% investment policy. We are also adopting, as proposed, the requirement that a fund must come back into compliance "as soon as reasonably practicable" (with a 90-day outer limit) because we anticipate that most temporary departures caused by portfolio drift could be remedied in substantially less than 90 days, though this could depend on the specific facts and circumstances.[218]

We recognize that there are certain circumstances under which a fund may be unable to bring its portfolio back into compliance with the fund's 80% investment policy within the required 90-day period. As commenters stated, there may be events that preclude the ability of a fund to make investments or sell assets that would not be in the best interest of the fund but that may be required to come back into compliance with the names rule. If such an event occurred,

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217 *See* Investment Company Act section 6(c) (providing the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act).

218 *See also, e.g.*, J.P. Morgan Asset Management Comment Letter ("Although temporary non-compliance in the ordinary course, such as due to unusually large flows, should be readily fixable in less than 30 days, there are also circumstances in which more flexibility is warranted."); MFDF Comment Letter ("While we agree that in most circumstances, a fund should be able to return to compliance within 30 days, it is difficult to anticipate every type of market volatility or other extenuating circumstance that might make this difficult to do while still protecting the interests of the fund's shareholders.").

the fund would need to change its name to better reflect the realities of its portfolio and the fund must provide shareholders with a notice of that change, which would provide information that would allow investors to understand the nature of the fund's portfolio.[219] The final amendments, consistent with the proposal, effectively toll the time for a fund to get back into compliance following a departure from 80% that the rule otherwise would require, if a notice of a change in a fund's policy has been provided to fund shareholders.[220] Once such a notice has been provided to shareholders, shareholders have a period of 60 days to determine whether they would like to redeem their shares before the change in policy takes effect.

d) Fund Launches and Reorganizations

We are adopting final rule amendments that permit funds to invest less than 80% of their assets in the 80% basket temporarily in order to reposition or liquidate assets in connection with a reorganization or to launch a fund.[221] We are adopting these amendments substantially as proposed. For fund launches, the final amendments provide funds with a temporary period to depart from the 80% investment requirement that is not to exceed 180 consecutive days starting from the day the fund commences operations.[222] The final rule amendments do not limit the time of departures associated with fund reorganizations.

The Commission received comments requesting that we extend the proposed period of time permitted for fund launches from 180 days to a longer period.[223] Commenters stated that

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[219] *See* final rule 35d-1(a)(2)(ii), (b)(1)(iii), (d).

[220] *See* proposed rule 35d-1(b)(iv); final rule 35d-1(b)(1)(iii).

[221] Final rule 35d-1(b)(1)(iii); *see also* final rule 35d-1(g) (defining the term "launch").

[222] Final rule 35d-1(g).

[223] *See, e.g.*, SIFMA AMG Comment Letter; USCOC Comment Letter; Invesco Comment Letter.

certain funds, for example "alts funds" or certain illiquid funds, may have a longer ramp-up period that can extend beyond 180 days.[224] One commenter stated that investors in these types of less-liquid funds will understand the nature of the fund they are investing in and understand that coming into compliance with the names rule within 180 days may not be in the interest of the fund.[225] Another commenter stated that it is in the best interest of the fund manager to invest the assets of the fund and to establish the fund as quickly as possible and that a fund manager may reasonably need more than 180 days to come into compliance with the names rule.[226] The Commission received one comment supporting the proposed approach to reorganizations and did not receive comments opposing this aspect of the proposal.[227]

We understand that there may be variability in how long is needed to launch a new fund depending on the types of investments in which the fund seeks to invest. In some instances, it may be in shareholders' interest for funds to take additional time beyond the otherwise-required 90-day temporary departures period to invest in a manner consistent with the fund's 80% investment policy, for example to avoid the potential for adverse impacts on the price of a targeted investment, to scale up an investment, or to find a better investment that corresponds to the investment focus relative to what is currently available. Nonetheless, we are adopting the requirement that, consistent with current guidance, such a period should not exceed 180 consecutive days.[228] We understand, based on staff knowledge of industry practice, that this time

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224 *See, e.g.*, SIFMA AMG Comment Letter; USCOC Comment Letter.

225 *See, e.g.*, SIFMA AMG Comment Letter.

226 *See, e.g.*, USCOC Comment Letter.

227 *See* Fidelity Comment Letter.

228 *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at n.39 and accompanying text.

frame is generally sufficient for funds to invest fully, consistent with their 80% investment policy, after the fund commences operations.[229] Further, the final amendments generally require funds to be invested consistent with their 80% investment policy "as soon as reasonably practicable," which may be a shorter time than 180 days. The amendments therefore do not permit any fund to exceed 180 consecutive days to invest its assets consistent with its 80% investment policy when launching a fund.

We recognize the likelihood that it can take longer for funds to find investments during their start-up, particularly for funds that invest in securities whose supply is limited. Both reorganizations and launches may result in a fund holding assets in a way that is inconsistent with its 80% investment policy in connection with these fund life-cycle events. For example, at start-up it may take time for a new fund to find and purchase available investments consistent with the fund's investment focus, and the fund may hold cash in the interim. While we anticipate that, for most funds, codifying a required 180-day period for a fund to be fully invested consistent with its 80% investment policy will not result in significant operational changes, we acknowledge that may not be the case for all funds.

Planned reorganizations may take longer to complete than 30 days or even 180 days. Moreover, such a planned action will be disclosed, and the reorganization is likely to be a permanent change to the nature of the investor's investment.[230] Similarly, a change to a fund's 80% investment policy will result in a permanent change to the fund's investments, about which

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229 *See also, e.g.*, PRI Comment Letter (supporting all of the proposed time frames for getting back into compliance).

230 For example, when the board of an open-end fund determines to approve a reorganization, the fund would supplement its prospectus.

funds notify investors pursuant to the provisions of the names rule. Thus, we do not believe that changes in the fund's investment portfolio to support an upcoming reorganization would generally be inconsistent with investors' reasonable expectations. As a result, we do not believe that an express time limit is necessary for departures from the 80% investment requirement made in connection with these actions. Such departures would still be required to be resolved as soon as reasonably practicable, consistent with any temporary departure under the rule.

3. Considerations Regarding Derivatives in Assessing Names Rule Compliance

Consistent with the proposal, we are adopting amendments that address the valuation of derivatives instruments for purposes of determining compliance with a fund's 80% investment policy, as well as the derivatives that a fund may include in its 80% basket. These amendments are designed to reflect the investment exposure derivatives investments create and to increase comparability, as some funds currently value derivatives instruments using their notional amounts for purposes of determining their compliance with the 80% test while other funds use market values.[231] The amendments are designed both to allow funds to use names that may more effectively communicate their investments and risks to investors, and to reduce the risk that a fund may use derivatives to invest in a manner inconsistent with the investment focus suggested by the fund's name.

The proposed amendments included the requirement for funds to use a derivatives instrument's notional amount, rather than its market value, for the purpose of determining

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[231] *See, e.g.*, Proposing Release, *supra* footnote 2, at nn.76-78 and accompanying text.

compliance with a fund's 80% investment policy.[232] The proposal also included amendments to address the derivatives instruments that a fund may include in its 80% basket.[233] As discussed below, commenters generally agreed that the names rule should specifically address funds' use of derivatives, although some commenters suggested modifications to the proposed approach.

We are adopting the proposed amendments with certain changes in response to comments. We discuss each element of the final amendments' provisions addressing derivatives below.

Use of Derivatives' Notional Amounts, with Currency Hedging Exclusion

The final amendments generally require a fund to use notional amounts to value derivatives in assessing whether it has invested 80% of the value of its assets in accordance with the investment focus that the fund's name suggests.[234] In a change from the proposal, however, the final amendments also require a fund to exclude from the calculation certain derivatives that hedge the currency risk associated with a fund's foreign-currency denominated investments. These derivatives therefore will not be included in the calculation of the fund's assets or the fund's 80% basket when determining if the fund is complying with its 80% investment policy. A fund must exclude a currency derivative if it: (1) is entered into and maintained by the fund for hedging purposes, and (2) the notional amounts of the derivatives do not exceed the value of the

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[232] *See* proposed rule 35d-1(g).

[233] *See* proposed rule 35d-1(b)(2).

[234] *See* final rule 35d-1(g) (definitions of "assets" and "derivatives instrument"). The final amendments' approach, like the proposed approach, does not distinguish between derivatives instruments that are assets and derivatives that are liabilities of the fund. *See* Proposing Release, *supra* footnote 2, at n.83.

hedged investments (or the par value thereof, in the case of fixed-income investments) by more than 10 percent.

The final amendments' approach of using notional amounts better reflects the investment exposure that derivatives investments create than the use of market values (as the Act would generally otherwise require by operation of its definition of the term "value"), because a derivative instrument's market value may bear no relation to the investment exposure that the derivatives instrument creates.[235] For most types of derivatives instruments, the notional amount generally serves as a measure of a fund's investment exposure to the underlying reference asset or metric.[236] The use of notional amounts furthers the goal of helping to ensure that a fund's investment activity is consistent with the investment focus its name communicates.[237] Notably, using a derivatives instrument's market value for purposes of assessing names rule compliance could prevent a fund from using a name that effectively communicates its investments, or could result in a fund being in compliance with its 80% investment policy despite having significant exposure to investments that are *not* suggested by the fund's name.[238]

Comments on the proposed mandatory approach to using notional amounts were mixed. Some commenters supported the proposed approach, stating that notional amounts are a more accurate reflection of funds' economic exposure, as compared to market values, and that

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235 *See* Proposing Release, *supra* footnote 2, at paragraph accompanying nn.77-78; *see also* 15 U.S.C. 80a-2(a)(41)(B) (defining "value," in part, as the market value of securities for which market quotations are readily available and, for all other investments, as fair value as determined in good faith by the board of directors).

236 A total return swap, for example, can provide a return that is the economic equivalent of a direct investment in the derivative's reference asset.

237 A fund's name may be materially deceptive or misleading under section 35(d) of the Investment Company Act, however, even if it complies with the 80% investment policy requirement (and uses notional amounts as the final amendments require in performing its compliance calculations). *See infra* section II.A.5.

238 *See* Proposing Release, *supra* footnote 2, at paragraphs following n.78.

exposure is likely what investors assume a fund name reflects.[239] One commenter also expressed appreciation that the proposal attempts to provide a clear rule while also adjusting for accuracy in reflecting exposure.[240] Other commenters generally supported the use of notional amounts but suggested changes to the proposed approach that would permit the use of market values under certain circumstances.[241] For example, some commenters suggested that the rule should permit a fund to value each derivatives instrument consistent with a "reasonable exposure metric" and a method that best measures the economic exposure the derivatives instrument obtains synthetically, so long as the fund consistently applies the relevant metric and method.[242] One commenter suggested an alternative approach that would require the use of notional amounts for derivatives that are included in a fund's 80% basket, but that would permit the use of market values for derivatives that are not included in the 80% basket, depending on the nature of the particular derivative.[243]

Commenters suggesting these alternative approaches expressed particular concern about using notional amounts for derivatives transactions entered into to protect against risks posed by

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[239] *See* Consumer Federation of America Comment Letter; Capital Group Comment Letter; J.P. Morgan Asset Management Comment Letter; Ceres Comment Letter; Environmental Defense Fund Comment Letter; Comment Letter of Americans for Financial Reform Education Fund (Aug. 15, 2022) ("AFREF Comment Letter"); *see also* Comment Letter of Chris Barnard (June 8, 2022) ("Barnard Comment Letter") (expressing support for "an economic consideration that would look through the notional value of assets held in order to determine the economic impact of the fund exposures").

[240] *See* Center for American Progress Comment Letter; *see also* SIFMA AMG Comment Letter (stating that, while not all SIFMA AMG members agree that notional value is the most appropriate valuation for every derivatives instrument in all cases, many funds "recognize the benefit of eliminating disparate valuation practices among funds with an 80% investment policy").

[241] *See, e.g.*, Capital Group Comment Letter; Fidelity Comment Letter; T. Rowe Comment Letter; Dechert Comment Letter; ICI Comment Letter.

[242] *See* Dechert Comment Letter; ICI Comment Letter; *see also* Capital Group Comment Letter.

[243] T. Rowe Comment Letter.

investments *not* suggested by a fund's name (*i.e.*, investments not included in the 80% basket).[244] For example, a fund with "U.S. equities" in its name might invest a limited percentage of its assets in non-U.S. securities and then enter into derivatives to hedge risks associated with those securities. To comply with the fund's 80% investment policy, the value of the fund's U.S. equity investments in the fund's 80% basket must represent at least 80% of the value of the fund's "assets" as defined in the rule. If the derivatives intended to hedge risks associated with the non-U.S. equity securities in this example were valued using notional amounts, however, this would increase the value of the fund's "assets" and therefore could have a potentially large impact on the denominator for purposes of names rule compliance, causing the fund to drop below the required 80% threshold.[245] These commenters argued that this, in turn, could dissuade funds from entering into certain derivatives transactions that funds use for hedging or risk management purposes, whose impact on fund performance might be insignificant. One commenter, on the other hand, argued against an alternative approach that uses different valuation approaches for different derivatives because this would be less consistent and more complex than the proposed approach, which would likely result in inconsistencies in treatment, would complicate funds' compliance, and would raise examination challenges.[246]

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[244] *See* Dechert Comment Letter; ICI Comment Letter; T. Rowe Comment Letter.

[245] If the fund in this example had invested $80 in U.S. equity securities and $20 in non-U.S. securities, and then hedged risks associated with the non-U.S. securities with derivatives with a notional amount of $20, the fund would no longer satisfy its 80% investment policy. The fund's $80 in U.S. equity securities would represent 67% of the fund's $120 in assets. *See also* Proposing Release*, supra* note 2, at nn.75-76 and accompanying text.

[246] Consumer Federation of America Comment Letter.

After analyzing comments, we continue to believe that notional amounts are generally an appropriate measure of derivatives instruments' economic exposure.[247] This approach is designed to provide a clear and consistent approach to derivatives valuation that will simplify names rule compliance because all funds will have a specific standard to follow when valuing derivatives for names rule purposes. This approach also promotes names that effectively communicate a fund's investments and risks because all funds will be using the same calculation methodology. The final amendments' requirement for funds to use notional amounts to value derivatives, in the context of names rule compliance, reflects these goals.

However, we are adopting a modification to this approach in consideration of commenters' concerns that the proposed approach could limit the use of derivatives for hedging purposes. Take the example discussed above, where a U.S. equity fund may invest up to 20% of its assets in stocks of companies domiciled outside of the United States, consistent with the names rule. The fund in this example would not include the foreign stocks in its 80% basket, and therefore these foreign stocks would be in the denominator in the calculation that the fund would use to determine compliance with its 80% investment policy.[248] Any related currency derivative that the fund holds for hedging purposes, therefore, also would be in the denominator. This currency derivative could have a high notional amount, even though it would be reducing, not increasing, the fund's exposure to risks associated with the fund's foreign securities. Holding the currency derivative therefore could significantly limit the extent to which the fund could invest

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[247] *But see infra* footnote 259. We believe that the term "notional amount," which is also used in 17 CFR 270.18f-4 ("rule 18f-4"), is understood by market participants and used as a means to reflect the market exposure a derivatives creates—meaning, for example, that if a derivative provides a return based on the leveraged performance of a reference asset, the notional amount must reflect the application of the leverage factor. *See* Derivatives Adopting Release, *supra* footnote 214, at text following n.496.

[248] *See* T. Rowe Comment Letter.

outside of its 80% basket. One commenter stated that this approach could result in funds adopting more generic names, which would permit them to use derivatives with fewer constraints.[249] A fund also could decide to leave its foreign-currency-denominated investments unhedged in lieu of breaching its 80% investment policy, increasing risks to the fund and its shareholders.

While we appreciate these concerns, we continue to believe the names rule's approach to derivatives must be clear and consistently applied, and therefore we are not adopting a principles-based approach that, as some commenters suggested, would permit a fund to use any appropriate exposure metric when valuing derivatives in the context of names rule compliance. Instead, the final amendments require a fund, in calculating its assets for purposes of assessing names rule compliance, to exclude certain currency derivatives instruments that hedge currency risks associated with one or more specific foreign-currency-denominated equity or fixed-income investments held by the fund. A fund must exclude a currency derivative if it: (1) is entered into and maintained by the fund for hedging purposes, and (2) the notional amounts of the 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.

Excluding these derivatives from the names rule compliance calculation addresses concerns that including certain derivatives at their notional amounts in this calculation could limit the use of derivatives for hedging purposes. Limiting this exclusion to currency derivatives is designed to ensure that the exclusion will not result in the names rule calculation excluding instruments that create economic exposures that should be considered in assessing whether a

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[249] *See id.*

fund's name is materially deceptive and misleading in light of its portfolio. The Commission has previously distinguished currency derivatives, when directly matched to particular investments held by the fund, as instruments that "predictably and mechanically provide the anticipated hedging exposure."[250] The provision in the final rule requiring that these derivatives must be entered into and maintained for hedging purposes, and that the notional amounts of these derivatives must not exceed the value of the hedged investments by more than 10 percent, similarly reflects an approach the Commission has taken in the past to define currency derivatives that qualify as hedges.[251] These instruments therefore would not generally create economic exposures that could cause a fund's name to be materially deceptive or misleading.

On the other hand, other types of hedging transactions executed through derivatives are difficult to distinguish from transactions that create exposures that contribute to (or detract from) the investment focus that a fund's name suggests. For example, while a fund can use derivatives to hedge the interest rate risk that exists in interest-bearing assets, similar derivatives instruments can be used to supplement a portfolio whose strategy reflects a particular conviction about the movement of interest rates. It therefore would not be appropriate to adopt an approach that requires exclusion of interest rate derivatives in this example, as opposed to currency derivatives whose hedging purpose under the final amendments is more straightforward to determine. While no commenter suggested the specific approach to currency derivatives that the final amendments include, this approach addresses commenters' concerns about ways in which the proposal could

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[250] *See* Derivatives Adopting Release, *supra* footnote 214, at paragraph accompanying n.522. While the Commission's discussion in the Derivatives Adopting Release also characterized interest rate derivatives in this way, in addressing derivatives that may be excluded when calculating derivative exposure to determine eligibility for the limited derivatives user exception in rule 18f-4, the policy considerations for interest rate derivatives in the context of the names rule are unique as discussed below.

[251] *See id.* at paragraphs accompanying and following nn.523-526.

limit hedging activities, with one commenter specifically discussing hedging involving currency derivatives.[252]

We acknowledge that commenters suggesting alternative approaches generally favored the use of market values for certain derivatives, as opposed to excluding these derivatives from the names rule calculation. While derivatives' market values can often be quite low, such that the use of their market values would be functionally equivalent to excluding these derivatives from a names rule compliance calculation, there are circumstances where the market value of a derivative could be large.[253] The use of market values under these circumstances, as well as an approach that permits but does not require the exclusion of currency derivatives used for hedging purposes, could therefore lead to inconsistent compliance calculation outcomes.

Calculating notional amounts for purposes of names rule compliance

In calculating notional amounts, the final amendments, as proposed, will require a fund to convert interest rate derivatives to their 10-year bond equivalents and to delta adjust the notional amounts of options contracts.[254] A simple way to convert an interest rate derivative to its ten-year bond equivalent is to multiply the derivative's unadjusted notional amount by the ratio of the derivative's duration and the duration of the reference security. The requirement to convert interest rate derivatives to 10-year bond equivalents is designed to result in adjusted notional

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[252] *See* Dechert Comment Letter; ICI Comment Letter; T. Rowe Comment Letter (discussing currency derivatives, as well as interest rate derivatives).

[253] While the market value of a derivative almost never will exceed its notional amount, as typically defined, a derivative can equal it, for example in the case of deep in-the-money options.

[254] *See* final rule 35d-1(g).

amounts that better represent a fund's exposure to interest rate changes.[255] Absent this adjustment, short-term interest rate derivatives can produce large unadjusted notional amounts that may not correspond to large exposures to interest rate changes. Similarly, a fund will delta adjust an option by multiplying the option's unadjusted notional amount by the option's delta (*i.e.*, the ratio of change in the value of the option to the change in value of the asset into which the option is convertible).[256] The requirement to delta adjust options is designed to provide for a more tailored notional amount that better reflects the exposure that an option creates to the underlying reference asset.

Some commenters supported the proposed mandatory notional amount adjustments, arguing that these adjustments are standardized practices that will properly account for derivatives instruments' true exposures.[257] Other commenters argued that the names rule should permit, but not require, the proposed adjustments.[258] These commenters stated that rule 18f-4 permits the adjustments but does not require them, and therefore the names rule's approach would permit funds to benefit from compliance and operational efficiencies.[259] One commenter also argued that there is no policy reason for different treatment between the names rule and rule

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[255] *See* Proposing Release, *supra* footnote 2, at n.80 and accompanying text; *see also* Derivatives Adopting Release, *supra* footnote 214, at section II.E.1; AFREF Comment Letter (providing numeric examples of the utility of the proposed adjustments).

[256] *See* Derivatives Adopting Release, *supra* footnote 214, at n.500.

[257] *See* AFREF Comment Letter; Center for American Progress Comment Letter; *see also* Consumer Federation of America Comment Letter (stating that it makes sense, for efficiency's sake, for the names rule to apply the same approach with regards to derivatives measurement that rule 18f-4 under the Act requires for purposes of considering funds' derivatives exposure in the context of the rule's limited derivatives user provision).

[258] *See* Dechert Comment Letter; ICI Comment Letter; SIFMA AMG Comment Letter; Fidelity Comment Letter.

[259] *See* SIFMA AMG Comment Letter; Fidelity Comment Letter.

18f-4 because the permissive adjustments in rule 18f-4 "generate an accurate measure of the exposure created by a particular derivatives transaction."[260] Another stated that requiring the proposed adjustments would prevent funds from "taking a more conservative approach" by deciding not to scale down the notional value of derivatives to their 10-year bond equivalents.[261]

After considering comments, we are adopting the proposed mandatory adjustments. We continue to believe that requiring these tailoring adjustments is appropriate for purposes of the names rule in order for a fund's 80% investment policy to best reflect the fund's investment exposure, which in turn would help ensure that the investment focus a fund's name communicates is not materially deceptive or misleading.[262] For example, a deep out-of-the money option can have a large unadjusted notional amount, but will provide limited investment exposure to the underlying reference asset. It would not be consistent with the goal of requiring notional amounts when assessing names rule compliance to permit the fund in this example to use such an option's unadjusted notional amount to satisfy its 80% investment policy because, even if the option's unadjusted notional amount equaled or exceeded 80% of the value of the fund's assets, it is not providing a commensurate degree of investment exposure at that time. While permitting the adjustments rather than requiring them could allow a fund to take a "more conservative" approach in certain specific cases as one commenter suggested, it also could permit a fund to account for derivatives in its names rule compliance in a way that could be

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260 SIFMA AMG Comment Letter.

261 Fidelity Comment Letter.

262 A fund's use of derivatives that results in a substantial portion of the fund's risks or returns being materially different from those which an investor reasonably would expect based on the fund's name, regardless of the fund's compliance with the requirements of the names rule (including the use of derivatives' notional amounts and the required tailoring adjustments) could render a fund's name to be materially deceptive or misleading. *See infra* section II.A.5.

inconsistent with investors' expectations based on the fund's name. Requiring these adjustments would prevent a fund, for example, from including a deep out-of-the money option in its 80% basket to comply with its 80% investment policy. In that case, the option's unadjusted notional amount would not represent the exposure that the option creates to the underlying reference asset at that time. This potential gaming consideration is not applicable in the context of rule 18f-4, because including high unadjusted notional amounts in a fund's calculation of derivatives exposure for rule 18f-4 purposes could result in the possibility only of increased regulatory burden (for a fund not qualifying as a limited derivatives user under the rule).

Reducing the value of a fund's assets by deducting cash and cash equivalents and certain U.S. Treasury securities

The final amendments will permit a fund, in determining compliance with its 80% investment policy, to deduct cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less from assets (*i.e.*, the denominator in the 80% calculation), up to the notional amounts of the fund's derivatives instruments.[263] This represents a change from the proposal, which would have limited the deduction to cash and cash equivalents and would have required, not permitted, this deduction.

The Commission stated in the Proposing Release that funds that use derivatives instruments to gain exposure to the markets in which they invest may maintain portions of their

[263] Final rule 35d-1(g). The Commission has stated that items commonly considered to be cash equivalents include certain Treasury bills, agency securities, bank deposits, commercial paper, and shares of money market funds. *See* Proposing Release, *supra* footnote 2, at n.86. U.S. Generally Accepted Accounting Principles ("U.S. GAAP") define cash equivalents as short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. Generally, only investments with original maturities of three months or less qualify under that definition. *See* FASB Accounting Standards Codification Master Glossary, *available at* https://asc.fasb.org/glossary.

assets in cash and cash equivalents, which may not themselves provide market exposure. Rather, such cash and cash equivalents may effectively function as low-risk collateral for those derivatives instruments. Because the notional amount of the derivatives instruments for which the cash and cash equivalents effectively function as collateral is already included in the denominator of the 80% investment test, including the cash and cash equivalents held as such collateral could effectively "double-count" the fund's exposure.[264]

Commenters that addressed this aspect of the proposal generally supported it and encouraged the Commission to expand the types of assets that funds may deduct beyond cash and cash equivalents.[265] Some commenters stated that the Commission should extend the proposed approach to allow funds to exclude any assets that they have posted as collateral under derivatives instruments and certain other asset types.[266] These commenters provided examples of what this recommended broader approach would encompass, including other U.S. government securities such as U.S. Treasury securities with under five years to maturity, investment-grade corporate bonds with under three years to maturity, short-term bond fund shares, interests in other short-term investment funds, and repurchase agreements on cash equivalents or any of the foregoing types of instruments. One commenter discussed circumstances in which cash and cash equivalents provide investment exposure and therefore should not be deducted in a fund's 80%

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[264] *See* Proposing Release, *supra* footnote 2, at paragraphs accompanying nn.84-86.

[265] *See* Dechert Comment Letter; ICI Comment Letter; Dimensional Comment Letter.

[266] *See* Dechert Comment Letter; ICI Comment Letter.

investment policy calculation, and another commenter suggested that the deduction of cash and cash equivalents be permissive instead of mandatory as proposed.[267]

We agree that the deduction of cash and cash equivalents should be permissive and not mandatory. For funds that do not employ investment strategies that seek exposure through investments in cash and cash equivalents, the decision *not* to deduct cash and cash equivalents in a fund's 80% investment policy calculation always would be more conservative for purposes of meeting the required 80% threshold. That is, the denominator in the calculation (the fund's assets as defined in the names rule) for a fund that chooses not to deduct cash and cash equivalents would always be larger compared to an equivalent fund that chooses to deduct cash and cash equivalents from its assets. Choosing not to deduct cash and cash equivalents therefore would require proportionately more assets in the fund's 80% basket compared to an equivalent fund that chooses to deduct cash and cash equivalents. Moreover, permitting a fund to choose not to deduct cash and cash equivalents reflects that there are circumstances in which cash and cash equivalents provide investment exposure that is consistent with the fund's name.

We also agree that expanding the permissible deduction to encompass all U.S. Treasury securities with remaining maturities of one year or less (as opposed to those with original maturities of three months or less, which would qualify as "cash equivalents" for purposes of U.S. GAAP) would permit funds to exclude certain additional assets that effectively function as

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[267] SIFMA AMG Comment Letter (stating that funds may employ investment strategies that seek exposure to the U.S. government through derivative instruments, as well as cash and cash equivalents, and it would be appropriate to permit cash and cash equivalents to be included in both the numerator and denominator of a fund's 80% investment policy calculation when such investments provide market exposure); T. Rowe Comment Letter (stating that if the Commission were to adopt the commenter's suggested alternative approach to the mandatory use of notional amounts, discussed in *supra* footnote 243 and accompanying text, this approach would not require the deduction of cash and cash equivalents to address potential double-counting of a fund's exposure, but if the Commission did not adopt the alternative approach, the deduction of cash and cash equivalents should be permissive and not mandatory).

low-risk collateral for derivatives instruments but that do not introduce unexpected investment exposure or risk to the portfolio.[268] U.S. Treasury securities with remaining maturities of one year or less have a significantly lower likelihood of a short-term price change (and the magnitude of any price change is likely significantly lower) than U.S. government securities with longer original and/or remaining maturities.[269]

We decline, however, to expand the permissible deduction beyond cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less. We are concerned that this approach could result in funds deducting investments from the names rule calculation that could introduce unexpected investment exposure or risk to the portfolio. For instance, if a fund with a name that suggests a focus in bonds with very short-term maturities were to use derivatives as part of its strategy, and held corporate bonds with longer maturities than its name suggests, deducting those bonds from the names rule calculation would result in deducting instruments that may be riskier than the assets in which the fund's name suggests a focus. The same consideration applies for Treasury securities with relatively long original and/or remaining maturities, as these securities similarly can introduce risk to a portfolio, in particular when interest rates rise. The deduction of these types of assets could result in the fund's investments providing investment exposure that is inconsistent with the fund's name, but is not reflected in names rule compliance assessments, which could mislead investors. The breadth of funds that could be subject to the 80% investment policy requirement makes it challenging to

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268 *See supra* footnote 263.

269 *See* ISDA, *Initial Margin Non-Cleared Margin Rules/Eligible Collateral Comparison by Jurisdiction* (Jan. 5, 2023), *available at* https://www.isda.org/a/EqxgE/Eligible-Collateral-Comparison-010523.pdf (haircuts on U.S. debt securities with under 1 year residual maturity are substantially less than haircuts on U.S. debt securities with longer maturities).

draw clear and consistent lines about what types of collateral—other than cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less—would *not* result in potentially misleading names if deducted from the names rule calculation.

Deduction of closed-out derivatives positions

In a change from the proposal, the final amendments provide that a fund is permitted to exclude any closed-out derivatives positions when calculating assets for purposes of determining compliance with its 80% investment policy, if those positions result in no credit or market exposure to the fund.[270] The proposed amendments did not address closed-out derivatives positions directly. However, the 2022 Proposal included a request for comment asking whether it is sufficiently clear that funds would eliminate from the names rule calculation closed-out derivatives positions, that is, derivatives that were closed out with the same counterparty and result in no credit or market exposure to the fund, or instead whether the rule should address these positions.[271]

Several commenters discussed this request for comment and stated that the Commission should exclude closed-out derivatives positions from the names rule calculation, but should not limit the exclusion of closed-out positions to those with the same counterparty.[272] These commenters contrasted their suggested treatment with the treatment of closed-out positions in rule 18f-4 under the Act.[273] Commenters recognized that rule 18f-4 does not permit funds to exclude offsetting positions across different counterparties in calculating derivatives exposure for

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[270] Final rule 35d-1(g).

[271] *See* Proposing Release, *supra* footnote 2, at Request for Comment #33.

[272] *See* Dechert Comment Letter; ICI Comment Letter; T. Rowe Comment Letter; *see also* SIFMA AMG Comment Letter.

[273] *See* rule 18f-4(a).

purposes of determining whether a fund qualifies as a limited derivatives user.[274] Commenters argued that the concerns underlying the approach in rule 18f-4, however, do not apply for purposes of the names rule, which is focused "primarily on addressing the alignment between the investment exposures suggested by a fund's name and those resulting from the fund's investments and preventing the use of misleading fund names."[275] One commenter argued that limiting excluded closed-out derivatives positions to those with the same counterparty would lead to economic inefficiencies and could be detrimental to a fund's returns.[276]

The final amendments permit funds to exclude closed-out derivatives positions from the names rule calculation if those positions result in no market exposure to the fund because these closed-out positions will not affect the fund's risks or returns. We agree that the concerns underlying rule 18f-4's provision on closed-out derivatives positions are not the same concerns underlying the names rule. Rule 18f-4 does not permit a fund to offset derivatives transactions with different counterparties for purposes of determining whether a fund qualifies as a limited derivatives user under that rule because netting these derivatives transactions could result in a fund having a large volume of open derivatives positions subject to their own margin and other requirements with various counterparties. This, in turn, could involve a scale of derivatives positions and related operational and counterparty risks that the Commission has stated it believes funds should manage as part of a derivatives risk management program. The goals of

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274 *See* Derivatives Adopting Release, *supra* footnote 214, at section II.E.

275 Dechert Comment Letter; *see also supra* footnote 270.

276 Dechert Comment Letter (suggesting that under the proposed approach, "a fund might be compelled to transact with the counterparty with which it entered in the original derivatives transaction on less favorable terms, including pricing, or which poses more credit risk to the fund, than a different counterparty with which it could enter into an offsetting position at the time it needs to eliminate its exposure under the first transaction").

the names rule, on the other hand, address whether the exposures that a fund's portfolio creates align with the focus that the fund's name suggests. Reflecting these exposures for purposes of calculating names rule compliance does not depend on requiring offset positions to have the same counterparties. The final amendments, therefore, do not require that closed-out positions to be closed out with the same counterparty in order for a fund to exclude them from the calculation of its assets.

Derivatives instruments included in the 80% basket

The final amendments, substantially as proposed, permit a fund to include in its 80% basket a derivatives instrument that provides investment exposure to one or more of the market risk factors associated with the investment focus suggested by the fund's name.[277] This approach recognizes that, in addition to using derivatives as direct substitutes for cash market investments, some funds use derivatives instruments to hedge exposures or to obtain exposure to market risk factors associated with the fund's investments (for example, interest rate risk and credit spread risk). Those instruments may have very high notional amounts, and if the rule did not allow funds to treat the notional amounts of those derivatives instruments as investments that reflect the fund's investment focus, the notional amounts of those derivatives instruments could cause a fund to fall out of compliance with its 80% investment policy.[278]

Commenters expressed support for the proposed approach, as it recognizes that funds often use derivatives instruments to provide complementary investment exposure to the

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[277] Rule 35d-1(b)(2).

[278] *See* Proposing Release, *supra* footnote 2, at paragraphs following paragraph accompanying n.86. For example, if ABC Bond Fund invested $100 in bonds, $100 in interest rate swaps, and held no other assets, the fund would not satisfy its 80% investment policy if the interest rate swaps were not included in the fund's 80% basket ($100 in bonds / $100 in bonds + $100 in swaps = 50%).

investments suggested by a fund's name, including exposure to the market risk factors associated with such investments.[279] Some commenters requested that the Commission acknowledge that funds may consider all derivatives that provide exposure to market risk factors associated with investments suggested by a fund name when testing names rule compliance, not just those enumerated risk factors discussed in the Proposing Release.[280] Another commenter requested that the Commission expand the types of derivatives hedging instruments that may be included in a fund's 80% investment policy by allowing derivatives transactions that hedge the risks associated with one or more securities held by a fund, notwithstanding whether they are intended to hedge market risk factors associated with the investments suggested by the fund's name.[281] This commenter provided as an example funds that invest in mortgage pass-through securities, which commonly use U.S. Treasury futures and options to hedge against the impact of mortgage prepayments on the fund's duration (stating that using derivatives to manage duration in this manner may not align with the investments suggested in a fund's name or provide investment exposure to a market risk factor associated with an investment suggested by a fund's name).

After considering comments, the final amendments do not expand the derivatives that may be included in a fund's 80% basket beyond the proposed approach. Under the proposed approach, the derivatives instruments included in a fund's 80% basket would either be functioning as a substitute for direct investments in the securities suggested by the fund's name

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[279] *See* SIFMA AMG Comment Letter; Dechert Comment Letter; Fidelity Comment Letter; ICI Comment Letter.

[280] *See* ICI Comment Letter; *see also* SIFMA AMG Comment Letter; Dechert Comment Letter; *see also* Proposing Release, *supra* footnote 2, at section II.A.3 (discussing funds' use of derivatives to obtain exposure to market risk factors associated with the fund's investments, for example interest rate risk, credit spread risk, and foreign currency risk).

[281] Fidelity Comment Letter.

or (in the case of, for example, interest rate derivatives) used to facilitate the fund's investment in those securities by increasing or decreasing the fund's exposure to risk factors associated with those securities. On the other hand, derivatives used to manage the risks of the fund's portfolio as a whole can involve more complex hedging activities than transactions that provide investment exposure to one or more of the market risk factors associated with investments suggested by the fund's name.[282] This, in turn, could create exposures that could be inconsistent with investors' reasonable expectations of the fund's investment activity.[283]

We acknowledge that there may be transactions other than the ones that the Commission specifically addressed in the Proposing Release that provide investment exposure to one or more of the market risk factors associated with investments suggested by the fund's name, and the examples the Commission provided are not intended to be limiting. To help determine whether a derivatives instrument provides investment exposure to one or more of the market risk factors associated with a fund's name assets, the fund generally should consider whether the derivative provides investment exposure to any explicit input that the fund uses to value its name assets, where a change in that input would change the value of the security.[284] For example, prepayment

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282 *See* Derivatives Adopting Release, *supra* footnote 194, at n.530 and accompanying text.

283 Including derivatives in the 80% basket to the extent that they negate the primary market risk factor associated with the assets in which the fund's name suggests an investment focus similarly could result in a fund's name being materially deceptive and misleading, notwithstanding the fund's adoption of an 80% investment policy and compliance with the requirements of the names rule. *See supra* footnote 262. For example, investors may reasonably expect the investments in which the "XYZ Corporate Bond Fund" focuses to reflect exposure to certain risks, such as credit risk. If this fund were to purchase credit default swaps or any other derivatives instruments that resulted in the elimination of all credit risk in its portfolio for an extended period of time, and were to include these derivatives in the fund's 80% basket, the fund's name could be materially deceptive and misleading because the fund would have eliminated the primary market risk factor associated with the assets in which the fund's name suggests a focus.

284 *See* Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 6, 2021)] (for a general discussion of valuation practices with respect to the fair value of a registered investment company or business development company).

is an explicit risk factor in the price of a mortgage security, and therefore, in contrast to the concern that a commenter expressed, it would generally be appropriate for a fund whose name indicates a focus in mortgage securities to include derivatives in its 80% basket that manage the prepayment risk of these securities.

Treatment of short positions

Under the final amendments and as proposed, if a fund were to use derivatives instruments to obtain exposure to short positions in one or more reference assets, the fund would have to use these derivatives instruments' notional amounts for purposes of determining compliance with its 80% investment policy. That is, these investments would be valued at their notional amounts in the denominator in all cases, and at their notional amounts in the numerator where the fund includes investments that provide short exposure in the numerator. The final amendments, in a change from the proposal, also specify that a fund must value each physical short position using the value of the asset sold short.[285] For example, if a fund sold short one share of a security for $100, the market value of the position would be $0 at that time because the fund has $100 in short sale proceeds but also a liability in the form of the obligation to return a share worth $100. If the fund had obtained the same short exposure via a swap, the notional amount would be $100. Valuing the physical short position at $100 for purposes of the names rule—the value of the asset sold short—provides comparable values for names rule purposes for the swap and physical short sale in this example.

The 2022 Proposal included a request for comment asking about funds' current practices with respect to including short positions in their 80% baskets, and also whether the Commission

285 Final rule 35d-1(g).

should address the valuation of physical short sales for purposes of assessing names rule compliance. Commenters who discussed these points advocated for the Commission explicitly to permit funds to include short positions in derivatives and physical short sales in their 80% baskets and to address the valuation of physical short sales.[286] They stated that the Commission should adopt an approach that permits, but does not require, funds to include in their 80% baskets short positions in derivatives and physical short sales, where each of these provides short exposure to the investments suggested by the fund's name or to the market risk factors associated with those investments in their 80% baskets, regardless of whether the fund's name specifically suggests the use of short sales or short positions. Commenters stated that many funds currently take this approach when assessing names rule compliance.[287] One commenter stated that funds use both long and short positions to obtain exposures suggested by a fund's name, and this commenter argued that the suggested approach would be consistent with the proposed approach of including derivatives instruments that provide investment exposure to a market risk factor associated with a fund's name.[288] In addressing the valuation of physical short positions, commenters suggested that the Commission should permit funds to use the absolute notional amount or the absolute market value of the asset sold short under a physical short sale for purposes of valuing such transaction for names rule compliance.[289] In addition, they also suggested a fund should be permitted to look through to the components of its open short sale

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[286] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter.

[287] ICI Comment Letter; Dechert Comment Letter.

[288] ICI Comment Letter.

[289] ICI Comment Letter; Dechert Comment Letter; *see also* SIFMA AMG Comment Letter (stating that, with respect to short positions, whether accomplished through the use of derivatives instruments or the physical short sale of a security or other asset, the Commission should require that funds use the notional value of such positions for purposes of determining names rule compliance).

positions to offset their investment exposure (*i.e.*, the fund should be able to close out all or part of a short sale position) for purposes of compliance with its 80% investment policy.

We agree that short positions, under certain circumstances, may qualify as investments that a fund may include in its 80% basket. For example, if a fund's name indicates that its investment focus includes short exposure to a particular type of investment, this inclusion would be appropriate. In other circumstances, however, the inclusion of short positions would not be appropriate where this would result in the fund's economic exposure departing significantly from investors' reasonable expectations based on the fund's name. For example, if a fund were named the "XYZ Equity Fund," and half of the value of its 80% basket were invested in long equity positions, and the other half were invested in short equity positions, the portfolio's net exposure would likely not be consistent with investors' expectations based on the fund's name.

We agree that, to better reflect the exposures that physical short sales provide, the rule should address the valuation of physical short sales and use an approach where their valuation is consistent with the valuation of short positions obtained through a fund's use of derivatives. We are therefore adopting a change to the proposed definition of "assets" in the names rule, which specifies that a fund must value each physical short position using the value of the asset sold short.[290] A fund would be able to 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 value of asset(s) sold short, just as a fund could exclude any cash and

290 This approach is consistent with the valuation of physical short positions in rule 18f-4 under the Act. *See* definition of "derivatives exposure" in rule 18f-4(a).

cash equivalents and such U.S. Treasury securities up to the notional amount of the fund's derivatives instruments, as discussed above.

4. Unlisted Registered Closed-End Funds and BDCs

The final rule will prohibit a registered closed-end fund or BDC whose shares are not listed on a national securities exchange, and that is required to adopt an 80% investment policy, from changing that policy unless authorized by a vote of the majority of the outstanding voting securities of the fund.[291] However, in a modification from the proposal, under the final amendments such funds will be permitted to make changes to their 80% investment policies without this vote if the fund conducts a tender or repurchase offer in advance of the change, the fund provides at least 60 days' prior notice of any change in the policy in advance of that offer, that offer is not oversubscribed, and the fund purchases shares at their net asset value.[292]

Some commenters voiced general support for this element of the proposal, stating that it was an improvement from the current rule, whereby investors in these products generally have limited or no ready recourse if a fund were to change its investment policy, and that it would empower investors.[293] Conversely, other commenters raised concerns regarding the proposed requirement, arguing that it would impede the ability of funds to change their investment

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[291] Final rule 35d-1(f). This approach has the same practical effect as the proposed approach, which would have required these funds to adopt their 80% investment policies as fundamental policies (policies that funds cannot change unless authorized by a vote of a majority of its outstanding voting securities). *See* proposed rule 35d-1(a)(2)(ii); *see also* 15 U.S.C. 80a-13(a)(3).

[292] Final rule 35d-1(f)(4) (specifying that, in the event of a tender offer, the fund purchases shares at their net asset value). This provision in final rule 35d-1 addresses tender offers but does not specifically address the price at which repurchase offers must be conducted for a fund to be eligible for this exception because the Investment Company Act rules already address the price (net asset value) at which closed-end funds and business development companies conducting periodic repurchase offers are required to repurchase shares. *See* 17 CFR 270.23c-3 ("rule 23c-3"),

[293] Better Markets Comment Letter; NASAA Comment Letter.

strategies without conducting costly special shareholder votes.[294] This, according to commenters, could place these funds at a competitive disadvantage relative to other funds.[295] Furthermore, some commenters expressed that the requirement was unnecessary because it did not seem to address any identified harm to investors in these funds, stating that many closed-end funds and BDCs currently offer tender offer and repurchase programs as periodic sources of liquidity, and that investors in these products are already on notice through existing disclosures of any potential liquidity constraints.[296] Some commenters also suggested that a blanket requirement on BDCs to adopt a fundamental policy was contrary to the congressional intent behind exempting BDCs from Investment Company Act provisions that otherwise require funds to disclose and have a shareholder vote on changes in fundamental policies.[297] Some commenters suggested alternative approaches to address these concerns but also achieve the goals of the proposed amendments. For example, commenters suggested that the Commission require a vote only when all shareholders are not given an opportunity to sell or tender their shares back to the issuer after notice of a change in the 80% investment policy, or require a shareholder vote only in the event that the next tender offer or repurchase program after such notice is oversubscribed.[298]

As an alternative to the requirement to make their 80% policies fundamental policies, the current names rule permits funds other than tax-exempt funds to provide shareholders with 60 days' prior notice of such changes. The Commission permitted funds to provide shareholders

[294] *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter; Comment Letter of Simpson Thacher and Bartlett, LLP (Aug. 30, 2022) ("Simpson Thacher Comment Letter").

[295] SIFMA AMG Comment Letter; Invesco Comment Letter.

[296] SIFMA AMG Comment Letter; Simpson Thacher Comment Letter.

[297] Stradley Comment Letter; Dechert Comment Letter.

[298] *See* Dechert Comment Letter; Simpson Thacher Comment Letter.

advance notice, in lieu of adopting a fundamental policy, because the advance notice would provide shareholders with sufficient time to decide whether to redeem their shares in the event that a fund decides to pursue a strategy involving a different investment focus.[299] Unlike other funds subject to the rule, however, unlisted registered closed-end funds and BDCs do not issue redeemable shares or list their shares on a national securities exchange. As a result, shareholders in the affected funds generally have no ready recourse, such as the ability to redeem shares, if a fund were to change its investment policy and the investment focus that the fund's name indicates.[300] In light of these investors' limited options to sell their shares readily, the proposed fundamental policy requirement for unlisted registered closed-end funds and BDCs aimed to ensure that investors in these funds would be able to vote on any changes to a fund's investment policy.

After considering comments, we do not agree that extending the notice period, as some commenters suggested, is a sufficient substitute to respond to the concerns that the proposed approach was designed to address.[301] We recognize, however, that there could be alternative approaches to the proposed requirement that could address the Commission's concerns while decreasing the operational burdens that would accompany a requirement to conduct a shareholder vote for every instance in which a fund changes its 80% investment policy. We also recognize that where a fund *does in fact* give its investors the opportunity to sell their shares in

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[299] 2001 Names Rule Adopting Release, *supra* footnote 8, at n.19 and accompanying text.

[300] *See also* Proposing Release, *supra* footnote 2, at n.99. For example, many of the tender offer and repurchase programs currently offered by unlisted registered closed-end funds and BDCs are periodic and limited, and are therefore unlikely to provide recourse where a large percentage of a fund's investors disapprove of a change.

[301] *See, e.g.*, Invesco Comment Letter; ICI Comment Letter. *But see* NASAA Comment Letter (stating that a longer notice period would be insufficient as it would not provide investors a voice in these decisions).

connection with a fund's change of its 80% investment policy, the fund alleviates the concern that investors will be forced to hold investments that they wish to sell.

The final amendments include a limited exception to the shareholder approval requirement for funds that conduct qualifying tender or repurchase offers in advance of a proposed change in policy.[302] This exception is intended to function in a similar manner to the rule's general notice alternative by giving investors in unlisted registered closed-end funds and BDCs that use this alternative the opportunity to exit the fund prior to a fund's change in investment policy. This exception will provide funds with increased optionality in effecting changes to their investment policies compared to the proposed approach, and this approach is designed to mitigate commenter concerns that the proposed fundamental policy requirement would have put unlisted registered closed-end funds and BDCs at a competitive disadvantage against other types of funds.

To be eligible for this exception, a fund must conduct a tender or repurchase offer in accordance with all applicable Commission rules prior to any change in policy and provide shareholders with at least 60 days' prior notice of any change in such policy in advance of the offer. In the case of tender offers, a fund must purchase shares at NAV in order to be eligible for the exception. The exception applies only insofar as the tender or repurchase offer is not

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[302] The final amendments do not frame the requirement to obtain shareholder approval under certain circumstances as the requirement to adopt a "fundamental policy." *See supra* footnote 297 and accompanying text (discussing commenters' concerns about the proposed approach that would require BDCs to adopt fundamental policies). While the final amendments do retain the requirement to obtain a shareholder vote under certain circumstances, which the proposed approach effectively would have required, we believe that this is an appropriate use of the Commission's authority under section 35(d), and in light of the fact that the requirement to seek a shareholder vote under the final amendments is triggered only where a fund chooses a name that conveys a particular investment focus. We also believe this is appropriate in the context of unique investor protection concerns for investors in unlisted funds including BDCs resulting from the general lack of readily available liquidity.

oversubscribed.[303] If a tender or repurchase offer is oversubscribed, suggesting that the shareholders are not supportive of the change, a fund therefore would then be required to conduct a shareholder vote prior to making the change to its investment policy that the notice describes, in accordance with the final rule. This change also gives a fund discretion to determine the number of shares it is willing to repurchase from shareholders after the notice of the change, in accordance with all applicable Commission rules. This will permit fund managers to weigh the risk of oversubscription, and the resulting need to have a special shareholder meeting to vote on the change, against the amount of liquidity they are willing to provide to shareholders.

5. Effect of Compliance with an 80% Investment Policy

We are adopting, substantially as proposed, a new provision in the names rule providing that a fund's name may be materially deceptive or misleading under section 35(d) of the Investment Company Act even if the fund adopts and implements an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy.[304] The Commission has previously stated that the names rule's 80% investment policy requirement is not intended to create a safe harbor from liability under section 35(d) for materially deceptive or misleading fund names, and we are codifying this view to make clear that a fund name may be materially deceptive or misleading even where the fund complies with its 80% investment policy.[305]

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303 "Oversubscribed" in this case means shareholders have tendered or requested repurchase of a greater number of shares than the fund has offered to purchase (or ultimately purchases) in accordance with applicable Commission rules including rule 13e-4 under the Exchange Act and rule 23c-3 under the Investment Company Act. *See* final rule 35d-1(g).

304 Final rule 35d-1(c). In addition, the anti-fraud provisions of the Federal securities laws regarding disclosures to investors continue to apply to funds notwithstanding their compliance with the names rule.

305 *See* Proposing Release, *supra* footnote 2, at n.101.

Many commenters supported this aspect of the proposal.[306] Some commenters asserted that the codification is particularly important for fund names that articulate an ESG focus.[307] One commenter urged the Commission to require funds that use ESG terms in their name to state clearly and prominently what percent of the fund is invested in securities that do not comply with the investment criteria for the 80% basket.[308] Other commenters suggested that fund names that imply a prohibition or absence of investments or issuers with certain characteristics should have an investment policy that prohibits these investments.[309]

Several commenters, however, suggested that the Commission should provide more clarity or define precisely what types of investments would be considered inconsistent with the fund's name to the degree that the name would be materially deceptive or misleading despite the fund's compliance with an 80% investment policy.[310] In response to an example in the 2022 Proposal that a fund that complies with the names rule but makes a substantial investment that is "antithetical" to the fund's investment focus would have a materially deceptive or misleading name, commenters expressed that the proposed provision poses significant risks of second-guessing because evaluating whether an investment is antithetical to a fund's name is highly

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306 *See*, *e.g.*, Better Markets Comment Letter; CFA Institute Comment Letter; Sierra Club Comment Letter; Fidelity Comment Letter; U.S. SIF Comment Letter.

307 *See*, *e.g.*, PRI Comment Letter; Comment Letter of As You Sow (Aug. 15, 2022) ("As You Sow Comment Letter"); Comment Letter of Blue Haven Initiative (Aug. 16, 2022) ("Blue Haven Comment Letter"); Comment Letter of Building a Sustainable Investment Community Comment Letter (Aug. 15, 2022) ("Building a Sustainable Investment Community Comment Letter").

308 Comment Letter of Corey Shapiro (Aug. 16, 2022) ("Shapiro Comment Letter").

309 *See*, *e.g.*, CFA Institute Comment Letter; As You Sow Comment Letter; Blue Haven Comment Letter; Bonwood Comment Letter; Comment Letter of Change Finance (Aug. 15, 2022) ("Change Finance Comment Letter").

310 *See*, *e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter; Capital Group Comment Letter; PRI Comment Letter.

subjective.[311] Commenters also suggested that the uncertainty related to the provision would decrease portfolio management discretion and flexibility in managing the fund's portfolio, as this uncertainty would give rise to concern about violating the rule.[312] A few commenters asserted that absent a claim in a fund's name that the fund will not invest in a particular type of investment, a fund should have flexibility as long as it discloses how it will invest its 20% basket.[313]

After considering the comments on the proposed provision, we continue to believe that a fund's name could be materially deceptive or misleading for purposes of section 35(d) even if that fund has complied with the names rule's 80% investment policy requirement. For example, a fund's name could be materially deceptive or misleading for purposes of section 35(d) if the fund invests in a way such that the source of a substantial portion of the fund's risks or returns is materially different from that which an investor reasonably would expect based on the fund's name, regardless of the fund's compliance with the requirements of the names rule (*e.g.*, a "green energy and fossil fuel-free" fund making a substantial investment in an issuer with fossil fuel reserves, or a "conservative income bond" fund using the 20% basket to invest in highly volatile equity securities that introduce significant volatility into a fund that investors would

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311 *See*, *e.g.*, J.P. Morgan Asset Management Comment Letter; Federated Hermes Comment Letter; Stradley Comment Letter; *see also* Fidelity Comment Letter (expressing particular concern with the statements provided in the 2022 Proposal, asserting that "the current regulatory landscape, which requires certain specific disclosures under Form N-1A and provides for further registration statement liability through other securities laws, appropriately addresses any potential liability for material omissions or misstatements in the registration statement").

312 *See*, *e.g.*, MFS Comment Letter; Stradley Comment Letter; Capital Group Comment Letter; Fidelity Comment Letter (stating that "the 20% portion of the fund's portfolio that is not subject to the Names Rule is a diversification tool in managing fund assets").

313 *See* SIFMA AMG Comment Letter; MFS Comment Letter.

expect to have lower levels of volatility associated with lower-yielding bonds).[314] To the extent a fund uses its 20% basket to invest in assets that are materially inconsistent with the investment focus or risk profile reflected by the fund's name, the fund's name would be materially deceptive or misleading under section 35(d). While we appreciate commenters' expressed concerns, the provision is designed to codify the existing relationship between the names rule and section 35(d) and not to create new requirements or standards with respect to the selection of investments in a fund's 20% basket that are not now present. For these reasons, this provision will not require certain disclosures related to the percent of a fund's assets invested in securities that do not comply with the investment criteria for the 80% basket, nor will this provision include an explicit prohibition on investments that are inconsistent with the activity that a fund's name communicates, as suggested by a few commenters.

Relatedly, the 2022 Proposal discussed situations where a fund may be invested 80% or more in a market index referenced in the fund's name, but that underlying index may have components that are contradictory to the index's name.[315] In such circumstances, even though the fund meets the names rule requirements by its investments in the index, the name could still be materially misleading or deceptive in that the *index's* name would suggest an investment focus that the fund does not follow. A few commenters agreed that this example could lead to

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[314] *See* Proposing Release, *supra* footnote 2. As another example, a fund that is perpetually out of compliance with the 80% investment requirement on account of temporary departures may have a name that is materially deceptive or misleading under section 35(d) even if each temporary departure is permissible under the rule. *Id.* Further, as discussed above, a fund of funds or other acquiring fund can reasonably rely upon the entire value of its investment in an appropriate acquired fund as a general matter. *See supra* paragraph following paragraph accompanying footnotes 139-140. However, if an acquiring fund was aware that an underlying fund has changed its investments such that it is not following the acquiring fund's investment focus, that acquiring fund's name may be materially misleading or deceptive if it continues to include the value of the investment in the acquired fund in its 80% basket.

[315] *See* Proposing Release, *supra* footnote 2, at n.102 and accompanying discussion.

materially deceptive or misleading fund names, asserting that terms used in the name of index funds can communicate an investment focus to investors, therefore such funds should not be allowed to circumvent the technical holding requirements of the names rule.[316] Other commenters, however, expressed that index funds should not be required to determine compliance with an 80% investment policy regarding investments that the name of an index indicates, but rather the fund should comply with the rule by investing 80% of its assets in the components of the underlying index.[317] Some of these commenters expressed that fund managers may have visibility into index methodologies, but they do not determine the particular investments that an index includes, making it challenging to deviate from an index if their principal objective is to track its returns.[318] In addition, some commenters suggested that applying the rule to index funds in the manner the Commission's example described could increase tracking error between index funds and indices, while increasing costs and the likelihood of potential confusion for investors if funds have to deviate from the methodologies of the underlying index.[319]

We continue to believe that a fund that is invested 80% or more in an index included in the fund's name can be materially deceptive and misleading if a meaningful nexus does not exist between the components of the underlying index and the investment focus suggested by the

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316 PIABA Comment Letter; Dogwhistle Comment Letter.

317 *See*, *e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter; Fidelity Comment Letter; Invesco Comment Letter.

318 *See* SIFMA AMG Comment Letter; BlackRock Comment Letter; Dechert Comment Letter (stating that "[w]hile fund sponsors conduct initial and ongoing periodic due diligence on index providers, index funds rely upon the index providers, on a daily basis, to construct the index. Funds make clear disclosures concerning their use of indices, and we believe investors have established a clear understanding of how index funds operate in the decades since their introduction").

319 *See* Comment Letter of State Street Global Advisors (Aug. 16, 2022) ("State Street Comment Letter"); ICI Comment Letter; WisdomTree Comment Letter.

index's name.[320] We acknowledge that many investors that invest in index funds are seeking exposure to a particular index and that funds will have names that reflect the index that they track. However, terms used in fund names, including index funds, can communicate an investment focus that creates a reasonable expectation among investors that the fund will hold investments that support that focus. While we recognize the practical constraints and potential for investor confusion raised by commenters, we believe permitting index funds not to consider the relationship between the terms in their name and the investment focus such terms convey undermines the investment protection concerns that underlie the names rule and section 35(d). If a fund's name indicates an investment focus, such as investments in a specified industry, investors reasonably will expect that there is a meaningful nexus between fund's investments and the fund's investment focus—regardless of whether the fund executes its strategy by selecting companies in the specified industry or tracking an index that identifies such companies. As a result, consistent with rule 38a-1, index funds should generally adopt and implement written policies and procedures reasonably designed to ensure that indexes selected by a fund do not have materially misleading or deceptive names themselves.[321] While index funds should generally implement written policies and procedures ensuring that they comply with the requirements of section 35(d), in response to commenters, we are confirming that the terms in a market index referenced in an index fund's name would not be subject to an 80% investment policy test that would be in addition to the fund's policy to invest at least 80% of its assets in the index's components required under the rule.

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320 *See* Proposing Release, *supra* footnote 2, at n.102 and accompanying discussion.

321 *See supra* footnote 119.

B. Prospectus Disclosure Defining Terms Used in Fund Name

We are adopting amendments to funds' registration forms—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—that each fund that is required to adopt and implement an 80% investment policy must include disclosure in its prospectus that defines the terms used in its name, including the specific criteria the fund uses to select the investments that the term describes, if any.[322] We are also adopting a requirement that funds must tag most of the new information that will be included under the final amendments, using a structured data language (specifically Inline eXtensible Business Reporting Language or "Inline XBRL").[323] The final amendments are designed to help investors better understand how the fund's investment strategies correspond with the investment focus that the fund's name suggests, as well as to provide additional information about how the fund's management seeks to achieve the fund's objective. We are adopting these amendments substantially as proposed.

Commenters generally supported the proposed prospectus disclosure requirements.[324] We did not receive any comments opposing this proposed requirement. In particular, the Commission received comments supporting the proposal's approach that allows funds the flexibility to use reasonable definitions when defining the terms in their names, as there may be

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[322] *See* instructions to Item 4(a)(1) and Item 9(b)(1) of Form N-1A; instruction to Item 8(2) of Form N-2; and instruction to Item 11 of Form N-8B-2.

[323] *See* General Instruction C.3.(g) of Form N-1A; General Instruction I of Form N-2; General Instruction 2.(*l*) of Form N-8B-2; and General Instruction 5 of Form S-6. For purposes of the final disclosure requirements, "terms" mean any word or phrase used in a fund's name, other than any trade name of the fund or its adviser, related to the fund's investment focus or strategies. However, words like "fund" or "portfolio" in a fund's name do not describe an investment focus or strategy and do not need to be defined.

[324] *See, e.g.*, ICI Comment Letter; CFA Institute Comment Letter; SIFMA AMG Comment Letter; Public Citizen Comment Letter; Comment Letter of IRI (Aug. 16, 2022) ("IRI Comment Letter"); Fidelity Comment Letter; LTSE Comment Letter.

more than one reasonable definition for a particular term.[325] Commenters also supported requiring funds to disclose the specific, non-proprietary criteria used to select the investment terms used in the fund's name.[326] Without this proposed disclosure, these commenters stated, funds are not required to convey the key information about the fund's holdings, risks, characteristics, or strategies associated with the fund's 80% investment policy.

The final prospectus disclosure requirements will provide investors with important information to determine whether a particular investment meets an investor's needs and goals. These requirements are additive to current names rule and other disclosure requirements.[327] Despite the protections afforded by the Commission's anti-fraud rules, the final prospectus disclosure requirements will help ensure that investors are given important information about how a fund manager understands how the terms used in the fund's name connect to the fund's 80% investment policy.[328] These funds must disclose in their prospectuses the specific criteria used by the fund to select these investments. Understanding how terms used in a fund's name are understood by the fund's investment manager is key information that an investor needs to make an investment decision, as this will help the investor understand whether the investment focus the name suggests is consistent with the investor's investment goals and risk tolerance. There are many types of fund names for which understanding additional detail about how these terms are

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[325] *See, e.g.*, ICI Comment letter; CFA Institute Comment Letter; SIFMA AMG Comment Letter.

[326] *See, e.g.*, CFA Institute Comment Letter; SIFMA AMG Comment Letter.

[327] However, the names rule does currently include this requirement for funds with names suggesting investment in particular countries or geographic regions. The final amendments replace this provision with a general requirement to define terms used in the fund's name whenever the fund's name suggest an investment focus requiring an 80% investment policy.

[328] *See, e.g.*, Public Citizen Comment Letter.

defined would provide greater clarity to an investor about the investment focus that the name suggests.[329]

We understand, based on staff experience with fund disclosure, that it is currently common practice for funds to include prospectus disclosure that describes the fund's 80% investment policy and that defines the terms in the fund's name.[330] The amendments we are adopting codify certain best practices of some funds that currently provide disclosure defining terms used in a fund's name. The disclosure requirement, however, does not otherwise alter or address disclosure that funds currently provide, for example in response to prospectus disclosure requirements regarding the fund's investment policies.

In addition, we are modifying the proposed disclosure requirement for open-end funds registered on Form N-1A to provide that definitions of terms in the fund's name must be summarized in the summary section of the prospectus and disclosed in the statutory prospectus.[331] We proposed to require funds to provide this disclosure solely in the summary section of the prospectus. The modifications in the final amendments reflect that the principal investment strategies disclosure in the summary section of the prospectus is intended to summarize disclosure that appears later in the statutory prospectus. Specifically, the Form N-1A

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[329] *See supra* section I.B (discussing growth in the breadth of fund investment strategies over the past two decades).

[330] When the Commission adopted the names rule in 2001, the Commission stated that a fund that is subject to the rule's 80% investment policy requirement should disclose this policy as one of its principal investment strategies in its prospectus. *See* 2001 Names Rule Adopting Release, *supra* footnote 8, at nn.15 and 43; *see also* section 8(b) of the Act (requiring a registered investment company's registration statement to contain certain information, including a recital of its investment policies); Fidelity Comment Letter (stating that it is currently common practice for mutual funds to include prospectus disclosure that describes the fund's 80% policies and defines any terms that their names include in plain English, including funds whose names do not currently require such disclosures).

[331] *See* Instruction to Item 4(a)(1) of Form N-1A; Instruction 8 to Item 9(b)(1) of Form N-1A.

requirement for principal investment strategies disclosure that appears in the summary prospectus (Item 4(a) of Form N-1A) provides that, based on the information given in response to the Form N-1A requirement for principal investment strategies disclosure that appears in the statutory prospectus (Item 9(b) of Form N-1A), a fund must summarize how it intends to achieve its investment objectives by identifying the fund's principal investment strategies.

Funds have flexibility to use reasonable definitions of the terms that their names use. A fund's use of reasonable definitions of the terms used in the fund's name under the final rule, however, may not be inconsistent with their plain English meaning or established industry use.[332] As discussed above, what constitutes "reasonable" in context could vary depending on the fund name, but requires that definition have a meaningful nexus between the term used in the fund's name and the fund's investment focus.[333] For instance, when the investment focus relates to an industry, we recognize that there are different approaches a fund could take to determine if a given security is tied to the economic fortunes and risks associated with the named industry. As there could be multiple reasonable definitions of the same term that multiple funds use in their names, each fund required to adopt an 80% investment policy must disclose how it interprets these terms to help investors better distinguish among funds.[334]

As proposed, we are requiring that all funds subject to the new prospectus disclosure requirements tag information we are requiring funds to disclose on their registration forms in a

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[332] *See* final rule 35d-1(a)(2)(iii) and 35d-1(a)(3)(ii); *see also* Proposing Release, *supra* footnote 2, at text following n.112.

[333] *See supra* section II.A.1.c). Commission staff could request information from the fund regarding the fund's basis for determining that the fund name is sufficiently consistent with the definitions provided, just as staff currently may request information from a fund to support its disclosure reflecting the fund's compliance with various provisions of the Act and rules thereunder.

[334] This disclosure, like other disclosure in funds' prospectuses, should avoid "excessive detail, technical or legal terminology, and complex language." *See* General Instruction C.1.(c) to Form N-1A.

structured, machine-readable data language, specifically Inline XBRL.[335] We received a comment supporting the proposed Inline XBRL tagging requirement, stating that the XBRL standard is well-suited to narrative disclosures and will enhance the ability of those interested in using the data to extract disclosures quickly and to compare disclosures across entities more easily.[336] One commenter discussed that, as the Commission recognized in the Proposing Release, the proposed Inline XBRL tagging requirement would be new for UITs, as UITs are not currently subject to structured data tagging requirements.[337] This commenter requested that the Commission except UITs from the Inline XBRL tagging requirement, as most UIT unitholders are not familiar with Inline XBRL and introducing this requirement to UITs would be costly.

We are adopting the Inline XBRL tagging requirements substantially as proposed.[338] These requirements include block text tagging of narrative information about a fund's 80% investment policy and the terms used in its name, including the specific criteria the fund uses to select the investments that the term describes, if any.[339] Many funds are already required to tag

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[335] Many funds are already required to tag certain registration statement disclosure items using Inline XBRL. *See* Proposing Release, *supra* footnote 2, at n.115.

[336] *See* Comment Letter of XBRL US (Aug. 16, 2022) ("XBRL Comment Letter"); *but see* SIFMA AMG Comment Letter (stating that the costs associated with Inline XBRL tagging as proposed would be significant).

[337] *See, e.g.*, Invesco Comment Letter.

[338] While the proposal did not distinguish between names-related information that open-end funds would disclose in their summary prospectuses versus their statutory prospectuses, the final amendments do make this distinction. *See supra* paragraph accompanying footnote 331 and accompanying text. Only the summary prospectus disclosure would be tagged in Inline XBRL format; however, the disclosure that open-end funds provide in their statutory prospectuses also would be reported on Form N-PORT, where it would be tagged in XML format. *See infra* section II.E.2.

[339] This tagging requirement would be implemented by including cross-references to rule 405 of Regulation S-T in each applicable fund registration form (and, as applicable, updating references to those fund registration forms in rule 11 and rule 405, as well as references in those fund registration forms that currently require certain information to be tagged in Inline XBRL—that is, Form N-1A and Form N-2), by revising rule 405(b) of Regulation S-T to include the proposed names rule disclosures, and by adopting

certain registration statement disclosure items using Inline XBRL. While UITs do not currently have experience with tagging in Inline XBRL, after considering comments received, we are adopting the proposed requirements because we anticipate that tagging names rule disclosure for all funds that are subject to this disclosure requirement will benefit investors, other market participants, and the Commission by making the tagged disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.[340] This requirement will enable automated extraction and analysis of granular data about how funds are defining the terms used in their names, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison across funds and time periods. An Inline XBRL requirement facilitates other analytical benefits, such as more easily extracting and searching disclosures about funds' names and their 80% investment policies (rather than having to manually run searches for these disclosures through entire documents), and automatically comparing these disclosures against prior periods.

C. Plain English/Established Industry Use Requirement

For funds that are required to adopt an 80% investment policy, we are requiring that any terms used in the fund's name that suggest either an investment focus or that such fund is a tax-exempt fund must be consistent with those terms' plain English meaning or established industry

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conforming amendments to rule 485 and rule 497 under the Securities Act. The final amendments incorporate technical changes to the proposed amendments, but the tagging requirements that the final amendments effectuate are designed to be the same as under the proposed amendments. Pursuant to rule 301 of Regulation S-T, the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S-T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S-T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[340] *See infra* section IV.D.2 at footnotes 566-568 and accompanying text (for a discussion of the costs for UITs to comply with the new Inline XBRL requirement).

use.[341] This requirement is designed to provide investors with a better understanding of the fund and its investment objectives by effectively requiring a fund's name to be consistent with a reasonable investor's likely understanding of the investment focus or tax status that the fund's name suggests.

We received many comments supporting the proposed requirement.[342] Commenters expressed support for a requirement that would address reasonable, plain-English definitions for terms used in a fund's name as a means of providing additional clarity to fund shareholders.[343]

We received several comments requesting clarification on this requirement. One commenter asked how the Commission will determine whether a term is consistent with its "plain English" or "established industry use" meaning.[344] Another commenter requested clarification about circumstances where the plain English or established industry meaning of a word could be inaccurate or misleading.[345] For clarity on this point, commenters suggested that

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[341] Final rule 35d-1(a)(2)(iii) and (3)(ii).

[342] *See, e.g.*, J.P. Morgan Asset Management Comment Letter; Comment Letter of Delbert L. Coonce, Jr. (Aug. 15, 2022) ("Coonce Comment Letter"); Comment Letter of John Rosenmiller (Aug. 15, 2022) ("Rosenmiller Comment Letter"); Building a Sustainable Investment Community Comment Letter; Comment Letter of Peter Vandermark (Aug. 15, 2022) ("Vandermark Comment Letter"); Comment Letter of Rodney Smith (Aug. 15, 2022) ("Smith Comment Letter"); Comment Letter of Jim Metzinger (Aug. 15, 2022) ("Metzinger Comment Letter"); Change Finance Comment Letter; Comment Letter of Steve Wardwood (Aug. 15, 2022) ("Wardwood Comment Letter"); Public Citizen Comment Letter; Comment Letter of Veris Wealth Partners (Aug. 15, 2022) ("Veris Comment Letter"); Feinberg Comment Letter.

[343] *See, e.g.*, Fidelity Comment Letter ("We believe the requirement that the definition be reasonable and in plain English, along with the existing anti-fraud provisions under the securities law, will provide sufficient clarity to shareholders, without stifling innovation and opportunities for investment advisers to differentiate their investment strategies."); CFA Institute Comment Letter.

[344] *See, e.g.*, Calamos Comment Letter.

[345] *See, e.g.*, Public Citizen Comment Letter.

the final rule be modified to allow funds to use only any "reasonable" definition of the terms of its name.[346]

One commenter stated that some plain English meanings may lack clarity in an investment context and that funds should be required to include a description of how terms relate to the fund's 80% investment focus.[347] Another commenter similarly stated that certain terms like "sustainable" or "socially responsible" are evolving, and investors need to understand how funds define those terms.[348] As one commenter stated, certain terms have meanings that changed over time, and certain terms, particularly in the ESG context, may develop new meanings as markets and the investment management industry continue to evolve.[349]

Some commenters conveyed concern about the proposed plain English and established industry use requirement. One commenter stated that the plain English standard already applies to prospectus disclosure, and it should therefore not be separately required in the names rule.[350] One commenter suggested that there may still be deviations in how funds define terms even with this requirement. As a result, investors will still need to read the prospectus for clarity about the terms used in the fund's name, mitigating any positive impact of the requirement.[351] Commenters expressed specific concerns about the proposed "established industry use" standard. Commenters stated that this standard is nebulous, as industries and terminology can change over

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[346] *See, e.g.*, Seward & Kissel Comment Letter and WisdomTree Comment Letter.

[347] *See* CFA Institute Comment Letter.

[348] *See* Public Citizen Comment Letter.

[349] *See* J.P. Morgan Asset Management Comment Letter.

[350] *See* Seward & Kissel Comment Letter.

[351] *See, e.g.*, Calamos Comment Letter.

time, thereby altering the understood meaning of the term under established industry use.[352] Additionally, the Commission received a comment expressing concern that the relationship between the "plain English" standard and the "established industry use" standard is potentially contradictory and opaque.[353] One commenter cautioned that the established industry use standard could contribute to greenwashing for terms that have been widely used in inconsistent ways because the standard could permit funds to use terms consistent with industry practice when the usage of the term for the particular fund is misleading.[354] For example, this commenter stated that the term "impact" is used in many fund names with a range of meanings within the fund industry, and therefore funds should disclose the definitions of the terms used in the name as well as the criteria used to select the investments the terms describe.

After considering comments, we are adopting this requirement as proposed. We recognize that certain terms may be defined in multiple reasonable ways. Accordingly, the final amendments are intended to support these differences while providing that the use of terms that are inconsistent with their terms' plain English meaning or established industry use would mislead investors. Whether a fund is using a term consistent with its plain English meaning or established industry use could be derived from a variety of sources, including, but not limited to, the dictionary, prior public disclosures, industry codes or classifications, and/or a colloquial understanding of the term. Regardless of this requirement, funds that use terms in a materially misleading manner, for example, by using a term that has a plain English meaning or established industry use but then defining that term in disclosure in a materially different way, would

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352 *See, e.g.*, Fidelity Comment Letter; Seward & Kissel Comment Letter.

353 *See* Seward & Kissel Comment Letter.

354 *See* Consumer Federation of America Comment Letter.

generally violate section 35(d) of the Act and potentially other provisions of the Federal securities laws.

Under the final amendments, funds are required to include in their prospectus disclosure the definitions of the terms used in the fund's name, and as discussed above funds have flexibility in defining the terms under the policy that a fund adopts under the names rule.[355] The plain English/established industry use requirement is designed to prevent materially deceptive and misleading names in light of the flexibility that funds otherwise have to define the terms in their names. A name would be considered materially deceptive or misleading if the fund's prospectus disclosure defines a given term in the name inconsistent with the term's plain English meaning or established industry use, even if that disclosure correctly describes the fund's 80% investment policy.[356] While the final amendments require that the fund's prospectus disclosure and the terms used in a fund's name not be inconsistent, we recognize that prospectus disclosure may—and at times is required to—provide further information about the terms used in the name. For example, a "solar energy" fund's prospectus will need to provide additional context to what the name term "solar energy" means. This disclosure may not, however, otherwise change the plain English understanding of what solar energy means, for example, to include a type of alternative energy company that does not include solar energy.

The final rules' prospectus disclosure requirements provide additional context to the terms used in a name. Prospectus disclosure which, as a commenter highlighted, also has a plain English requirement, is separate from the plain English meaning and established industry use

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355 *See* instructions to Item 4(a)(1) and Item 9(b)(1) of Form N-1A; instruction to Item 8(2) of Form N-2; and instruction to Item 11 of Form N-8B-2; *see also supra* paragraph accompanying footnotes 92-94.

356 Final rule 35d-1(a)(2)(iii) and (3)(ii).

requirement we are adopting for fund names, which is specifically focused on the meaning of terms used in the fund's name.[357] The plain English requirements applicable to prospectus disclosures are focused on making prospectuses simpler, clearer, and more useful to investors.[358] Further, while a fund's disclosure in its prospectus provides important information about how a fund defines the terms used in its name and the criteria used to select investments consistent with the fund's 80% investment policy, the plain English requirement in the names rule addresses the goal that the name itself is reasonably communicative and clear to an investor based on the plain English or established industry use of terms that appear in the name. The plain English and established industry use requirement is not meant to be static and is designed to acknowledge that the language used in a fund's name may evolve as industries change and grow and the words used to describe funds and their investment focuses likewise change. While we recognize commenters' concerns about the "established industry use" of a term evolving over time, we are adopting this standard as proposed in recognition that certain terms in fund names might not have a plain English meaning, but still convey a particular focus to investors. The reference to "established industry use" is not designed to prevent a fund from defining a name term in reference to an emerging or developing definition, or from defining a name term in a way that is subject to industry debate. The fact that members of an industry have different conceptions of a term's definition, and that members of a particular industry are in good faith actively debating or discussing a definition, would be an indication that the definition is consistent with established

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357 *See, e.g.*, 17 CFR 230.421(d) and General Instruction B.4 of Form N-1A.

358 *See* Plain English Disclosure, Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370 (Feb. 6, 1998)].

industry use. That is, members of an industry need not coalesce on a standard, singular definition of a term for the term to be consistent with "established" industry use.

Further, we recognize that certain fund name terms used in a way that is standard within the fund industry could be less communicative to reasonable investors if they must be translated into "plain English." Regarding the relationship between the "plain English" and "established industry use" standards, we are adopting a requirement that includes both standards in recognition that the established industry use of a particular term may not be the same meaning given to the term in in a plain English context. The meaning of a term in reference to a specific industry or investment strategy, however, may be clear within the terminology of a particular industry or sector. For example, an equity fund could use the term "high beta" in its name, which is understood within the industry, and the investing public, to mean that the fund seeks to invest in stocks with high sensitivity to market movements, although arguably this term has no "plain English" usage. As another example, a fund might define the term "value" in its 80% investment policy by referring to financial metrics that are specific to value investing, and therefore may not be viewed as reflecting the plain English meaning of the term "value." The "established industry use" requirement is therefore an important corollary to the "plain English" requirement. The use of certain fund name terms, whose meanings are communicative to investors interested in investing in funds focused in a particular industry or using a strategy that uses a specific industry-specific lexicon, could be limited if we were to adopt a plain English requirement without alternatively permitting fund name terms to be consistent with their established industry use.

D. Modernizing the Rule's Notice Requirement

Consistent with the current rule, the final rule amendments will continue to require that, unless a fund's 80% policy is a fundamental policy, notice must be provided to shareholders of any change in the fund's 80% policy.[359] The amendments to the names rule's notice requirement we are adopting, substantially as proposed, are designed to specify further the content and delivery of the notice, and address more directly the needs of investors who elect electronic delivery. These changes reflect the Commission's commitment to adapting and modernizing the way in which information is disseminated to the investing public in response to changes in the industry and technology.[360] As an additional modification, the final amendments, as proposed, will also require notices to describe not only a change to the fund's 80% investment policy, but also an accompanying change in the fund's name.

The Commission proposed to modernize the current notice requirements in several ways. Specifically, the proposed approach would: (1) clarify the current requirement that the notice must be provided separately from any other documents; (2) update the legend requirements alerting the investor to a change in investment policy and/or name; (3) specify the content that the notices include; and (4) specify notices that may be delivered electronically. We are adopting each of these requirements as proposed, as detailed below.

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[359] Final rule 35d-1(a)(2)(ii) and final rule 35d-1(d); *see also* final rule 35d-1(g) (defining the term "fundamental policy").

[360] *See, e.g.*, Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (providing Commission views on the use of electronic media to deliver information to investors, with a focus on electronic delivery of prospectuses, annual reports, and proxy solicitation materials); Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (June 22, 2018)], at n.18; Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 57162 (Oct. 24, 2019)] ("ETF Adopting Release"), at n.229 (encouraging ETFs to consider whether there are technological means to make their disclosure more accessible).

The Commission received limited comments in response to these proposed requirements. Some commenters generally supported the proposed requirements, stating, for example, that the proposal would provide greater flexibility and clarity with respect to how the notice requirements translate to an electronic setting.[361] One supporting commenter recommended that the Commission further modernize shareholder notice requirements by allowing funds to post notice of certain policy changes on their websites rather than doing so through paper or email communications.[362]

Amendments Clarifying That Notice Be Provided Separately from Other Documents

The final amendments, as in the current rule, will continue to require the notice to be provided in plain English and delivered "separately from any other documents."[363] Further, as proposed, the final amendments specifically provide that if the notice is delivered in paper form, it may be provided in the same envelope as other written documents.[364] This amendment is

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361 *See* Fidelity Comment Letter; J.P. Morgan Asset Management Comment Letter; Dogwhistle Comment Letter; Environmental Defense Fund Comment Letter; PRI Comment Letter.

362 *See* Fidelity Comment Letter. This commenter stated that electronic postings should be considered to be sufficient notice where a change does not materially impact the risk profile of the fund. Another commenter similarly advocated for a one-time exception from the notice requirements for funds whose policies are not "meaningfully" changing. Dogwhistle Comment Letter.

363 While the requirement in the final rule that the notice be provided "separately from any other document" is worded differently than in the current rule, it is functionally the same as the current rule's requirement. *See* final rule 35d-1(d)(1); rule 35d-1(c)(1) ("the notice will be provided in plain English in a separate written document"). This rewording is designed to provide clarity regarding what it means for the notice to be provided separately from any other documents (*i.e.*, the notice cannot be built into the fund's prospectus or into other required shareholder communications). *See* Proposing Release, *supra* footnote 2, at paragraph accompanying nn.131-132.

364 Final rule 35d-1(d)(1).

designed to clarify the current rule's provisions that address when and how the notice can be provided with other written documents, but not to alter these current provisions substantively.

Amendments Updating Legend Requirement

Similar to the current notice requirement and as proposed, the final amendments require the notice contain the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Change in Investment Policy [and Name]."[365] This requirement represents a change from the current rule by requiring a fund to prominently indicate to investors any changes made to its *name* that accompany a change in investment policy in addition to changes made to the policy itself. This new requirement is designed to put investors on alert that, going forward, the fund that is described in various regulatory materials and other fund and intermediary communications is the same fund in which they are currently invested.

Under the current notice requirement, the mandated statement is required to appear on the envelope in which the notice is delivered, or if the notice is delivered separately from other communications to investors, the statement must appear either on the notice *or* on the envelope.[366] Under the final rule, for any notice that is provided in paper form, this required statement *must* also appear on the envelope in which the notice is delivered.[367] This expansion of the current requirement is designed to help draw shareholders' attention to an important document that provides them information about the change in the fund's investment policy and, if applicable, the fund's name.

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[365] Final rule 35d-1(d)(2).

[366] Rule 35d-1(c)(3).

[367] Final rule 35d-1(d)(2)(i).

Amendments to Notice Content Requirements

The final amendments include certain new requirements designed to incorporate greater specificity on content the notices include. Substantially as proposed, the final amendments will require that the notice describe, as applicable, the fund's 80% investment policy, the nature of the change to the 80% investment policy, the fund's old and new names, and the effective date of any investment policy and/or name changes.[368] These requirements are designed to codify certain best practices of some funds, help facilitate funds' compliance with the notice requirement, and increase specificity in the content that notices include in order to provide the information that fund shareholders need to decide whether to stay invested in a fund whose investment policy is changing.

Amendments Providing Specificity for Notices that May Be Delivered Electronically

The final amendments also include certain requirements designed to address the needs of investors who elect to receive notice electronically. Substantially as proposed, for notices that are provided electronically, the final rule will require that the statement appear on the subject line of the email communication that includes the notice.[369] This new requirement is designed to highlight the purpose of the electronic notice to shareholders, in the same way that the current requirement for a statement to appear on the delivery envelope highlights the purpose of the

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[368] Final rule 35d-1(d)(3).

[369] Final rule 35d-1(d)(2)(ii). As the Commission discussed at proposal, the Commission's current guidance regarding electronic delivery does not prohibit names rule notices from being delivered electronically. *See* Proposing Release, *supra* footnote 2, at n.136. Although paper is the default format for delivery of prospectuses and certain other required disclosures such as the proposed notice, the Commission has provided guidance noting that electronic delivery may be used to satisfy prospectus and certain other required disclosure delivery requirements if: (1) the investor has notice of the availability of the information; (2) the use of the medium is not so burdensome that intended recipients cannot effectively access the information being provided; and (3) the issuer has evidence of delivery. *Id.*

included paper notice. This aspect of the final amendments is also intended to clarify the application of the rule's requirements to electronic notices, which in turn will help ensure that investors who have opted into electronic delivery will receive the notices the names rule requires in the format that they prefer.

As proposed, the final amendments do not permit funds to post notices to their websites as an alternative to sending notice directly to shareholders. As the Commission discussed in the Proposing Release, requiring delivery of notice directly to shareholders, rather than permitting funds to post notices to websites, increases the likelihood that an investor would see and read the notice. This requirement will play an important role in helping investors make informed decisions in light of any changes to a fund's investment focus, portfolio holdings, risks and returns.

E. Form N-PORT Reporting

We are adopting amendments to Form N-PORT to include new reporting items for registered management investment companies and exchange-traded funds organized as a unit investment trust ("UIT"), other than money market funds or small business investment companies, (collectively, "N-PORT funds") regarding the 80% investment policy that such a fund adopts in compliance with the names rule.[370] As proposed, the final rules require N-PORT funds that are required to adopt an 80% investment policy to report on Form N-PORT: (1)

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[370] All N-PORT funds are required to electronically file with the Commission, on a quarterly basis, monthly portfolio investment information on Form N-PORT, as of the end of each month. *See* Investment Company Reporting Modernization Adopting Release, *supra* footnote 47. As BDCs and money market funds are not subject to Form N-PORT reporting requirements generally, they will not be subject to the final amendments to Form N-PORT. This approach is consistent with the proposal, and we did not receive any comments on this aspect of the proposal. *See* Proposing Release, *supra* footnote 2, at nn.146-147 and accompanying text. Exchange-traded funds organized as a UIT will have to comply with the Form N-PORT reporting requirements only if their initial deposit occurs after the effective date of the final amendments. *See infra* section II.G. Other UITs are not subject to reporting on Form N-PORT.

whether each investment in the fund's portfolio is in the fund's 80% basket; and (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets.[371]

In light of some of the changes to the proposed names rule amendments that we are adopting, and in response to comments, the final Form N-PORT amendments modify the proposed reporting approach by requiring reported information for the third month of each quarter, instead of for every month. Given that the final amendments will not require continual names rule compliance monitoring as proposed, and instead will require that funds review their portfolios for compliance no less than quarterly, the reporting time frame in the final Form N-PORT requirements therefore reflects the period for review that will otherwise be mandated by the final amendments.[372]

We are also adopting certain changes to the proposed approach to names-related information that funds will report on Form N-PORT, which we discuss in more detail below: (1) adding a new reporting item, in which funds will report the definitions of terms used in the fund's name; and (2) not adopting the proposed requirement that funds report the number of days

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[371] *See* Item B.11 and Item C.2 of Form N-PORT. Consistent with the final amendment's approach to derivatives generally, when responding to Item B.11, the percentage that the fund reports in response to Item B.11.b must reflect the use of notional amounts of funds' derivatives instruments with certain adjustments, as well as the value of assets sold short with respect to physical short positions. This percentage also must reflect any reduction of the value of the fund's assets resulting from, as applicable, those exclusions provided in final rule 35d-1(g). *See* instruction to Item B.11 and *supra* section II.A.3.

[372] The rationale for the required period for reporting this information on Form N-PORT is based on the period of the quarterly review requirement under the names rule and not the required period for filing Form N-PORT. Although the Commission has separately proposed to increase the frequency with which funds file reports on Form N-PORT, that proposal, if adopted, would not affect the requirement adopted in this release for funds to report names-related information on Form N-PORT on a quarterly basis, providing the information for the third month in each fiscal quarter. *See, e.g.*, Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Investment Company Act Release No. 34746 (Nov. 2, 2022) [87 FR 77172 (Dec. 16, 2022)].

that that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period.

As discussed below, the final amendments to Form N-PORT are designed to provide market-wide insight with respect to those registered investment companies, other than money market funds and BDCs that are subject to the 80% investment policy requirement for the Commission, its staff, and market participants.

1. Investments to Be Included in a Fund's 80% Basket

As proposed, we are adopting a new Form N-PORT reporting item that requires N-PORT funds subject to the 80% investment policy requirement to indicate, with respect to each portfolio investment, whether the investment is included in the fund's 80% basket. Such N-PORT funds must provide this new information, along with the other information they are currently required to report, for each of their portfolio investments on Form N-PORT, and as proposed the new information will be publicly available. In a change from the proposal, we are adopting a requirement that each N-PORT fund that is subject to the 80% investment policy requirement must also report the definitions of the terms used in the fund's name, including the specific criteria the fund uses to select the investments the term describes, if any.[373] These

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[373] The final amendments also require disclosure of these definitions in funds' prospectuses. *See supra* section II.B.

reporting requirements are designed to provide investors as well as the Commission and its staff insight into the types of investments a fund includes in its 80% basket.

The Commission received several comments broadly supporting the proposed Form N-PORT reporting requirements collectively.[374] One of these commenters stated that the proposed requirements would help investors and other market participants understand which factors or elements that a portfolio investment exhibits are consistent with a fund's 80% policy.[375] The Commission received several comments that objected generally to the collective proposed Form N-PORT reporting requirements.[376] Commenters stated that the proposed reporting requirements would be of little benefit to investors, as investors are more prone to review prospectus disclosure rather than information included on Form N-PORT.[377] The Commission received a comment questioning the rationale for the proposed reporting requirements given the name rule's unique role in addressing materially deceptive and misleading names, distinct from other disclosure requirements.[378] Commenters stated that the costs and operational burdens of the proposed requirements, in light of these concerns and particularly with respect to the names that

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[374] *See, e.g.*, Comment Letter of Nate Regan (June 15, 2022) ("Regan II Comment Letter"); Center for American Progress Comment Letter; PRI Comment Letter; Fidelity Comment Letter.

[375] *See* PRI Comment Letter.

[376] *See, e.g.*, SIFMA AMG Comment Letter; T. Rowe Comment Letter; J.P. Morgan Asset Management Comment Letter; USCOC Comment Letter; Nationwide Comment Letter; Federated Comment Letter; WisdomTree Comment Letter; MFS Comment Letter; Invesco Comment Letter; Capital Group Comment Letter; Seward & Kissel Comment Letter; Dimensional Comment Letter.

[377] *See, e.g.*, Nationwide Comment Letter; SIFMA AMG Comment Letter; Federated Comment Letter; WisdomTree Comment Letter; MFS Comment Letter; Invesco Comment Letter; Capital Group Comment Letter; J.P. Morgan Asset Management Comment Letter; Dimensional Comment Letter.

[378] *See* SIFMA AMG Comment Letter; *see also* Proposing Release, *supra* footnote 2, at nn.4-6 and accompanying text.

would be included in the proposed expanded scope of the 80% investment policy requirement, would be significant and questioned whether they would be warranted.[379]

The Commission received several comments specific to the proposed requirement that N-PORT funds report whether each investment is counted towards the fund's 80% basket. One included a general comment stating that this proposed reporting requirement would benefit investors and other market participants.[380] Several other commenters objected to this reporting requirement.[381] These commenters expressed concern about the costs and burden of tagging each investment on a monthly basis.[382] The Commission also received a comment that the Commission should not require funds to classify 100% of their portfolio when the rule requires that only 80% of a given fund's portfolio be invested consistent with the funds 80% investment policy.[383]

Some commenters questioned the usefulness of this reporting item because Form N-PORT disclosure is by its nature backward-looking, and so the reported information may not accurately represent what the fund's portfolio looks like at the present time.[384] Several commenters stated that how a fund categorizes individual investments in its portfolio is

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379 *See, e.g.*, MFS Comment Letter; J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter.

380 *See* Center for American Progress Comment Letter.

381 *See, e.g.*, ICI Comment Letter; Nationwide Comment Letter; Federated Comment Letter; J.P. Morgan Asset Management Comment Letter; Fidelity Comment Letter; WisdomTree Comment Letter; Capital Group Comment Letter; MFS Comment Letter; SIFMA AMG Comment Letter.

382 *See* MFS Comment Letter.

383 *See* ICI Comment Letter.

384 *See, e.g.*, SIFMA AMG Comment Letter; Wellington Comment Letter.

subjective and therefore not comparable across funds.[385] Without additional disclosure regarding how a fund may categorize individual investments, we received comment asserting that this disclosure may be confusing to investors.[386] Separately, a commenter stated that whether each investment qualifies as an 80% basket investment under a fund's 80% investment policy may change on a more frequent basis than the proposed monthly reporting period and that the disclosure requirement therefore may overwhelm investors with outdated information that would not help compare funds in a meaningful way.[387]

Some commenters stated that the proposed new reporting item would require the build-out of new systems, for daily testing and validation of names rule compliance information, and for mapping this information over for reporting on Form N-PORT.[388] Additionally, commenters stated that the new reporting requirements would consume compliance resources to the extent compliance personnel would have to attend to the new reporting requirements, which would impact other compliance activities.[389] Some commenters stated that funds may need to hire third-party vendors for supplemental and specially tailored data on their portfolio investments, in order

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385 *See, e.g.*, ICI Comment Letter; J.P. Morgan Asset Management Comment Letter; SIFMA AMG Comment Letter; Dimensional Comment Letter.

386 *See* Capital Group Comment Letter.

387 *See* Fidelity Comment Letter.

388 *See, e.g.*, T. Rowe Comment Letter; Invesco Comment Letter; Seward & Kissel Comment Letter.

389 *See, e.g.*, Nationwide Comment Letter; Federated Comment Letter; Capital Group Comment Letter.

to comply with the proposed new reporting requirements.[390] The use of third-party vendors may, according to these commenters, lead to the homogenization in how funds define certain terms.

The requirement for an N-PORT fund to report whether each investment is included in the 80% basket helps the Commission and investors to have insight into how funds invest consistent with their 80% investment policies. The final amendments to Form N-PORT will complement the required prospectus disclosure defining terms used in fund names by providing additional information that is designed to increase investor understanding of a particular fund's investment focus, which will assist investors in making investment choices that better match their investment preferences. While the new information that funds would report on Form N-PORT is backward looking in that it reflects, on a quarterly basis, how funds have implemented their 80% policies, investors and third-party users who provide services to investors could also use this information to understand on a going-forward basis how funds may continue to implement their 80% investment policies consistent with the fund's name. While investors may not be directly accessing Form N-PORT, third-party service providers that investors look to for assistance in selecting investments, such as broker-dealers, investment advisers, and those that provide investment information for analysis to fund investors, will be able to use this information to analyze how a fund invests consistent with its name. We recognize that the benefits of these new reporting requirements will come with costs, as complying with the new reporting requirements will entail new compliance activities, and potentially also systems and operational modifications and the use of third-party service providers. The Form N-PORT reporting requirements may generate costs of adding new data tags for the new reporting items. By

[390] *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter.

requiring less frequent Form N-PORT reporting and reducing the amount of names-related information that must be reported on N-PORT than was proposed, however, the final amendments should, on balance, have lower costs compared to the proposal.[391]

We also recognize that funds with similar names and investment focuses may reasonably make different determinations regarding whether an investment is appropriately within the 80% basket. Some funds may have an investment focus where the selection of 80% basket investments involves some degree of subjectivity. The reporting requirement we are adopting provides transparency that should help investors and other market participants providing transparency to investors, as well as Commission staff, understand what specific portfolio investments a fund may consider to be consistent with the fund's 80% investment policy and those that they do not. The Commission, investors, and these other market participants will also have the ability to examine, across N-PORT funds with similar investment focuses, whether these funds may be characterizing particular investments similarly. For example, investors interested in funds with a growth investment focus will better be able to compare across funds with similar names to determine whether specific investments are characterized similarly or differently, and therefore invest according to their specific preferences.

In a change from the proposal, we are adopting an accompanying reporting requirement to provide necessary context for this reporting. Under the final amendments to Form N-PORT, a fund subject to the 80% investment policy requirement must report the definitions of the terms used in the fund's name, including the specific criteria the fund uses to select the investments that the term describes, if any. This required reporting leverages the same disclosure that funds

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391 *See infra* section IV.D.2.

will also, under the final amendments, be required to include in their prospectuses.[392] This requirement addresses comments the Commission received expressing concern that the portfolio-specific information that would be required under the proposal lacked context.[393] We are requiring this information in both Form N-PORT and in the fund's prospectus to ensure that a user of the investment categorization information in Form N-PORT is not required to look to two documents to understand how investments are categorized by the fund, and how funds define the terms used in their names and the specific criteria the fund uses to select the investments (which gives context for the investment categorizations). With this additional information, investors will be able to better contextualize how the specific investments made by the fund adhere to the fund's stated criteria for how investments are selected consistent with the fund's 80% investment policy.

2. Investment Company Act Names Rule Investment Policy

We are adopting, as proposed, the requirement for N-PORT funds that adopt an 80% investment policy to report on Form N-PORT the value of the fund's 80% basket as a percentage of the value of the fund's assets.[394] This reporting requirement is designed to increase the effectiveness of the Commission's oversight of funds' compliance with the names rule as well as provide investors meaningful information about how funds comply with the names rule. This

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[392] Given that funds can leverage efficiencies in reporting the information that they will include in their prospectuses in response to the final rules' disclosure requirements, we anticipate that the burden of this additional reporting item should be minimal. *See infra* section V.D.

[393] *See, e.g.*, Capital Group Comment Letter; J.P. Morgan Asset Management Comment Letter.

[394] To the extent a fund's name suggests an investment focus that has multiple elements, and therefore must adopt an 80% investment policy that addresses each element of that investment focus, the fund must report a single percentage that reflects its multi-element investment focus. *See supra* paragraph accompanying footnotes 139-140. For example, a "Wind and Solar Fund" would report the percentage of its assets invested in wind and solar companies combined, rather than reporting separate percentages for each of wind and solar.

information also may allow investors to make investment choices that are more consistent with their investment preferences. As discussed below, we are not, however, adopting the proposed requirement that an N-PORT fund report the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period.

The Commission received some comments specific to the proposed requirement that N-PORT funds report the value of the fund's 80% basket as a percentage of the value of the fund's assets. Some commenters stated that this proposed reporting requirement would lead to inappropriate comparisons among funds.[395] These commenters stated that, because funds may have different 80% investment policy formulations, despite having the same or similar terms in their names, comparisons about the percentage of funds' assets invested in their 80% baskets would not provide useful information to investors.

We recognize that there are various reasonable ways in which funds with a similar name could implement the 80% investment requirement, and the Form N-PORT reporting requirements provide an important window into exactly how funds implement their 80% investment policies. Understanding how different funds with the same or similar terms in their names may have different strategies that invest more or less of the fund's assets outside of their 80% basket may provide investors with important information that better enables investors to select the investment that best meets their investment goals.[396] The reported information is designed to provide an additional data point that supplements other reported and disclosed information about how a fund invests in accordance with the focus its name suggests. This other

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395 *See*, *e.g.*, SIFMA AMG Comment Letter; Dimensional Comment Letter; Fidelity Comment Letter.

396 *See* Proposing Release, *supra* footnote 2, at n.145 and accompanying text for examples of how this may be the case.

reported and disclosed information, including the definitions of funds' name terms, will provide context that helps ensure that information reported about the percentage of a fund's portfolio invested in 80% basket assets is not misleading.

With respect to the proposed requirement that a fund report the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period, the Commission received one supporting comment.[397] This commenter stated that the proposed reporting requirement would assist shareholders in comparing different funds as well as the Commission in its role overseeing fund's compliance with the names rule. The Commission received many comments, however, opposing this proposed reporting requirement.[398] For example, a commenter stated that monitoring individual securities on a daily basis for name rule compliance—which would de facto be a necessary corollary of the proposed reporting requirement—would be operationally onerous and should not be required by the final rule.[399] The Commission also received feedback that this proposed reporting requirement would be confusing, as the information would be reported without context and may raise unnecessary concern from investors.[400] Commenters also suggested that it was inappropriate to utilize Form N-PORT as a compliance tool.[401] Relatedly, a commenter stated that requiring the proposed

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[397] *See* Fidelity Comment Letter.

[398] *See, e.g.*, ICI Comment Letter; Nationwide Comment Letter; J.P. Morgan Asset Management Comment Letter; Capital Group Comment Letter; MFS Comment Letter.

[399] *See, e.g.*, J.P. Morgan Asset Management Comment Letter. The commenter who supported this reporting item also suggested a longer compliance monitoring period than what was proposed. *See* Fidelity Comment Letter.

[400] *See, e.g.*, ICI Comment Letter and J.P. Morgan Asset Management Comment Letter; Capital Group Comment Letter; MFS Comment Letter; *see also* ICI Comment Letter III (discussing particular challenges for certain tax-exempt funds that apply the income test pursuant to rule 35d-1(a)(3)(i)(B)).

[401] *See, e.g.*, USCOC Comment Letter.

reporting of departures below 80%, without also requiring reporting that would provide context of the investment team's judgment, could create legal risk for the fund and result in the fund manager taking more conservative portfolio management approaches despite the fact that the names rule permits certain departures.[402] At a minimum, one commenter suggested that these reporting items, like similar ones for liquidity and derivatives reporting, should be non-public.[403]

We are not adopting this proposed reporting requirement. The temporary departures provision we are adopting as part of the final names rule amendments does not require funds to monitor names rule compliance on a continual basis, but instead adopts a time-of-investment test with a minimum quarterly review of the investments in the fund's portfolio. A requirement to report the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets would be inconsistent with this approach to temporary departures, because it would require daily compliance monitoring.

F. Recordkeeping

Consistent with the proposed amendments, the final rule will require funds that are subject to the 80% investment policy requirement to maintain certain records documenting their compliance with the rule, including changes that reflect the final rule's approach to temporary departures.[404] As a modification to the proposal, the final amendments do not include the

402 *See* J.P. Morgan Asset Management Comment Letter.

403 *See* ICI Comment Letter.

404 Final rule 35d-1(b)(3).

proposed requirement for funds that do not adopt an 80% investment policy to maintain a written record of their analysis that the policy is not required under the names rule.

We are adopting recordkeeping requirements designed to enable Commission staff, as well as a fund's compliance personnel, to evaluate a fund's compliance with the names rule. Neither the current rule nor the general recordkeeping rule under the Act includes a recordkeeping requirement specific to names rule compliance-related topics. Consistent with the proposal, under the final amendments, funds that are required to adopt an 80% investment policy will be required to maintain written records documenting their compliance with the names rule. Specifically, these funds will be required to maintain:[405]

- Written records, at the time the fund invests its assets, documenting (1) whether the investment is included in the fund's 80% basket and, if so, the basis for including that investment in the 80% basket; and (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets;[406]
- Written records documenting the fund's review of its portfolio investments' inclusion in the fund's 80% basket, to be conducted at least quarterly, including whether each investment is included in the fund's 80% basket and the basis for including each investment in the 80% basket;

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405 The new Form N-PORT reporting requirements would not satisfy the record-keeping requirements of rule 35d-1(b)(3). The Form N-PORT requirements reflect a snapshot of the fund's investments at the end of the reporting period. The recordkeeping requirement, however, reflects the fund's ongoing names rule compliance activity.

406 These recordkeeping requirements apply as well to any derivatives that a fund includes in its 80% basket (either because the derivatives instrument provides investment exposure to investments suggested by the fund's name, or investment exposure to one or more of the market risk factors associated with the investment focus that the fund's name suggests). *See supra* section II.A.3.

- If during this review or otherwise the fund identifies that the 80% requirement is no longer met due to drift, written records documenting the date this was identified and the reason for any departures from the 80% investment policy;[407]
- If there was a departure from the 80% requirement in other-than-normal circumstances, written records documenting the date of any such departure and reason why the fund departed (including why the fund determined that circumstances are other-than-normal); and
- Any notice sent to the fund's shareholders pursuant to the rule.

All of these records must be maintained for at least 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.[408]

Functionally, under these recordkeeping requirements, each time a fund procured an investment, the fund would record the basis for including that investment in the 80% basket and the value of the 80% basket. A fund would also make or update such records in connection with its quarterly review reassessing the characteristics of investments in the fund's 80% basket (or any time the fund otherwise determines that certain investments' characteristics are inconsistent with the fund's 80% investment policy).[409]

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[407] As a technical change to the proposed rule text, the final amendments do not specify that a fund's reason for any departure must be "pursuant to paragraphs (b)(1)(2)" of the rule. This is because final rule amendments do not address specific circumstances under which temporary departures from the 80% investment requirement would be permitted. *See supra* section II.A.2.

[408] The six-year retention period under the final amendments is designed to be generally consistent with other recordkeeping retention periods provided in rules under the Act. *See, e.g.*, rule 31a-1; rule 2a-7. This consistency with other retention periods will likely reduce the compliance burden of the recordkeeping requirements under the final amendments.

[409] *See supra* paragraph following footnote 165; *supra* paragraph following footnote 174.

Some commenters expressed general support for the proposed recordkeeping requirements, stating that these requirements would allow Commission staff to better understand and evaluate funds' compliance with the names rule, as well as encourage good governance and internal controls.[410] The majority of commenters, however, expressed opposition to the proposed recordkeeping requirements. Several commenters stated that the proposed requirement to maintain documentation of each investment included in a fund's 80% basket would be overly burdensome on funds' compliance and management personnel.[411] Certain commenters stated that they expected this requirement to be particularly burdensome in light of the increased scope of the names rule's 80% investment policy requirement.[412] One of these commenters stated that the requirements would necessitate portfolio management personnel devoting significant time to documenting the basis for each investment, including short-term investments.[413] Other commenters stated that some of the proposed recordkeeping requirements may not be easily automated, including the requirement to state the basis for including each investment in the 80% basket.[414] Some commenters also argued that this requirement would reduce a fund's capacity to focus on other aspects of compliance.[415]

After considering commenters' input, the final amendments retain the proposed requirement for funds required to adopt 80% policies to maintain documentation of each

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[410] *See* J.P. Morgan Asset Management Comment Letter; Environmental Defense Fund Comment Letter.

[411] *See* ICI Comment Letter; T. Rowe Comment Letter; USCOC Comment Letter; Invesco Comment Letter; Federated Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter; Seward & Kissel Comment Letter.

[412] ICI Comment Letter; T. Rowe Comment Letter; USCOC Comment Letter; Federated Comment Letter; SIFMA AMG Comment Letter; Dechert Comment Letter.

[413] Dechert Comment Letter.

[414] Invesco Comment Letter; Seward & Kissel Comment Letter.

[415] Invesco Comment Letter; Federated Comment Letter; Dechert Comment Letter.

investment it includes in the 80% basket.[416] The records resulting from this requirement will enable our staff to evaluate a fund's treatment of specific investments, and the interaction of such investments with the overall operation of a fund's 80% investment policy. This information will allow our staff to identify deficiencies and assess compliance of the overall rule as amended.

As discussed above, the final rule's requirements related to temporary departures from the 80% requirement are different from what was proposed, particularly by retaining the time-of-investment test; requiring a quarterly, as opposed to continual, review; and creating different requirements for departures in other-than-normal circumstances as opposed to drift discovered during this quarterly review. We are providing more detail in the final rule to reflect these changes and make clear which records funds must maintain and when funds must create them under the final amendments. For example, the final rule provides specific requirements on which records a fund will be required to maintain pursuant to its quarterly review reassessing the characteristics of each investment in the fund's 80% basket (or any time the fund otherwise determines that certain investments' characteristics are inconsistent with the fund's 80% investment policy).[417]

These changes also help to address questions as to when funds should make records under the final rule. Some commenters, discussing expected burdens, anticipated the need to monitor a fund's 80% basket on a daily basis to comply with the proposed recordkeeping requirements.[418] As adopted, the frequency with which records under the final rule will be made would be at the time of investment, as well as when the fund engages in an activity that the rule

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416 Final rule 35d-1(b)(3).

417 *See supra* paragraph following footnote 165; *supra* paragraph following footnote 174.

418 USCOC Comment Letter; T. Rowe Comment Letter.

requires which triggers a record (*e.g.*, conducts a quarterly review), consistent with the changes to the temporary departure requirements. Making records at each of these times will produce documentation supporting the fund's compliance with the rule and its 80% investment policy at the time a fund invests its assets, and in reflection of the fact that the fund's 80% basket and investments included in the 80% basket could change following initial investment, as provided in the rule. The frequency of records will, as a practical matter, vary based on the specific activities and compliance needs of the fund, and many funds would make certain of these records daily in order to reflect ongoing investment activity. For example, if a fund (for instance, an actively-managed fund whose portfolio turns over regularly, or a fund that frequently buys and sells portfolio assets in response to high or volatile investor flows) were making investments daily, that fund would keep daily records. These records would document whether the investments made each day are included in the fund's 80% basket (and, if so, the basis for that determination) and of the value of the fund's 80% basket, as a percentage of the value of the fund's assets.

As discussed above, the final amendments will require funds to conduct at-least quarterly – rather than continual – assessment of portfolio investments' inclusion in the 80% basket. This modification, in turn, could mitigate some of the anticipated costs of certain of the recordkeeping obligations compared to the proposal to the extent these anticipated costs assumed continual monitoring and assessment of portfolio investments, as well as recordkeeping requirements that would reflect this continual monitoring. We recognize that the recordkeeping requirements under the final amendments will still entail certain costs, particularly those associated with those records that certain funds (those that make investments on a daily basis) would make daily under the final rules and records that may not easily lend themselves to automation (due to the nature of certain investments, or otherwise). We continue, however, to anticipate that much of the

required recordkeeping would be able to be at least partially automated.[419] We also recognize that there may be multiple reasonable approaches to documenting the basis for an investments' inclusion in a fund's 80% basket in compliance with the final amendments.

As proposed, the final amendments will not prescribe the particular form of documentation required to be maintained but will instead provide flexibility in how a fund documents the information delineated in the recordkeeping requirement. Funds, however, should generally maintain appropriate documentation that would be sufficient for a third party to verify the matter covered by each record and would be readily available to Commission staff.

The final rule will not include a requirement for funds that do not adopt 80% investment policies to maintain a written record of their analysis as to why such policy is not required.[420] Numerous commenters opposed this requirement.[421] While one commenter expressed general support for this provision, several others voiced general opposition, asserting that requiring funds to demonstrate affirmatively that a rule does not apply would be inconsistent with the general character of the Federal securities laws.[422] One commenter stated that this requirement would not

[419] *See infra* section IV.D.2; *see also, e.g.*, J.P. Morgan Asset Management Comment Letter (stating that, for funds within the current scope of the names rule, "routine testing for compliance can be done in a highly automated fashion," and stating that "bespoke automated processes" have already been developed for funds the sponsor offers that use ESG-related terms in their names, but expressing concern that for certain names that would be brought within the proposed broadened scope, compliance testing would be relatively more manual. *But see supra* footnote 71 and accompanying text (discussing commenters who suggested that it would be challenging to establish automated compliance monitoring solutions for terms in fund names where subjective criteria are part of the decision-making process). As the Commission stated in the Proposing Release, records that do not lend themselves to automation would need to be created on an as-needed basis.

[420] Final rule 35d-1(b)(3).

[421] *See* Comment Letter of Independent Directors Council (Aug. 16, 2022) ("IDC Comment Letter"); ICI Comment Letter; Seward & Kissel Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter; USCOC Comment Letter; Invesco Comment Letter.

[422] *See* J.P. Morgan Asset Management Comment Letter. *But see* ICI Comment Letter; Seward & Kissel Comment Letter; Dechert Comment Letter.

provide a meaningful benefit to shareholders, and another expressed concern that it could potentially imply that funds' boards of directors were required to make or approve a finding that the fund is not required to adopt an 80% policy.[423]

After considering comments, we have determined that this provision is not necessary to motivate proper determinations of when a fund is required to adopt an 80% policy. Moreover, the obligations imposed on funds through the substantive operation of the names rule as amended will continue to provide safeguards by generally requiring funds to adopt 80% investment policies where a fund name contains terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. In addition, a fund with a name that appears to Commission staff to be within the scope of the 80% investment policy requirement, but that determines not to adopt an 80% investment policy, would nonetheless be responsible for sharing its analysis as to why it is not in violation of the names rule if requested by the Commission's examinations and enforcement staff.[424]

G. Unit Investment Trusts

The 2022 Proposal included exceptions for UITs that made their initial deposit of securities prior to the proposed amendments' effective date. Specifically, the Commission proposed to except these UITs from the requirements to adopt an 80% investment policy and maintain written records relating to the rule, unless the UIT already adopted—or was required to

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423 *See* Invesco Comment Letter; IDC Comment Letter.

424 It would be appropriate for such a fund to compile a written analysis at the time it receives any such request from staff. This would be consistent with final rule's recordkeeping requirements, which do not include a requirement for funds that do not adopt 80% investment policies to maintain a written record of their analysis as to why such policy is not required. To be clear, the lack of a requirement to maintain a record of the analysis does not mean the fund would not be required to determine the applicability of the 80% investment policy requirement in the first instance.

adopt at the time of the initial deposit—an 80% investment policy under the current rule.[425] This proposed approach was designed to be generally consistent with the treatment of UITs under the current names rule, and also to retain the existing exception from the 80% investment policy requirements for UITs that pre-date the original rule. In a modification from the 2022 Proposal, the final amendments will simply provide that the 80% investment policy and recordkeeping requirements will apply to UITs only at the time of initial deposit. This modification is designed to accommodate the practical realities that UITs would encounter if required to comply with the new provisions in the final amendments that require periodic review and potential rebalancing of a fund's portfolio.

Commenters expressed broad support for the proposed exceptions.[426] These commenters suggested, however, that for UITs that do not qualify for the exemption, the requirements of the names rule should apply only at the time of initial deposit and not on an ongoing basis. As these commenters observed, UITs typically maintain a fixed and transparent portfolio of securities and are limited in how and under what circumstances they can acquire or sell securities in their portfolio. These commenters therefore asserted that UITs are marketed as *pro rata* portions of a fixed portfolio and investors generally understand that security weightings will change during the life of the UIT due to market fluctuations. These commenters suggested that maintaining compliance with the temporary departure provisions of the proposed amendments could result in a UIT having to rebalance its portfolio post-deposit, which could create potential operational and legal issues.

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[425] *See generally* Proposing Release, *supra* footnote 2, at nn.159-162 and accompanying text.

[426] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Invesco Comment Letter.

After considering these comments, we are modifying the proposed approach to better align the rule's new requirements with the way in which UITs are constructed. Unlike the current rule, the final amendments will require a fund to review its portfolio assets' inclusion in its 80% basket as least quarterly and will also require that, if a fund drifts out of compliance with its 80% basket, the fund must come back into compliance within 90 days.[427] Because UITs are passively managed vehicles with fixed portfolios, it would be challenging for them to adjust their portfolios to comply with the new portfolio maintenance and testing requirements in the final amendments. If UITs were required to comply with the new requirements for temporary departures, portfolio changes could result over time that could be inconsistent with the requirements of UITs' governance documents or investor expectations.[428] Accordingly, we have modified the proposed exceptions for UITs to provide that the 80% investment policy and recordkeeping requirements will apply only at the initial deposit.[429]

As a result, UITs that have names that are implicated by the final amendments and whose initial deposit occurs after the compliance date of the final amendments will need to adopt an appropriate 80% investment policy, including making such a policy fundamental or providing notice to investors in the event of a change of the policy, if appropriate. However, such UITs will not be required to engage in the monitoring and other requirements associated with the final amendments' temporary departure requirements nor will they be required to keep records under

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[427] *See* final rule 35d-1(b)(1)(i); *see also supra* section II.A.2.

[428] *See* Proposing Release, *supra* footnote 2, at n.160 and accompanying text.

[429] *See* final rule 35d-1(e). Functionally, UITs that have made their initial deposit prior to the compliance date of the final amendments, including those that would have been subject to the exception in the 2022 Proposal because they pre-date the original rule, will not be required to adopt a new 80% investment policy or comply with the recordkeeping requirements in the final amendments.

the final amendments beyond the initial deposit. Also consistent with the proposal, all UITs will be subject to the rule's other requirements under the final amendments, as applicable, as well as those of the Federal securities laws generally, including section 35(d) of the Investment Company Act.[430] For example, all UITs will continue to be subject to the prohibition on names that suggest a guarantee by the U.S. Government regardless of the date of initial deposit.[431] Consistent with the 2022 Proposal, we continue to believe that the ability to provide prospectus disclosure is not precluded by the fixed nature of a UIT's portfolio.[432] As a result, UITs will be subject to the plain English requirements and the prospectus disclosure requirements, including the requirement to tag newly required information in the prospectus using Inline XBRL.[433]

H. Compliance Dates

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430 A few commenters suggested that the Commission should expressly exclude from the 80% investment policy requirement sub-accounts of insurance company separate accounts classified as UITs that fund variable annuity contracts and variable life insurance contracts when the sub-account invests in a single, designated underlying fund and has substantially the same name as the corresponding underlying fund. *See* Dechert Comment Letter; IRI Comment Letter; Comment Letter of Committee of Annuity Insurers (Aug. 16, 2022). These UITs should comply with the 80% investment policy requirement at initial deposit if they use a term in their name that suggests an investment focus. *See also supra* discussion in section II.A.1.c) (it would generally be reasonable for a fund of funds or other acquiring fund to include the entire value of its investment in an appropriate acquired fund when calculating compliance with the 80% investment requirement without looking through to the acquired fund's underlying investments, provided that the acquired fund has an 80% investment policy, unless it knows that the underlying fund is not investing consistent with the acquiring fund's investment focus).

431 *See* final rule 35d-1(a)(1). In addition, ETFs organized as a UIT will be subject to the Form N-PORT reporting requirements regarding a fund's 80% investment policy post-deposit, consistent with their current reporting obligations. *See supra* section II.E. Other UITs will not be required to make these reports as they are not required to report on Form N-PORT generally. *See supra* footnote 371.

432 *See* Proposing Release, *supra* footnote 2, at section II.H.

433 *See supra* sections II.B and II.C. One commenter stated that the Inline XBRL tagging requirements would introduce new costs for UITs without significant benefit to investors. *See* Invesco Comment Letter. *But see* XBRL US Comment Letter (supporting the proposed requirement that all funds subject to the new disclosure requirements provide these disclosures in Inline XBRL format, for the reasons discussed at *supra* footnote 336 and accompanying text, and expressing that UITs can avail themselves of the same applications and processes used by other fund types that report information using Inline XBRL data language). These costs and benefits are discussed in more depth in *infra* section IV.D.

The compliance date for the final amendments is December 11, 2025, for larger entities, and June 11, 2026, for smaller entities.[434] We are adopting this tiered compliance period to provide existing funds with adequate time to prepare to come into compliance with the final amendments. We proposed a one-year compliance period for all funds that would be subject to the amendments, regardless of asset size, and we solicited comment on whether the transition period should be shorter or longer, and whether it should be the same for all funds. We received comments on this aspect of the proposal, with many commenters stating that a one-year compliance period is an inadequate timeframe given the legal, compliance, and operational challenges associated with implementing the various components of the rule.[435] Some commenters specifically stated that funds will need time to evaluate the impact of the amendments, determine necessary changes, and seek board and/or shareholder approval of any required changes to funds' names or investment strategies.[436] Other commenters stated that

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[434] For purposes of the final rules' tiered compliance period, larger entities are funds that, together with other investment companies in the same "group of related investment companies" (as such term is defined in rule 0-10 under the Investment Company Act [17 CFR 270.0-10]) have net assets of $1 billion or more as of the end of the most recent fiscal year, and smaller entities are funds that together with other investment companies in the same "group of related investment companies" have net assets of less than $1 billion as of the end of the most recent fiscal year. This standard is consistent with prior Commission approaches for tiered compliance dates based on asset size for rules affecting registered investment companies. *See, e.g.*, Investment Company Reporting Modernization Adopting Release, *supra* footnote 47; Liquidity Adopting Release, *supra* footnote 214; Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Sep. 17, 2018)]. In our experience, this threshold is a reasonable means of distinguishing larger and smaller entities for purposes of tiered compliance dates for rules affecting investment companies. We estimate that, as of December 2022, 77% of registered investment companies would be considered to be larger entities. This estimate is based on data reported in response to Items B.5, C.9, and F.11 on Form N-CEN. We estimate that, as of March 2023, 48% of BDCs would be considered to be larger entities. This estimate is based on data from Refinitiv BDC Collateral.

[435] *See* ICI Comment Letter; SIFMA AMG Comment Letter; Federated Comment Letter; TIAA-Nuveen Comment Letter; IRI Comment Letter; MFS Comment Letter; Invesco Comment Letter; Nasdaq Comment Letter; J.P. Morgan Asset Management Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; Capital Group Comment Letter; XBRL US Comment Letter.

[436] *See* ICI Comment Letter; SIFMA AMG Comment Letter; TIAA-Nuveen Comment Letter; J.P. Morgan Asset Management Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; Capital Group Comment Letter.

service providers assisting with ongoing assessment of funds' portfolios will need time to develop and update systems necessary to support the rule.[437] One commenter stated that many small funds would be particularly burdened by heavy legal and compliance costs.[438]

After consideration of commenters' concerns, we are adopting a compliance period of 24 months following the final amendments' effective date for larger entities, and 30 months following the final amendments' effective date for smaller entities. The tiered compliance period we are adopting is designed to strike the appropriate balance between allowing funds adequate time to adjust their compliance practices, and allowing investors and shareholders to benefit from the amended names rule framework. This tiered compliance period also recognizes commenter concerns related to the operational challenges associated with compliance with the final amendments. In considering the adequacy of this compliance period, we also have considered that certain funds' current investment policies may already be in line with the final amendments or could be readily conformed without material change.[439] Furthermore, certain provisions of the final amendments will reduce both the initial and ongoing costs associated with compliance compared to the proposed amendments from which some commenter concerns stemmed. We anticipate that smaller entities will benefit from having an additional six months to come into compliance with the final amendments, based on feedback from commenters and to the extent that smaller entities may face additional or different challenges in coming into compliance with the amendments than larger entities.

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437 *See* ICI Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; Capital Group Comment Letter.

438 *See* Freeman Capital Management Comment Letter.

439 *See infra* section IV.D.2.

We disagree with the commenter who asserted that the amended rule is impermissibly retroactive.[440] The compliance period that we are adopting ensures that the rule amendments will operate and will be enforced prospectively. That regulated entities may have to take action to come into compliance with the rule does not make that rule retroactive.[441]

Staff in the Division of Investment Management are reviewing its no-action letters and other statements addressing compliance with the names rule to determine which letters and other staff statements, or portions thereof, should be withdrawn in connection with the final amendments. Some of these letters and other staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the final rule and, therefore, may be withdrawn by the staff. The staff's review includes, but is not necessarily be limited to, the staff no-action letters and other staff statements listed below.

- Frequently Asked Questions about Rule 35d-1;
- Disclosure by Funds Investing in Government Sponsored Enterprises (staff letter to the ICI, Oct. 17, 2003);
- IM Guidance Update, No. 2013-12, Fund Names Suggesting Protection from Loss (Nov. 2013).

440 *See* Stradley Comment Letter.

441 *See Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) ("It is often the case that a business will undertake a certain course of conduct based on the current law, and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive lawmaking, and indeed most economic regulation would be unworkable if all laws disrupting prior expectations were deemed suspect.") (internal quotation marks omitted).

III. OTHER MATTERS

Pursuant to the Congressional Review Act,[442] the Office of Information and Regulatory Affairs has designated the final amendments as a "major rule" as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. ECONOMIC ANALYSIS

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 2(c) of the Investment Company Act[443] provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The following analysis considers, in detail, the likely significant economic effects that may result from the final rule amendments, including the benefits and costs to investors and other market participants as well as the broader implications of the final rule amendments for efficiency, competition, and capital formation.

Many of the benefits and costs discussed below are difficult to quantify. For example, the Commission cannot quantify how investors may change their investments in funds in response to

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442 5 U.S.C. 801 *et seq*.

443 15 U.S.C. 80a-2(c).

the final rule amendments. Also, in some cases, data needed to quantify these economic effects are not currently available and the Commission does not have information or data that would allow such quantification. For example, the costs for investors to search for funds and monitor them to ensure that their investments are consistent with their preferences will depend on investors' opportunity cost of time, which could differ across investors. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature.

B. Broad Economic Considerations

As discussed in section I above, we believe that a fund's name is one important piece of information that investors use to select a fund, and that asset managers give considerable thought to the fund names that they choose. To the extent that investors value and can determine whether a fund's investments comport with the fund's name, there are reputational incentives for funds to hold such assets.[444] However, it is costly for individuals or third parties to analyze and monitor the extent to which every fund invests in assets consistent with an investment focus suggested by its name, or even to discover the reputation of each fund. As a result, it may be more efficient for investors to be able to rely on certain regulatory standards addressing the relationship between a fund's name and its investments than to rely on third parties or individual analyses for these purposes. Investors within a fund also differ in their preferences, and this variability mitigates an

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[444] *See* Zycher Comment Letter.

adviser's incentive to cater to those types of preferences, such as preferences over risk or correlation with particular market factors.

Further, an adviser has an incentive for the fund to hold investments different from those suggested by the fund's name to the extent that doing so would lead to increased assets under management and increased fee revenues. For example, a fund may be incentivized to depart from the investment focus suggested by its name in an attempt to outperform its peers and attract greater inflows and may act on this incentive within regulatory and market constraints. Holding investments not consistent with the investment focus that a fund's name suggests could lead to investors holding investments that are inconsistent with their goals and risk tolerances.

Some commenters believed that the current names rule needs to be amended.[445] Some of these commenters stated, for example, that the current scope of the 80% investment policy provision does not cover all instances in which fund names create the reasonable expectation that a fund will invest in a certain way.[446] Funds that suggest an investment focus but that are not currently covered by the names rule are popular. For example, funds with "growth" or "value" in their name make up over 15% of funds.[447]

In addition, derivatives have become a more common tool used by funds since the inception of the names rule, and many funds that use derivatives do so in ways that amplify, rather than hedge, their non-derivative positions.[448] Because the market value of derivatives

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[445] For a fuller discussion, *see* section I.B.

[446] *See supra* footnote 26 and accompanying text.

[447] Based on an analysis of fund names as of Dec. 2022.

[448] *See* R. Kaniel, and P. Wang, Unmasking Mutual Fund Derivative Use, CEPR Discussion Paper 17755 (2022) ("Kaniel Paper"). The authors find that 26% of active equity mutual funds use derivatives. Of these,

tends to be small relative to the exposures they create, certain derivatives may currently provide funds a way to create large exposures not suggested by a fund's name without falling out of compliance with an 80% investment policy if derivatives are valued using their market value.[449]

Researchers have studied whether a fund's name can drive investor behavior above and beyond the investment strategy of the fund. That is, they have studied whether an incentive exists for managers to use names to attract fund flows in ways that are not reflected in the investment allocation of the fund. Research has found that fund names have an impact on fund flows in different types of environments.[450] Researchers have also found that certain funds have changed their names to suggest changes in style, but the funds do not subsequently change styles.[451] Gaps

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63% have derivative returns that correlate positively with their non-derivative returns. The median correlation was 0.25. For comparison, J Koski and J Pontiff, *How are Derivatives Used? Evidence from the Mutual Fund Industry*, Journal of Finance, Volume 54(2), 791-816 (1999) finds that only 21% of similar funds use derivatives.

449 *See* Kaniel Paper. The authors find that, among funds that use derivatives, derivatives are, on average, 2% of the market value of those funds. By contrast, derivatives make up, on average, 21% of those same funds' gross notional exposure. *See also supra* footnote 238 and accompanying text (stating that using a derivatives instrument's market value for purposes of assessing names rule compliance could result in a fund being in compliance with its 80% investment policy despite the fund having significant exposure to investments that are *not* suggested by the fund's name).

450 *See e.g.*, S. El Ghoul, and A. Karoui, *What's in a (Green) Name? The Consequences of Greening Fund Names on Fund Flows, Turnover, and Performance*, Finance Research Letters, Volume 39, 101620 (2021). The authors find that, following a fund name change suggesting socially responsible investment, fund inflows increase but there is a statistically insignificant change in fund exposure to socially responsible investment. *See also* B. Candelon, J. B. Hasse, J.- Q. Lajaunie, *ESG-Washing in the Mutual Funds Industry? From Information Asymmetry to Regulation*, Risks, 9, 199 (2021). The authors provide empirical evidence that some asset managers portray their funds as socially responsible yet do not make tangible investment decisions consistent with that portrayal. *See also* C. Wu and W. Chen, *What's an AI Name Worth? The Impact of AI ETFs on Their Underlying Stocks,* Finance Research Letters, Volume 46 (B), 102474 (2022). The authors compare returns between the stocks in two different kinds of AI ETFs: those with and without "AI" in their name. They find that the constituent stocks of the group with "AI" in the name has a higher cumulative abnormal return than the constituent stocks of the group without "AI" in the name, and attribute this to differential fund flows to the different groups.

451 *See* Michael J. Cooper, Huseyin Gulen, and P. Raghavendra Rau, *Changing Names with Style: Mutual Fund Name Changes and Their Effects on Fund Flows*, Journal of Finance, Volume 60, 2825-2858 (2005) ("Cooper Paper"). The authors identify 296 equity mutual funds that make a style name change over the period April 1994 to July 2001. They find that 63% of style-related name changes are 'misleading' in that

between the investment style implied by a fund's name and the actual style of the fund are consistent with self-interest of the fund's adviser. For example, research findings suggest that fund managers may alter funds' investment styles during the last part of a year, without changing their names to reflect a new style, in an effort to outperform their peers and attract greater inflows over the remainder of the year.[452] Research findings also suggest that funds' name changes that do not also involve a style change may be intentional and aimed at attracting investors.[453] In particular, these fund name changes tend to suggest fund styles that have performed well recently and that have received a disproportionate amount of fund flows.[454]

Some commenters disputed the relevance of this research to the proposed amendments to the names rule, claiming that it predates the current names rule, misuses terms like "growth" and "value," and does not demonstrate that investors have been misled.[455] While some of this evidence does predate the current names rule, it also reflects styles that are not within the scope

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they are not accompanied by corresponding changes in investment style to reflect the investment style suggested by the new name. *See also* Susanne Espenlaub, Imtiaz ul Haq, and Arif Khurshed, *It's all in the name: Mutual fund name changes after SEC Rule 35d-1*, Journal of Banking and Finance, Volume 84, 123-134 (2017) ("Espenlaub Paper"). The authors examine 2,677 fund name changes among 2,110 funds from the fourth quarter of 2001 through the fourth quarter of 2011. The authors find 435 "misleading" name changes in their sample.

452 *See* Anne-Florence Allard et al., *When Mutual Fund Names Misinform* (working paper, 2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628293. The researchers find that funds that perform poorly over the first three quarters of a year, and funds that have experienced poor fund flows over the first three quarters of a year, are more likely to change to an investment style that is inconsistent with the style implied by the fund's name. These results suggest that funds that have performed poorly over the first three quarters of a year, and funds that have experienced poor fund flows over the first three quarters of a year, would bear an opportunity cost if they continued to follow the investment style consistent with the strategy implied by the funds' names.

453 *See* Espenlaub Paper, *supra* footnote 451. The researchers find that "superficial" name changes result in increased fund flows but do not result in either higher performance or lower fees. *See also* Cooper Paper, *supra* footnote 451. The researchers find that funds that change their names: (1) experience negative flows, relative to their peers, prior to changing their names, (2) have performed poorly on a risk-adjusted basis, and (3) are in a style, irrespective of a fund's individual performance, that has recent poor performance.

454 *See* Cooper Paper, *supra* footnote 451.

455 *See* ICI Comment Letter and SIFMA AMG Comment Letter.

of the current names rule but are in the scope of the amended rule (*i.e.*, growth and value funds). As such, we do not anticipate that the current names rule impacted the main findings of these studies. Further, we believe that the totality of the academic research, both before and after the enactment of the names rule, suggests that fund names affect investor behavior above and beyond what can be explained by a fund's returns, risk level, correlation with market risk factors, or classification by third parties. This is not to suggest that names are solely determinative in investor decisions. While the above research is consistent with some investors unknowingly choosing funds that invest in assets outside of the investment focus suggested by their names, this is not the only possible explanation for the given findings. For example, funds with names that superficially suggest popular styles may be included more often in investors' initial screenings for funds, and investors may nonetheless disproportionately choose these funds after investigating them more thoroughly despite this fact. However, this would still suggest inefficiencies in the investor-fund matching process that could be improved by more precise naming and establishes the existence of an incentive for managers to choose names that maximize fund flows, even if the chosen name is not indicative of the investment practice of the fund. The academic research cited generally does not distinguish whether funds were purchased directly by investors or by a fiduciary or other intermediary. However, the rule is intended to increase search efficiency for both retail investors and fiduciaries.

Some commenters also criticized the proposed amendments for the costs they would impose on funds and, by extension, investors. Prevalent among these were concerns that the expansion of the scope of the rule would encompass many funds whose names have terms that

are defined at least partially by managerial judgment.[456] These funds, commenters argued, would have significantly higher costs of compliance with the names rule than would funds that are already scoped into the rule. In particular, commenters were worried that automated processes could not be implemented that would categorize each asset and determine whether it fell in its 80% basket.[457] These concerns were heightened because the approach in the proposing release effectively would have required funds to do this categorization continually (and in some circumstances daily) in order to determine the number of days that a fund was out of compliance with its 80% investment policy.

The final amendments have taken several steps to mitigate costs for most funds relative to the amendments in the proposing release. For example, the final rule does not include a requirement for continual or daily monitoring to reassess the characteristics of the investments in the fund's 80% basket, alleviating the need for daily recategorization. However, a fund must review its portfolio investments on a quarterly basis to determine whether or not the fund's investments continue to be consistent with its 80% investment policy. As is true under the baseline, a fund must also categorize an asset at its time of investment. If a fund is trading each of its assets daily then the cost mitigation described above would not apply.

C. Economic Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rule are measured consists of the current state of the fund market, current practice as it relates to fund names and investment policies, and the current

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456 *See, e.g.*, ICI Comment Letter, SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter.

457 *See, e.g.*, ICI Comment Letter, J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter.

regulatory framework. The economic analysis appropriately considers existing regulatory requirements, including recently adopted rules, as part of its economic baseline against which the costs and benefits of the final rule are measured.[458]

1. Fund Industry Overview

The fund industry has grown and evolved substantially in past decades in response to various factors, including investor demand, technological developments, and an increase in domestic and international investment opportunities, both retail and institutional. As of December 2022, there were 9,533 mutual funds (excluding money market funds) with approximately $21,861 billion in total net assets, 2,735 ETFs organized as an open-end fund or as a share-class of an open-end fund with approximately $8,843 billion in total net assets, 748 registered closed-end funds with approximately $389 billion in total net assets, and 45 UITs with approximately $812 billion in total net assets.[459] There also were 355 money market funds

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458 *See, e.g.*, *Nasdaq v. SEC*, 34 F.4th 1105, 1111-15 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* Staff's "Current Guidance on Economic Analysis in SEC Rulemaking" (March 16, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf ("The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action."); *Id*. at 7 ("The baseline includes both the economic attributes of the relevant market and the existing regulatory structure."). The best assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed actions, because doing so would improperly assume the adoption of those proposed actions.

459 Estimates of the number of registered investment companies and their total net assets are based on an analysis of Form N-CEN filings as of Dec. 31, 2022. For open-end management funds, closed-end funds, and management company separate accounts, total net assets is the sum of monthly average net assets across all funds in the sample during the reporting period (*see* Item C.19.a of Form N-CEN). For UITs, we count only N-CEN UIT filers that indicated registration on Form S-6 or Form N-8B-2. Furthermore, we use the total assets as of the end of the reporting period (*see* Item F.11 of Form N-CEN), and for UITs with missing total assets information, we use the aggregated contract value for the reporting period instead (*see* Item F.14.c of Form N-CEN).

with approximately $5,556 billion in total net assets.[460] Finally, as of December 2022, there were 125 BDCs with approximately $138 billion in total net assets.[461]

The final rule amendments would also affect current and prospective individual investors who invest in funds. According to an association representing registered funds, as of 2022, 71.7 million (54.7%) U.S. households and 120.5 million individuals owned shares in U.S. registered investment companies.[462] Median mutual fund assets of mutual fund-owning households were $125,000 with the median number of mutual funds held being three.[463] Moreover, registered funds play an important role in individuals' retirement savings. 72% of households had tax-advantaged retirement savings with $10.1 trillion invested in mutual funds either through defined contribution plans or IRAs.[464]

2. Market Practice

Fund names are an important mechanism in marketing funds to investors. Although investors have access to the entirety of a fund's disclosures, a fund's name is often the first piece of fund information investors see and can have a significant impact on their investment decision. Several commenters stated that the name of a fund is vital to an investor's decision-making process and can have a large impact on its fund flows.[465] Fund names commonly include words

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[460] Estimates of the number of money market mutual funds and their total net assets are based on an analysis of Form N-MFP filings as of Dec. 31, 2022.

[461] Estimates of the number of BDCs and their net assets are based on an analysis of Form 10-K and Form 10-Q filings as of Dec. 31, 2022. Our estimate includes BDCs that may be delinquent or have filed extensions for their filings.

[462] *See* Investment Company Institute, 2023 Factbook (2023) ("2023 ICI Factbook") *available at* https://icifactbook.org/pdf/2023-factbook.pdf.

[463] *Id*.

[464] *Id*.

[465] *See*, *e.g.*, Better Markets Comment Letter, Consumer Federation of America Comment Letter, Center for American Progress Comment Letter.

that describe the fund's investment focus—for example, the asset class(es) in which the fund invests, as well as the fund's investment strategy. For example, the words "equity" or "stock" – terms that convey an investment type and therefore subject funds to the existing names rule's 80% investment policy requirement – appear in 1,393 fund names (approximately 10.6% of non-money market funds).[466] The words "growth," "income," and "value" – terms that do not convey an investment type – appear in 1,167 (8.9% of non-money market funds), 1,472 (11.2%), and 829 (6.3%) fund names, respectively.[467]

A review of fund filings suggests that approximately 82% of funds have investment policies specifying a minimum percentage of investments consistent with a certain fund focus,[468] while 67% of all funds have such a policy with a minimum threshold of 80% or higher.[469] Certain funds also specify investment maximums as a percentage of fund assets.[470] The review

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466 Based on an analysis of fund names as of Dec. 2022.

467 Certain word pairs are also common in fund names. For example, the word pair "small cap" appears in 3.6% of fund names. Other common word pairs include "large cap" (2.5% of funds), "high yield" (2.0% of funds), and "emerging markets" (3.5% of funds).

468 This estimate is based on a random stratified sample of 100 fund names, which is a representative sample based on fund size randomly selected from the population of N-CEN filings as of Dec. 31, 2022. Specifically, 497 and 485BPOS fund prospectuses filed in 2021 or 2022 that match to the sample of 100 funds are parsed both programmatically and manually for keywords and phrases indicative of minimum investment commitment policies. 485BPOS refers to any post-effective amendments to the initial registration statement or prospectus filed pursuant to Securities Act rule 485(b). The investment policies for ten funds could not be identified in the 497 and 485BPOS fund prospectuses filed in 2021 or 2022. Therefore, these ten funds are excluded for this estimate. The random sample of 100 funds referenced here is the same sample of funds as that used to estimate the percentage of funds whose names implicate the 80% requirement. *See infra* section IV.C.3

469 22% of funds that have investment policies specifying a minimum percentage of investments consistent with a certain fund focus specify a percentage less than 80%. While 67% of funds have an investment policy requiring at least 80% of fund investments be consistent with a certain investment strategy, we estimate that 60% of funds have names that trigger the 80% requirement (discussed below). These results suggest that funds may adopt 80% investment policies even if they are not currently within the scope of the names rule's current requirement to adopt an 80% investment policy.

470 For example, a fund may specify that it invests no more than a given percentage of fund assets in a given country or geographic region.

also found that 60% of funds are required under the current names rule to maintain an 80% investment policy.[471]

Funds' use of derivatives has grown in the time since the names rule was originally adopted in 2001, with 26% of funds now having some derivatives exposure.[472] Funds use derivatives in a variety of ways, including increasing or hedging their exposure to certain risk factors. Funds primarily do this through the use of futures and swaps contracts but other derivatives, such as options, are also widely used.[473] For example, a fund may wish to hedge the currency risk of a foreign asset through the use of a forward contract or its interest rate risk using a swap. Similarly, a fund may gain exposure to certain equities or commodities through the use of forward and option contracts. Funds also use derivatives for cash management purposes when fund flows are high,[474] for tax efficiency,[475] or to arbitrage market mispricing.

3. Current Regulatory Framework

As discussed above, section 35(d) of the Act authorizes the Commission to define certain fund names or titles as materially deceptive or misleading.[476] The current names rule applies to a registered investment company and any series of the investment company.[477] The rule generally requires that if a fund's name suggests a particular type of investment, industry, or geographic

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471 *See* section IV.C.3 for details on the current regulatory requirement.

472 *See supra* footnote 448 and accompanying text.

473 *See* Kaniel Paper.

474 *See, e.g.*, A. Frino, A. Lepone, and B Wong, *Derivative Use, Fund Flows and Investment Manager Performance*, Journal of Banking & Finance, Volume 33, 925-933 (2009).

475 For example, 60% of futures contracts profits may be taxed at the long-term capital gains rate regardless of duration of the investment.

476 *See supra* section I.A.

477 Rule 35d-1(d)(1).

focus, the fund must invest at least 80% of its assets in the type of investment, industry, country, or geographic region suggested by its name.[478] The names rule also provides that a fund's 80% investment policy applies "under normal circumstances"[479] – giving funds flexibility to take cash or other defensive positions during market crises. The names rule also imposes an 80% investment policy requirement for tax-exempt funds.[480] Under the rule, a fund may generally elect to make its 80% investment policy a fundamental policy (*i.e.*, a policy that may not be changed without shareholder approval) or instead provide shareholders notice at least 60 days prior to any change in the 80% investment policy.[481] The names rule also requires a fund with a name suggesting that the fund focuses its investments in a particular country or geographic region to disclose in its prospectus the specific criteria used by the fund to select these investments.[482]

The current names rule has no express provision for how derivatives are to be treated in a fund's 80% calculation. In practice however, funds typically use a derivative's market value consistent with the definition of the term "value" in the Investment Company Act. [483]

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478 *See* rule 35d-1(a)(2)(i), (a)(3)(i).

479 *Id.*

480 Alternatively, at least 80% of the income that it distributes will be exempt. *See* rule 35d-1(a)(4); *see also supra* footnote 15.

481 *See* rule 35d-1(a)(2)(ii), (a)(3)(iii). An 80% investment policy relating to a tax-exempt fund, however, must be a fundamental policy.

482 Rule 35d-1(a)(3)(ii).

483 2020 Request for Comment, *supra* footnote 20.

A review of fund names suggests that approximately 60% of funds have names that implicate the 80% investment policy requirement, but that approximately 67% of funds have an investment policy that covers at least 80% of investment assets.[484]

The 80% investment policy requirement generally applies at the time when an investment company invests its assets.[485] If an investment causes a fund to no longer satisfy its 80% investment policy, then all future investments must be made in a manner that will bring the fund back into compliance with the 80% investment policy.[486]

Because the current rule applies to all registered investment companies, it applies to UITs as well as mutual funds and registered closed-end investment companies.[487] UITs are passively managed vehicles that operate pursuant to a trust indenture or a similar document and have fixed portfolios. They are also generally subject to the 80% investment policy requirement of the

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[484] This estimate is based on a random stratified sample of 100 fund names. *See supra* footnote 468.

[485] Rule 35d-1(b); *see also* 2001 Names Rule Adopting Release, *supra* footnote 8.

[486] Rule 35d-1(b). As described in greater detail in the Proposing Release, *supra* footnote 2, funds' compliance with the baseline rule is facilitated by Commission staff review of funds' initial registration statements, post-effective amendments, proxy statements, and annual reports. Likewise, the names rule's 80% investment policy requirement has never been intended to create a safe harbor from liability under section 35(d) for materially deceptive or misleading fund names generally. *See supra* section II.A.5; *see also* 2001 Names Rule Adopting Release, *supra* footnote 8, (stating that the Division would "continue to scrutinize investment company names not covered by the proposed rule . . . and [i]n determining whether a particular name is misleading, the Division w[ould] consider 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"). Funds that anticipate oversight may be more likely to take steps to align their investment practices with the terminology used in these funds' names.

[487] 2001 Names Rule Adopting Release, *supra* footnote 8.

current names rule at the time of investment. However, UITs that have made an initial deposit of securities before the compliance date of the original rule are exempted from this requirement.[488]

BDCs, while not registered investment companies, are subject to requirements of section 35(d) of the Act, and thus the names rule, by operation of section 59 of the Act.[489] Accordingly they must meet the current rule's 80% investment policy requirement including to either adopt the required 80% investment policy as a fundamental policy or provide shareholders 60 days' advance notice for any change in the investment policy.[490] Unlisted registered closed-end funds and BDCs, however, do not issue redeemable shares or list their shares on a national securities exchange. Shareholders in an unlisted registered closed-end fund or BDC generally will have no ready recourse, such as the ability to redeem or quickly sell their shares, if the fund were to change its investment policy and the investment focus that the fund's name indicates.[491]

All registered management investment companies (other than money market funds and small business investment companies), as well as ETFs organized as UITs, file Form N-PORT with the Commission on a monthly basis. Form N-PORT requires reporting of a fund's complete portfolio holdings in a structured data language, with every third month available to the public 60 days after the end of the fund's fiscal quarter.

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488 Rule 35d-1(b).

489 *See supra* footnote 13 (citing 15 U.S.C. 80a-58).

490 Rule 35d-1(a)(2)(ii), (a)(3)(iii).

491 *See* Proposing Release, *supra* footnote 2, at n.99 and accompanying text.

D. Benefits, Costs, and Effects on Efficiency, Competition and Capital Formation

The final amendments are designed to modernize and enhance the investor protections that the names rule currently provides. The final amendments are designed to improve, and broaden the scope of, the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests. These amendments further the name rule's objective of preventing fund names from misrepresenting a fund's investments and risks by ensuring that a fund's investment activity is consistent with the investment focus its name communicates. The final amendments also update the rule's notice requirements, establish recordkeeping requirements, and require enhanced prospectus disclosure and reporting on Form N-PORT.

1. Benefits

The investor protections provided by the names rule benefit investors by helping to ensure investors' assets in funds are invested in accordance with their investment goals and risk tolerances. The distinction in the current rule between a type of investment – which implicates the 80% requirement under the baseline - and an investment strategy – which does not implicate this requirement - is not useful from an investor protection perspective because any fund name that may connote a particular investment focus can result in reasonable investor expectations regardless of whether the fund's name describes a strategy or a type of investment. Also, under certain circumstances, the current structure of the rule may not protect investors from funds departing from the investment focus suggested by their name over time. For example, funds may passively hold assets whose characteristics change, such as a small-cap firm becoming a mid-cap firm. Since funds are currently required only to assess assets at the time of investment, changes

in the relative value of the assets of a fund could allow a fund's portfolio to drift such that its holdings no longer reflect the investment focus suggested by its name, which could mislead new or existing investors. Additionally, the investor protections provided by the names rule are not designed to address funds' increasing use of derivatives.

The benefits associated with the final amendments may vary based on funds' current practices. We estimate that 82% of funds, and over half of funds not currently subject to the names rule, currently have in place practices related to investing a certain percentage of their assets in a particular type of assets or assets that have certain characteristics.[492] Depending on the extent to which those practices differ across funds or differ from the final amendments' requirements, the benefits realized by fund investors, as detailed below, may vary across fund investors.

Generally, the final rules should increase investor confidence that funds' portfolios are aligned with the investment focus suggested by their names. The provisions are intended to align fund investments with the preferences of investors. To the extent that funds change their behavior and invest in assets more suited to investor preferences, allocation efficiency will increase.

One commenter questioned the general benefits of the amendments on the basis of a lack of enforcement actions or lawsuits arising from the current names rule.[493] We disagree with this assessment. There are a number of factors that determine whether and when the Commission brings enforcement actions, meaning the presence or absence of such actions does not

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[492] *See supra* footnote 468 and accompanying text.

[493] *See* SIFMA AMG Comment Letter.

necessarily indicate whether rulemaking is or is not justified. For the reasons discussed throughout, including the Commission and staff's experience with the names rule over the past two decades and developments in the fund industry, the Commission believes that this rulemaking is justified.[494]

Names Suggesting an Investment Focus. To the extent fund names are not representative of funds' investment focuses, existing and potential investors may hold, or invest in, funds with risk and return characteristics that differ from investors' reasonable expectations. Absent investor protections with respect to fund holdings, existing investors may expend resources they otherwise would not expend to confirm that fund investments are consistent with their expectations based on the fund's name, or they may choose to reduce or eliminate their investments in funds. Similarly, uncertainty about fund holdings despite the fund's name could cause potential investors to expend greater resources to confirm fund investments prior to investment or could lead potential investors to invest less or forgo investment altogether. The final amendments would extend the provisions of the names rule to a broader set of fund names.

Specifically, we estimate that approximately 8,100 (60%) funds are currently subject to the names rule's 80% investment policy requirement and that our final amendments would increase this number to approximately 10,300 (76%) funds.[495] We believe that investors in these additional funds would benefit to the extent that the scope expansion helps ensure that a fund's investment activity is consistent with the investment focus its name communicates and, thus, the investor expectations the name creates.

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[494] *See supra* section II.A.1.

[495] *See supra* footnotes 468-469. The percentage estimate is applied to the total number of funds (13,541) listed in section IV.C.1.

Temporary Departures. The final amendments will continue to permit a fund to depart temporarily from the requirement to invest at least 80% of the value of its assets in accordance with the investment focus its name suggests. The final rule requires that a fund must invest in accordance with its 80% investment policy under normal circumstances. Funds must review their portfolios on a quarterly basis for compliance with the 80% investment requirement. In instances where a fund identifies that its portfolio is out of compliance with the 80% investment requirement, the fund must make future investments in a manner that would bring the fund into compliance as soon as reasonably practicable and in all circumstances within 90 consecutive days of the fund's identification that the requirements are no longer met. If the fund departs from the requirements in other-than-normal circumstances, the fund is not required to come back into compliance as soon as reasonably practicable but must come back into compliance within 90 consecutive days of the initial departure.

In addition, funds are permitted under the final rule to temporarily depart from the 80% investment requirement in connection with a reorganization (for which the final rule does not specify a required time frame for accompanying temporary departures) or a fund launch (departure not to exceed the period of 180 consecutive days) or when a notice of a change in a fund's policy in certain circumstances has been provided to fund shareholders.[496]

The current rule requires a fund to determine at the time it invests whether the security is appropriately included in the fund's 80% basket. As a result, a fund that does not frequently trade could potentially have assets that comported with the name of the fund at the time of investment, but whose characteristics have changed with time. As a result, the requirement in the final rule

[496] *See supra* section II.A.2 for a full description of the requirement.

for a fund to reassess the characteristics of a fund's assets on a quarterly basis will benefit investors by ensuring that funds cannot passively drift such that their name no longer reflects their holdings for a prolonged period.

The final rule will also benefit investors by imposing a limit to the amount of time that a fund can invest less than 80% of the value of its assets in accordance with the fund's investment focus in other-than-normal circumstances. The new deadline gives a predictable timeline for discrepancies to be resolved, during which funds can investigate a name change and shareholders can determine whether to redeem their shares. Some commenters highlighted the benefit of increased investor protection that this would produce.[497] For example, the final rule would disallow a departure for longer than 90 consecutive days to address a market disruption. This will benefit investors to the extent that such a departure would frustrate the expectation of investors who may expect the fund to invest consistent with its stated investment focus even during market disruptions, and therefore may choose to rebalance investments on their own rather than relying upon the fund to do so.

Because UITs are passively managed vehicles that have fixed portfolios, it would be difficult to adjust their portfolios to comply with the rule's portfolio composition requirements.[498] Accordingly, UITs are exempted from this provision and the associated benefits discussed above do not apply to UITs.

Considerations Regarding Derivatives in Assessing Names Rule Compliance. The final amendments also address the valuation of derivatives instruments for purposes of determining a

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[497] *See*, *e.g.*, NASAA Comment Letter; Center for American Progress Comment Letter; Consumer Federation of America Comment Letter.

[498] *See supra* footnote 428.

fund's compliance with its 80% investment policy, as well as the derivatives that a fund may include in its 80% basket. The final amendments generally require that, in calculating its assets for purposes of names rule compliance, a fund must value each derivatives instrument using its notional amount, with certain adjustments.[499] The final amendments also, in a change from the proposal, require a fund to exclude from the calculation derivatives transactions that it uses to hedge currency risk associated with one or more specific foreign-currency-denominated equity or fixed-income investments held by the fund provided that: (1) such currency derivatives are entered into and maintained by the fund for hedging purposes, and (2) 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. The final amendments will permit a fund, in determining compliance with its 80% investment policy, to deduct cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less from assets (*i.e.*, the denominator in the 80% calculation) up to the notional amounts of the fund's derivatives instruments, as well as any closed-out positions if those positions result in no credit or market exposure to the fund.[500] The final amendments also specify that, in addition to any derivatives instrument that a fund includes in its 80% basket because the derivatives instrument provides investment exposure to the investments suggested by the fund's name, the fund also may include in its 80% basket a derivatives instrument that provides investment exposure to one

[499] Interest-rate derivatives must be adjusted to their 10-year bond equivalent, and options must be delta-adjusted. Physical short positions must instead use the value of the asset sold short. *See* discussion in *supra* section II.A.3.

[500] *See* final rule 35d-1(g).

or more of the market risk factors associated with the investment focus suggested by a fund's name.

As discussed above, a derivatives instrument's "value," as defined in the Act, will not be the same as the investment exposure created by the derivatives instrument.[501] We believe the notional amount generally serves as a better measure (than market value) of the fund's investment exposure to the underlying reference asset or metric. Also, as discussed in section II.A.3 above, using derivatives instruments' market values for purposes of assessing names rule compliance could result in a fund being in compliance with the fund's 80% investment policy despite the fund having significant exposure to investments that are *not* suggested by the fund's name, as is allowed under the baseline. The final amendments will benefit investors by allowing funds that use derivatives to use names that may more effectively communicate their investments and risks and reduce the risk that a fund may use derivatives to invest in a manner inconsistent with the investment focus suggested by the fund's name. The final amendments also provide clarity to funds and investors on how to value derivatives for the purpose of the 80% investment test, and make the test a more effective tool in assessing names rule compliance. Comments on different aspects of the proposed approach to using notional amounts were mixed; however, commenters largely agreed that using an approach that better reflects the economic exposure obtained by a derivatives instrument, rather than the market value, would result in the benefits outlined for this aspect of the rule.[502]

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501 *See* discussion in *supra* section II.A.3.

502 *See, e.g.*, Consumer Federation of America Comment Letter; Capital Group Comment Letter; J.P. Morgan Asset Management Comment Letter.

Unlisted Registered Closed-End Funds and BDCs. Unlisted registered closed-end funds and BDCs do not issue redeemable shares or list their shares on a national securities exchange. Under the baseline, shareholders in an unlisted registered closed-end fund or BDC generally would have no ready recourse, such as the ability to redeem or quickly sell their shares, if the fund were to change its investment policy. Under the final rule amendments, unlisted registered closed-end funds and BDCs will not be permitted to change their 80% investment policies without shareholder approval unless an appropriate liquidity event is offered a certain time prior to the implementation of such a change.[503] This rule will increase investor protections by requiring that investors have a choice when a fund takes action to change its 80% investment policy, either in the form of a vote or in the ability to disinvest.

The proposed rule would have required that 80% investment policies for unlisted registered closed-end funds and BDCs be fundamental policies. We believe that the final rule's approach to unlisted registered closed-end funds and BDCs achieves the same investor protection benefits that the proposal would have provided relative to the current rule, because investors who no longer wish to invest in a fund after a change in investment policy will be able to either vote on such a change or liquidate their position. For most investors, we assume that the ability to liquidate is at least as strong a recourse as the ability to vote in this context.

Effect of Compliance with an 80% Investment Policy. We are adopting a new provision in the names rule providing that a fund's name may be materially deceptive or misleading under section 35(d) even if the fund adopts and implements an 80% investment policy and otherwise

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503 *See supra* section II.A.4 for a discussion of the rule requirement.

complies with the rule's requirement to adopt and implement the policy.[504] The Commission has previously stated that the names rule's 80% investment policy requirement is not intended to create a safe harbor for fund names, and the provision we are adopting codifies this position.[505] We anticipate that investors will benefit from this codification of the prior guidance to the extent that it deters funds from investing in a way such that the source of a substantial portion of the fund's risks or returns is materially different from that which an investor reasonably would expect based on the fund's name, as communicated to investors. It may also lead funds to consider further ways in which their names could be materially deceptive and misleading even outside of compliance with the 80% investment policy requirement and modify their names and/or investment practices accordingly.

Prospectus Disclosure. We are also adopting amendments to funds' registration forms that would require each fund that is required to adopt and implement an 80% investment policy to disclose in its prospectus the definitions of the terms used in its name, including the specific criteria the fund uses to select the investments that the terms describe, if any.[506] These provisions are intended to help an investor understand whether the investment focus the name suggests is consistent with the investor's investment goals and risk tolerance. The final amendments will also reduce costs for investors to search for funds that match their investment preferences and

[504] *See supra* section II.A.5 and final rule 35d-1(c).

[505] *See supra* section II.B; *see also* 2001 Names Rule Adopting Release, *supra* footnote 8, section II.A.1.

[506] *See* Proposing Release, *supra* footnote 2, at n.104 and accompanying text.

facilitate monitoring by investors or third parties as well as facilitate oversight by the Commission.[507]

The final amendments will require funds to tag most of the new prospectus disclosure in Inline XBRL, a structured, machine-readable data language.[508] This requirement is designed to make the tagged prospectus disclosures more readily accessible for aggregation, comparison, filtering, and other analysis. As a point of comparison, XBRL requirements for public operating company financial statement disclosures have been observed to improve investor understanding of the disclosed information.[509] While those observations are specific to operating company financial statement disclosures (including footnotes), and not to disclosures from funds outside the financial statements, they indicate that the final rule's Inline XBRL requirements will provide fund investors with increased insight into term definitions and investment selection criteria at specific funds and across funds, asset managers, and time periods.[510] An Inline XBRL

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507 *See* section II.B, section II.C, section II.E, and section II.F for discussions of how the proposed prospectus disclosure requirements, plain English requirements, N-PORT reporting requirements, and recordkeeping requirements, respectively, facilitate monitoring of fund investments by investors or third parties as well facilitate oversight by the Commission.

508 *See supra* section II.B. For Forms N-2, N-8B-2, and S-6, all new prospectus disclosures will be tagged in Inline XBRL. For Form N-1A, the new summary prospectus disclosures in Item 4 will be tagged in Inline XBRL. While the new statutory prospectus disclosures in Item 9(b) will not be tagged in Inline XBRL, this disclosure will be reported on Form N-PORT, where it will be tagged in XML format.

509 *See, e.g.*, Birt, J., Muthusamy, K. & P. Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information*, Accounting Research Journal, 30 (2017) (finding "financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors"); Cahan, S.F., Chang, S., Siqueira, W.Z. & K. Tam, *The roles of XBRL and processed XBRL in 10-K readability*, Journal of Business Finance & Accounting (2021) (finding 10-K file size reduces readability before XBRL's adoption since 2012, but increases readability after XBRL adoption, indicating "more XBRL data improves users' understanding of the financial statements"); Efendi, J., Park, J.D. & C. Subramaniam, *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program*, Volume 52, Issue 2, Abacus, 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings).

510 The SEC's fund XBRL data are frequently accessed; for example, during the final week of Jun. 2023, over 37,000 investment company XBRL files were accessed via EDGAR. EDGAR access data is *available at*

requirement is designed to ensure that all disclosures on these forms—including both structured and unstructured disclosures—will be human-readable, because Inline XBRL enables a single document to include both human-readable and machine-readable disclosure.

Plain English/Established Industry Use Requirement. We are also requiring that any terms used in the fund's name that suggest either an investment focus, or that the fund is a tax-exempt fund, must be consistent with those terms' plain English meaning or established industry use. This requirement is designed to provide investors with a better understanding of the fund and its investment objectives by effectively requiring a fund's name to be consistent with a reasonable investor's likely understanding of the investment focus or tax status that the fund's name suggests. Because terms may inherently have multiple meanings, and the amended rule provides flexibility to funds to define the terms in their name, this provision will provide a safeguard to investors by helping to ensure that these chosen definitions are within a term's plain English meaning or established industry use.

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https://www.sec.gov/about/data/edgar-log-file-data-sets. As another example, the Commission's quarterly XBRL datasets for mutual fund prospectus risk/return summaries garnered over 13,000 pageviews from June 2022 to June 2023, according to a Google Analytics query of the Commission's XBRL dataset webpage. The webpage is *available at* https://www.sec.gov/dera/data. Even if some pageviews are not from investors themselves, investors may indirectly benefit from the processing of XBRL data by information intermediaries such as financial media, data aggregators, academic researchers, *et al.*). *See, e.g.*, Trentmann, N., *Companies Adjust Earnings for Covid-19 Costs, but Are They Still a One-Time Expense?*, The Wall Street Journal (2020) (citing an XBRL research software provider as a source for the analysis described in the article); *Bloomberg Lists BSE XBRL Data* (Mar. 17, 2019), *available at* https://www.xbrl.org/news/bloomberg-lists-bse-xbrl-data/; Hoitash, R & U. Hoitash, *Measuring accounting reporting complexity with XBRL*, The Accounting Review, Volume 93, 259–287 (2018). Also, in contrast to XBRL financial statements (including footnotes), which consist of tagged quantitative and narrative disclosures, the disclosures here do not expressly require the disclosure of any quantitative values (if a fund were to include any quantitative values as nested within the required discussion—for example by disclosing as a selection criterion a specific upper limit of company revenues from industries the fund deems incongruent with its definition of "ESG"—those values will also be individually detail tagged, in addition to the block text tagging of the narrative discussion). Tagging narrative disclosures can facilitate analytical benefits such as automatic comparison/redlining of these disclosures against prior periods and the performance of targeted artificial intelligence/machine learning ("AI/ML") assessments (tonality, sentiment, risk words, etc.) of specific definition and selection criteria disclosures rather than the entire unstructured document.

While many commenters agreed with the benefits of this requirement, some stated that this benefit may be mitigated in certain instances; for example, if the name uses terms that evolve over time, or if the plain English meaning of a term differs from its established industry use. These commenters suggested that investors would need to look at the prospectus disclosure to reasonably understand these terms and so there would be no additional benefit to requiring that terms in the name comport to either their plain English meaning or established industry use.[511] While investors should look to prospectus disclosure to understand how terms in a fund's name are defined, this provision would still benefit investors in those circumstances by allowing them to more quickly search for funds that match their investment goals by more effectively filtering for funds with names that could be related to their desired investment allocation.

New Form N-PORT Reporting Requirements. We are also amending Form N-PORT to include new reporting items.[512] Registered investment companies, other than money market funds, required to adopt an 80% investment policy would be required to report on Form N-PORT: (1) with respect to each portfolio investment, whether the investment is included in the fund's 80% basket, (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets, and (3) the definitions of terms used in the name and any selection criteria associated with these terms. The new information that funds will be required to report on Form N-PORT filings will facilitate the Commission's oversight of funds' names rule compliance and assist Commission staff in examination, enforcement, and monitoring with respect to the

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[511] *See supra* footnotes 357-358 and accompanying text for a discussion responding to the issues raised by these commenters.

[512] As discussed above, the final amendments to Form N-PORT, like all Form N-PORT reporting requirements, apply to registered investment companies other than money market funds. BDCs are not subject to any Form N-PORT reporting requirements and thus would not be subject to the final amendments to Form N-PORT. *See supra* footnote 370.

consistency between funds' portfolio investments and the investment focus that the fund's name suggests. In addition to assisting the Commission in its regulatory functions, investors and other potential users will benefit from the periodic public disclosure of the information reported on Form N-PORT. Although Form N-PORT is not primarily designed for disclosing information directly to individual investors, we intend that entities providing services to investors, such as investment advisers, broker-dealers, and entities that provide information and analysis for fund investors, will also utilize and analyze the new information that will be required by the final amendments to Form N-PORT to monitor fund investments for consistency with investment focuses suggested by fund names. The analysis done by these parties will make it easier for all investors to determine whether or not a fund's investment strategy is consistent with their goals and preferences. Accordingly, whether directly or through third parties, the final new disclosure on Form N-PORT is intended to benefit all fund investors.

Recordkeeping. The final amendments require funds to maintain certain records if the fund is required to adopt an 80% investment policy.[513] While the amendments do not prescribe the particular form of documentation required to be maintained, funds generally should maintain appropriate documentation that would be sufficient for a third party to verify the matter covered by each record and would be readily available to Commission staff. These requirements will provide our staff, and a fund's compliance personnel, the ability to evaluate the fund's compliance with the proposed amendments and thereby will benefit investors.

Notice Requirement. The final amendments also protect investors by modifying the current notice requirements when a fund chooses to change its investment policy. The final

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513 *See* final rule 35d-1(b)(3). The recordkeeping requirements will apply to UITs only at the time of initial deposit, and with respect to any notice sent to shareholders.

amendments are designed to specify further the content and delivery of the notice, and address more directly the needs of investors who elect electronic delivery. The rule change benefits shareholders by requiring more prominent notice, and by requiring notice of both policy changes and corresponding name changes. This is intended to help ensure that investors are aware of any name and/or policy change, including to help prevent confusion when investors begin receiving fund materials referring to the new name. The rule change also benefits funds by expressly permitting use of email for notices and by permitting paper notices to be bundled with other shareholder correspondence. These changes could result in cost savings for funds that may be passed on to investors.

2. Costs

We believe that compliance costs associated with the final amendments, particularly those that expand the current scope of the names rule or create new requirements, would vary based on a fund's current practices with respect to adopting policies to invest a particular percentage of fund assets in investments that have, or whose issuers have particular characteristics. We assume that certain funds' current investment policies may already be in line with many of the final rule's requirements or could be readily conformed without material change. For example, as discussed in section IV.C.3 above, a review of fund filings suggests that approximately 7% of funds have investment policies that cover at least 80% of investment assets but are not required to do so under the current names rule. Over 80% of these funds would be newly scoped into the rule. Since we also estimate that 16% of funds will be newly subject to the rule, this means that roughly one third of funds that will be newly subject to an 80% investment policy requirement already have an 80% investment policy, though the exact implementation of this policy may differ from that required by the rule. Even more funds not currently scoped into

the names rule already have a minimum investment policy covering less than 80% of assets. These funds will have lower implementation costs than they would have if they did not already have such an investment policy. For example, these funds are likely already to track the value of their assets on an initial and periodic basis for purposes of complying with such policy, as well as whether a particular asset is part of the percentage of their assets consistent with the investment policy.[514]

We expect that funds would incur costs to review the proposed rule's requirements and modify, as necessary, their investing practices, policies and procedures, and recordkeeping to comply with the proposed rule, or may decide to instead change their name. Even though we understand that many funds, even those that are not currently within the scope of the names rule, currently have in place practices related to investing a certain percentage of their assets in a particular type of assets or assets that have certain characteristics, those practices may differ across funds and also may differ from the proposed rule's requirements.

Certain costs may be fixed, while other costs may vary with the size of the fund and its investment focus. For instance, certain funds may determine that, in furtherance of the 80% investment policy that the rule requires, they will need to create or purchase data to track whether selected investments are consistent with the fund's investment focus. In certain circumstances, this cost may be relatively low and not vary much across similar funds. For example, some growth funds may rely on U.S. financial data when selecting fund portfolio investments. Even if different funds use different metrics to choose their investments, or invest in

[514] Implementations of such existing 80% investment policies may vary, for example with respect to the kind and frequency of the determinations being made. Cost savings would be greater for funds whose existing implementation can more easily be adapted to meet the specific requirements of the final rule.

different industries, the cost of obtaining and using their data will likely be similar across funds unless they are able to share this cost across funds in a fund complex. Further, the cost of aggregating and analyzing financial data is likely to be relatively low because Generally Accepted Accounting Principles promote consistency and comparability in reported financial information, and because in most cases these data are already tagged in XBRL so they can be parsed automatically. Conversely, other growth funds may rely on other metrics or more subjective criteria, and so the cost of creating or acquiring a dataset to track whether selected investments are consistent with the fund's investment focus may be higher. In general, this cost is likely to be relatively larger for smaller funds or funds with more esoteric or bespoke strategies.

Similarly, the cost of data that funds will likely use to comply with the rule may vary across funds based on the investment focus. For example, funds with an ESG focus may face a lack of consistent and comparable ESG information since different vendors of ESG ratings come to different conclusions about the same investment assets. This disparity arises from differing methodologies as well as differing inputs. Data vendors may charge a premium for their relatively more bespoke analysis compared to vendors of other more consistent data, such as financial statement data. Further, some funds may integrate multiple sources of information themselves to determine whether a particular asset is consistent with a fund's investment focus, further increasing the cost.

Also, while larger funds or funds that are part of a large fund complex may incur higher costs in absolute terms, larger funds may find it less costly, per dollar managed, to meet the requirements of the final amendments. For example, larger funds may have to allocate a smaller

portion of existing resources, and fund complexes may realize economies of scale in complying with the final amendment's requirements for several funds.

Names Suggesting an Investment Focus. The final amendments broaden the scope of the names rule's current 80% investment policy requirement to also apply to fund names that include terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics.[515] As discussed above, we estimate that this amendment would subject an additional 2,200 funds to this requirement.[516] Fund registration forms currently require each fund to include disclosure in its prospectus that describes its principal investment strategies (including the type or types of securities in which the fund invests or will invest principally).[517]

Some commenters projected that the costs of compliance with the expanded scope will be substantially larger than was estimated in the Proposing Release.[518] Regarding the modifications of systems to comply with the proposed amendments, one commenter suggested that "programming and testing efforts are far more complex and time consuming than contemplated by the Commission."[519] Another stated that "[t]his type of compliance monitoring for an investment strategy would be novel and potentially require substantial changes and updates to

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515 *See* section II.A.1 and *supra* footnote 56.

516 *See supra* footnote 495 and accompanying text.

517 *See, e.g.*, Item 9(b)(1) of Form N-1A. Instruction 2 to Item 9(b)(1) of Form N-1A states that a fund shall, in determining whether a strategy is a principal investment strategy, consider, among other things, the amount of the fund's assets expected to be committed to the strategy, the amount of the fund's assets expected to be placed at risk by the strategy, and the likelihood of the fund's losing some or all of those assets from implementing the strategy. *See also* Item 8(2)(b) of Form N-2. Item 8(2)(b) requires the registrant to disclose the investment objectives and policies of the registrant that will constitute its principal portfolio emphasis as well as how it proposes to meet its objectives, including: (1) the types of securities in which the registrant invests or will invest principally, and (2) the identity of any particular industry or group of industries in which the registrant proposes to concentrate.

518 *See, e.g.*, J.P. Morgan Asset Management Comment Letter, T. Rowe Comment Letter, Stradley Comment Letter.

519 ICI Comment Letter.

compliance systems."[520] We believe funds with names that would be newly scoped into the names rule's 80% investment policy requirement under the final amendments already have systems in place for monitoring compliance with existing principal investment strategy disclosure requirements, as these requirements predate the amendments we are adopting and funds presumably have systems to ensure that their investments are in line with these disclosures. Similarly, some of these funds already have minimum percentage investment policies in place and would have systems in place to monitor their portfolios in compliance with these policies.[521] As a result, we believe that most funds with names that would be newly scoped in already have internal systems that could be modified to assess compliance with the final rule. Further, many fund complexes will use the same automated systems across their funds, and so these costs could be shared across their funds. However, funds would need to develop new, or revise existing, recordkeeping processes as discussed below.

Funds with names that are not currently scoped into the 80% investment policy requirement may face costs in the need to determine whether a specific asset would qualify as part of a fund's 80% basket. One commenter stated that conducting an 80% test on terms that rely on judgment on the part of a fund manager "could become a highly manual process of confirming and recording the judgment of investment professionals with respect to each holding in a fund."[522] We believe that to the extent that fund names covered by the amended rule include terms that represent the judgment of their fund managers, the rule could create additional compliance costs. Assessing compliance with the 80% test for funds with such terms could be

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520 SIFMA AMG Comment Letter.

521 *See supra* footnotes 419 and 469 and accompanying text.

522 J.P. Morgan Asset Management Comment Letter.

more costly (relative to doing so for terms with more automatable criteria) as this process is less scalable and potentially introduces more operational risk than would similar automated compliance processes. For example, manual entry of data is more prone to error than is an automated system.

The difficulty in scaling this process was particularly highlighted by some commenters.[523] These commenters stated that for certain terms used in fund names, particularly "growth" and "value," there might be no reliable data from a third-party vendor that would match internal definitions.[524] According to these commenters, the definition of these terms and therefore the classification of certain assets may even differ across fund managers at the same firm, so any classification system would need to allow tags at the fund level rather than globally.[525] Such classification, in some of these cases, may be difficult to automate or outsource. As a result, some classifications may need to be done manually, with costs being incurred each time a fund performs the classification process.

Commenters' concerns about the scalability of this process were based on the proposed rule, which in effect would have required funds to engage in continual compliance testing to reassess the characteristics of investments in a fund's 80% basket. The final amendments are considerably less burdensome relative to the proposal in that such a test would need to take place only quarterly, in association with Form N-PORT reporting, or for each new investment (not the

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523 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter.

524 *See, e.g.*, ICI Comment Letter, SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter.

525 *See, e.g.*, ICI Comment Letter, SIFMA AMG Comment Letter; T. Rowe Comment Letter.

entire portfolio) at the time of the investment.[526] A fund subject to the 80% investment policy requirement that trades its entire portfolio each day would still be required to make a daily assessment for each asset of whether the asset belongs in a fund's 80% basket. However, funds whose disclosure of principal investment strategies indicates that the fund invests in assets with particular characteristics are presumably already doing the type of analysis required for such classification at the time of investment.[527] The primary new burden of the amended rule in this respect is that the analysis must be redone for each asset on a quarterly basis. At this frequency, the classification process should be manageable even if done manually, though we recognize that this will be more costly for funds with names that include terms involving managerial judgment than it will be for funds whose names evoke a strategy where compliance testing is more easily automated.

Many commenters stated that the expanded scope will create interpretive questions.[528] For example, funds that were not previously required to have an 80% investment policy will need to evaluate whether their current fund name would subject them to this requirement. In addition, some commenters were concerned that including more "subjective" terms into the scope of the rule would engender "second-guessing" by the Commission or staff on a fund's choice of definition of these key terms.[529] The amended rule will require that these definitions comport with their plain English meaning or established industry use.[530] So to the extent that a

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526 *See supra* section II.A.2.

527 *See supra* footnote 486.

528 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter; Stradley Comment Letter.

529 *See, e.g.*, ICI Comment Letter; CCMC Comment Letter; Dechert Comment Letter.

530 *See supra* footnote 341 and accompanying text.

term is relatively more subjective, funds will have discretion to define it consistent with the fund's investment strategy. Regardless of the chosen definition, a fund manager must make investments by applying specific criteria set forth in the fund's prospectus[531] related to the fund's investment focus or strategies such as "growth" or "value."[532] The investment decision is guided by definitions and methodologies prescribed in advance and publicized by the fund, mitigating the concern expressed by the commenters. Nonetheless, to the extent that "subjective" terms in a fund's name cause the fund's managers to be concerned about "second-guessing," funds may spend more resources to comply with the final rule.

Some commenters were concerned that wherever fund names that are newly subject to an 80% test employ terms that are based on projections or otherwise forward-looking metrics, the Commission might evaluate their compliance with these terms retrospectively based on the outcomes of the investments.[533] For example, a fund that calls itself a "growth" fund, on the basis of its projection that fund assets will grow in value, might be concerned that if those assets do not grow, its name could be construed as misleading. However, the amended rule is designed for funds to retain reasonable discretion in establishing their 80% investment policies and defining the terms in their names. This discretion includes the use of forward-looking metrics and models in their selection process, just as is allowed under the baseline in certain circumstances.

Newly scoped index funds may also face higher costs of compliance than those already subject to the rule. One commenter was concerned that "managers of index funds could be

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[531] *See* Forms N-1A, N-2, and N-8B-2, as amended.

[532] *See* final rule 35d-1(a)(2)(ii).

[533] *See, e.g.*, SIFMA AMG Comment Letter; J.P. Morgan Asset Management Comment Letter.

required to develop new fundamental analysis capabilities to evaluate each index constituent against the index name," and this sentiment was shared by several commenters.[534] Commenters also suggested that an index fund's tracking error could increase as a result, which could also frustrate investor expectations.[535] As is true under the baseline, index funds should generally adopt and implement written policies and procedures reasonably designed to ensure that the names of their selected indexes are not materially misleading themselves.[536] However, for terms whose meanings may vary across people or time, such as "growth" or "value," we acknowledge that funds may incur a higher cost for determining that the indexes they rely on are not themselves misleading.

Similarly, funds may not take a position that would undermine the investment focus suggested by the fund's name, even if such a position contributes less than 20% of the fund's total assets. Ensuring that a fund's investments are not inconsistent with its name in this way is likely to be costlier for funds that are newly scoped into the rule than it is for those already subject to an 80% investment policy requirement. In response to an example in the 2022 Proposal, some commenters highlighted what they characterized as the subjective nature of deciding whether an investment is "antithetical" to the description of the fund, particularly when no specific prohibitions are included in the fund's name.[537] We agree that such a determination

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[534] WisdomTree Comment Letter. *But see also*, *e.g.*, Fidelity Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter.

[535] *See supra* footnote 319 and accompanying text.

[536] *See supra* section II.A.5.

[537] *See, e.g.*, ICI Comment Letter; J.P. Morgan Asset Management Comment Letter; Capital Group Comment Letter. This release does not incorporate the "antithetical investment" language that the 2022 Proposal included, as final rule 35d-1(c) is designed to codify the existing relationship between the names rule and section 35(d) and not to create new requirements or standards with respect to the selection of investments in a fund's 20% basket that are not now present.

of whether a substantial portion of the fund's risks or returns is materially different from that which an investor reasonably would expect based on the fund's name may be more difficult to make in some cases and accordingly come with higher costs of compliance.

Finally, to the extent that funds choose to rename their funds in more generic ways to avoid having to comply with the amended names rule, investors may face increased search costs in determining their optimal fund allocation. However, this cost will exist only to the extent that those funds who choose to change their name previously had names that provided useful information to investors for their investment allocation decision.

Temporary Departures. The final amendments would retain a fund's ability to depart temporarily from the 80% investment requirement. The final amendments require that a fund must invest in accordance with its 80% investment policy under normal circumstances. Funds must reassess their portfolio assets' inclusion in the fund's 80% basket at least quarterly. In instances where a fund identifies that its portfolio is out of compliance with the 80% investment requirement, the fund must make future investments in a manner that would bring the fund into compliance as soon as reasonably practicable and in all circumstances within 90 consecutive days of the fund's identification that the requirements are no longer met. If the fund, in other-than-normal circumstances, invests in a manner not consistent with the 80% investment policy, the fund is not required to come back into compliance as soon as reasonably practicable, but must come back into compliance within 90 consecutive days of the initial departure. Funds are permitted under the final rules to temporarily depart from the 80% investment requirement in connection with a reorganization (for which the final rule does not specify a required time frame for accompanying temporary departures) or a fund launch (departure not to exceed the period of

180 consecutive days) or when a notice of a change in a fund's policy in certain circumstances has been provided to fund shareholders.

This change could create a cost for investors under circumstances where departing from the 80% investment requirement for an extended period of time would be beneficial to the fund and its shareholders, and such a departure would have been allowed absent the adopted amendments. For example, investors may experience lower returns if funds are forced to sell assets at depressed prices, or in a tax-disadvantaged manner, or if funds are forced to purchase less liquid securities in a compressed timeframe, which could drive up their cost for those securities. Also, to the extent that funds' assets become less liquid during a market crisis, funds' ability to manage liquidity risk may be affected as well as funds' ability to meet redemptions.

These costs are generally mitigated by the length of the period of time for resolving departures from investment compliance. In many circumstances, 90 days is significantly longer than we understand would be required for a fund to remedy departures from its 80% investment policy.[538] This cost is also mitigated by flexibility in the amended rule for funds to instigate a name change as an alternative to returning to compliance.

When a fund manager considers purposely departing from the fund's 80% investment policy, the manager must weigh the risks of bearing these costs against the potential benefit. Accordingly, these costs should arise only when the likelihood of bearing such costs is small relative to the upside of the departure. More often, the cost of this aspect of the rule will be reflected in any unearned excess return that the fund does not earn because it chose not to depart

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[538] *See, e.g.*, *supra* footnote 207 and accompanying text.

from its investment focus or tax treatment when it otherwise would have, absent the amended rule.

To the extent that funds do not already have systems in place for doing so, they would have to set up systems to identify departures from the 80% investment requirement during quarterly testing, and systems to monitor the time limits for returning to the 80% investment requirement after a temporary departure. This will entail additional costs.

Many commenters were concerned that a UIT would be required to monitor and change its assets in a case where its assets passively drifted such that they would no longer be consistent with the fund's 80% investment policy.[539] The final rule clarifies that UITs are subject to the 80% investment policy requirement at the time of initial deposit, but not on an ongoing basis. As a result, the costs associated with ongoing monitoring of portfolio investments for consistency with the fund's 80% investment policy discussed for other funds above will not be present for UITs.

The final rule's approach to temporary departures differs from that in the Proposing Release, which would have enumerated four specific cases in which funds would be allowed to depart temporarily from compliance with the 80% test for a period of, generally, no longer than 30 days. Many commenters interpreted this as requiring daily or otherwise constant monitoring of their assets in regard to the 80% test, even when they were not trading.[540] The final amendments mitigate this concern by requiring a fund to review its portfolio investments on a quarterly basis to determine whether the fund's investments continue to be consistent with its

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[539] *See, e.g.*, SIFMA AMG Comment Letter; Invesco Comment Letter; ICI Comment Letter.

[540] *See*, *e.g.*, J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter; ICI Comment Letter.

80% investment policy. Many commenters were also concerned with the enumerated exceptions to compliance with the 80% requirement and preferred the current standard in which compliance was required "under normal circumstances."[541] Some commenters wanted more specific exceptions to be added if the final rule were to include a prescribed list.[542] Still more commenters were concerned that unforeseeable events might occur which would reasonably cause managers and investors to agree that a temporary change in investment focus was warranted.[543] We agree that enumerating the circumstances in which a fund could deviate from their 80% investment policy would have provided significantly less flexibility to fund managers. Under the final rule the loss of flexibility is significantly less than under the proposed rule, relative to the baseline. A fund's use of its flexibility in accordance with investors' preferences will also promote capital allocation efficiency. Conversely, compared to the proposal, the final rule may be less effective at protecting investors to the extent that fund managers do not effectively manage their funds to the benefit of the fund's investors (for example, because fund managers do not fully internalize investors' preferences over risk or diversification benefits). However, we intend that the newly established timeline for returning to compliance with an 80% investment policy will limit this potential harm.

Considerations Regarding Derivatives in Assessing Names Rule Compliance. The final amendments address the valuation of derivatives instruments for purposes of determining the fund's compliance with its 80% investment policy requirement. Specifically, the final

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[541] *See*, *e.g.*, Dimensional Comment Letter; Seward & Kissel Comment Letter; Nasdaq Comment Letter.

[542] *See*, *e.g.*, ICI Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter.

[543] *See*, *e.g.*, SIFMA AMG Comment Letter; Dimensional Comment Letter; J.P. Morgan Asset Management Comment Letter.

amendments require that, in calculating its assets for purposes of names rule compliance, a fund must generally use the notional amount[544] of each derivatives instrument, with certain adjustments as discussed above, and may reduce the value of its assets by excluding cash, cash equivalents, and certain Treasury securities up to the notional amounts of the derivatives instrument(s) and the value of asset(s) sold short and by excluding closed-out derivative positions.[545] An exception to this requirement is the use of currency derivatives associated with one or more specific foreign-currency-denominated equity or fixed-income investments held by the fund, that are entered into and maintained by the fund for hedging purposes, which must be excluded.[546] The final rule also specifies that a fund may include in its 80% basket derivatives that provide investment exposure to one or more of the market risk factors associated with investments suggested by the fund's name.[547]

Our understanding is that funds that use derivatives typically calculate notional amounts for purposes other than names rule compliance, and that such a calculation, if not already performed, would not be burdensome.[548] As such, we do not anticipate that there will be additional costs associated with calculating notional values. While some funds may not currently calculate one or more of the adjustments to notional value required by the rule, we do not expect that doing so will entail significant costs. The inputs required for these calculations are widely

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[544] In the case of a physical short, a fund would use the value of the asset sold short.

[545] *See* final rule 35d-1(g).

[546] *See supra* discussion following footnote 234.

[547] *See* final rule 35d-1(b)(2).

[548] For example, rule 18f-4 includes an exception from certain of the rule's requirements that requires the calculation of notional amounts. More generally, however, funds that use derivatives typically consider notional amounts, and not solely their market value, when entering into derivatives contracts or when considering the economic effects of a derivatives contract within an existing portfolio.

available, including on most platforms that allow for trading these derivatives, and they can be automated with widely used and accessible software. The level of sophistication required to implement these calculations is significantly lower than that needed to manage the risk of the derivatives instruments in question. We understand, however, that meeting the requirements of this aspect of the final amendments could require reprogramming of internal systems for funds not currently subject to the names rule, and reprogramming of existing systems used for monitoring names rule compliance by funds currently subject to the names rule. However, we anticipate that the marginal contributions to cost of calculating the adjusted notional value will be minimal given that these same systems will need to be updated to comply with the rule generally.

The goal of the treatment of derivatives under the final rule is to align the value of the derivative being used for compliance with the 80% requirement with the exposure that this derivative provides to investors. There are inherent trade-offs in achieving this goal, however, because derivatives instruments are so varied in their purposes and details of execution. On the one hand, a uniform standard has the danger of being inappropriate in certain cases that could alter the incentives for its use. On the other hand, allowing greater flexibility runs the risk of being too permissive in a way which could undermine the purpose of this aspect of the amended rule.

Many commenters were particularly concerned with the costs associated with a uniform derivatives valuation approach that limits their flexibility to choose a valuation that would be most appropriate. Some of these commenters suggested alternatives, such as additional flexibility to decide whether to incorporate the required adjustments or whether the notional value or some other value would best represent a particular derivative's exposure, which they stated could

alleviate these costs.[549] One particular concern shared by many commenters was that derivatives used to hedge risk exposures unrelated to the name of the fund could cause the fund to fail an 80% test.[550] As discussed above, the final amendments require currency derivatives used as a hedge to be excluded from the 80% test calculation, and this approach addresses certain of the concerns commenters raised. However, this exception is limited to only currency hedges, and there are other possible hedges (such as those on interest rates) whose notional values will remain in the denominator, and not the numerator, of an 80% test calculation. As a result, the final amendments may disincentivize some funds from using derivatives to hedge risks other than those related to currency risk in the part of a fund's portfolio that is not used to satisfy the 80% requirement.

The final rule will also allow funds to include derivatives in their 80% basket for the purposes of complying with an 80% investment policy test so long as those derivatives provide exposure to one or more risk factors associated with the name. While in most cases, this will more accurately account for the derivative's effect on a portfolio's exposure to risks associated with the name, there may be instances in which this will overstate the amount of exposure a derivative creates. For example, in certain cases, a derivative may be modifying the risk of another asset in the portfolio rather than creating a new exposure. It may be possible for a fund to count both the derivative (at its notional value) and the underlying asset in the 80% basket for the purposes of compliance with an 80% test, even though a more useful valuation might rightfully treat these as a single asset for the purposes of representing risk exposures. This double counting

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549 *See*, *e.g.*, ICI Comment Letter; T. Rowe Comment Letter; Dechert Comment Letter.

550 *See*, *e.g.*, Dechert Comment Letter; Fidelity Comment Letter; ICI Comment Letter.

could, in these instances, make the 80% test more lenient than intended. To the extent that this reduces the investor protection intended in the rule, this would create a cost to investors. This cost is mitigated by the rule's codification of the effect of compliance with an 80% investment policy since a fund's name may still be misleading even if the fund technically complies with the 80% investment policy requirement.[551]

Unlisted Registered Closed-End Funds and BDCs. Under the current rule, unless a fund's name suggests that it is a tax-exempt fund, an unlisted registered closed-end fund's or BDC's 80% investment policy must either be a fundamental policy or subject to a requirement in the rule to provide shareholders 60-days' advance notice of any change in the policy. Under the final rule amendments, unlisted registered closed-end funds and BDCs will not be permitted to change their 80% investment policies without shareholder approval unless, among other things, the fund provides a 60-day notice and a tender or repurchase offer that is not oversubscribed.[552]

Funds that currently rely on a 60-day notice period thus have two options for complying with the final amendments. Some funds may choose to seek shareholder approval to change their 80% investment policy. These funds would incur costs including legal and accounting fees incurred in connection with preparing proxy materials, the costs of printing and mailing the proxy materials, the cost of an external proxy solicitor, if one is used, and the cost of holding an annual or special meeting of the shareholders.[553]

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551 *See supra* section II.A.5.

552 This will only impact existing funds if they currently rely on a 60-day notice period, since funds whose 80% investment policy is a fundamental policy already require a shareholder vote to change the policy.

553 In 2019, the ICI surveyed its member firms with respect to the costs of obtaining shareholder approval for proposals requiring funds to obtain a quorum of greater than 50% to approve. The ICI reports that 64 member firms with over $18 trillion of US-registered fund assets responded. Cost estimates for 145

Other funds may instead opt to make a repurchase or tender offer if doing so is cheaper or otherwise more advantageous to the fund's sponsor than holding a shareholder vote. The costs incurred would include legal and accounting fees associated with preparing offer documents and filing documents with the Commission such as Schedule TO, the cost of disseminating offer materials and information, and underwriting costs. There may also be costs associated with the fund needing to fulfill the offer and thus no longer having an adequate capital stock to take advantage of some investment opportunities. Some commenters noted that many of the funds subject to this requirement already make periodic tender or repurchase offers and so allowing this alternative would significantly reduce their costs.[554] For such funds, if the proposed change in the investment policy would not create an oversubscription to their regular tender or repurchase offer, the cost of compliance may be minimal. Exercising this option will be more costly for funds that are not already regularly providing tender or repurchase offers.[555]

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separate campaigns totaled $373 million. The ICI also reports that: (1) 22 campaigns had costs greater than, or equal to, $1 million, (2) eight had costs greater than or equal to $10 million, and (3) the most expensive campaign was $107 million. The ICI report does not disaggregate data on the cost of obtaining shareholder approval for changes to a fund's fundamental investment policies. *See* Comment Letter of the Investment Company Institute regarding the SEC Roundtable on the Proxy Process (File No. 4-725) (Dec. 23, 2019), *available at* https://www.sec.gov/comments/4-725/4725-6580709-201124.pdf. In a 2002 rulemaking related to fund mergers, we estimated the cost of obtaining shareholder approval to be $75,000. We did not receive any comments on that estimate. *See* Investment Company Mergers, Investment Company Act Release No. 25666 (July 18, 2002). Adjusting for inflation, $75,000 at the beginning of 2002 would imply a cost of approximately $128,800 as of May 2023. *See* Bureau of Labor Statistics CPI Inflation Calculator, *available at* https://www.bls.gov/data/inflation_calculator.htm. While this estimate is significantly lower than the average estimate from ICI, the distribution of costs in their sample is heavily skewed by a relatively small number of very expensive campaigns. The Commission estimate is more analogous to the median of that distribution. Further, the kinds of votes included in the ICI survey are much broader than those considered here and contain votes on more contentious issues over which funds may spend more resources on marketing and other costs.

[554] *See, e.g.*, Stradley Comment Letter; Dechert Comment Letter; ICI Comment Letter.

[555] We are unable to quantify the total of these costs because we do not have data on the magnitude of many of the sources of these costs, such as underwriting costs, which are privately negotiated. Further, these costs are likely to vary largely depending on the specific circumstances of the fund. However, the SEC has

The cost of the final rule will therefore be the difference between the cost of either seeking shareholder approval or making a tender or repurchase offer and the cost of issuing notice under the baseline. Instead of incurring these costs some funds may instead choose simply not to change their policy when faced with these costs. The value of any foregone investment opportunities that would have benefited investors if the fund had changed its investment policy would be a cost of the final rule.

The Proposing Release would have required that 80% investment policies for unlisted registered closed-end funds and BDCs be fundamental policies, with no alternative. While unlisted registered closed-end funds and BDCs generally offer a periodic repurchase tender offer, these offers are limited and unlikely to provide recourse to investors in the case where a large number of investors are dissatisfied with the change. Even discretionary repurchases as permitted under 17 CFR 270.23c-3(c) are generally limited to 25% of the common stock outstanding.[556] This amount could be too low to address the investor protection the rule is designed to address. In the Proposing Release, we were concerned that a large tender offer for all, or substantially all, of the outstanding shares could prove even more costly to these funds than a shareholder vote and could result in the fund's liquidation.

Some commenters highlighted the costs of the proposed approach,[557] and stated that an alternative in which investors were able to liquidate would be valuable.[558] We believe that the

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previously estimated the PRA burden of a Schedule TO at approximately $9,000 per response. *See* Filing Fee Disclosure and Payment Methods Modernization, Investment Company Act Release No. 34396 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

556 *See* 17 CFR 270.23c-3(a)(3), (b)(5), and (c).

557 *See, e.g.*, Invesco Comment Letter; Stradley Comment Letter; SIFMA AMG Comment Letter.

558 *See, e.g.*, ICI Comment Letter; Simpson Thacher Comment Letter; Dechert Comment Letter.

costs of the final rule are lower than those of the proposed rule, since these funds may now, instead, offer a repurchase opportunity, and funds can choose the lower-cost alternative.

Effect of Compliance with an 80% Investment Policy. The amended rule states that a fund's name may be materially deceptive or misleading under section 35(d) even if the fund adopts an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy.[559] The Commission has previously stated that the names rule's 80% investment policy requirement is not intended to create a safe harbor for fund names, and the final amendments will codify this view to make it clear.[560] Because the provision will codify an existing Commission position that that 80% investment policy is not intended to create a safe harbor for fund names and restate the existing scope and effect of section 35(d), we do not anticipate that the provision creates new costs.

Some commenters stated that they believed that this provision created new requirements that were not clear from previous statements by the Commission. These comments largely addressed a fund's responsibilities to monitor the indexes that they track[561] and relatively small positions that commenters questioned whether, in response to an example in the 2022 Proposal, would be "antithetical" to those suggested by a fund's name.[562] To the extent that funds comply with the final rules in a way that may be costlier for names with certain terms, this represents a

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559 Final rule 35d-1(c).

560 *See* Proposing Release, *supra* footnote 2, at n.101.

561 *See, e.g.*, Fidelity Comment Letter; Dechert Comment Letter; SIFMA Comment Letter.

562 *See, e.g.*, ICI Comment Letter; J.P. Morgan Asset Management Comment Letter; Capital Group Comment Letter; *see also supra* footnote 537.

cost of the rule's scope expansion, and not from a separate provision under the final amendments.[563]

Prospectus Disclosure. The final amendments to funds' registration forms—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—require each fund that is required to adopt and implement an 80% investment policy to include disclosure in its prospectus that defines the terms used in its name, including the specific criteria the fund uses to select the investments that the terms describe, if any.[564] We received one comment stating that the costs of prospectus disclosure were underestimated.[565]

The final amendments require funds to tag most of the new prospectus disclosure in Inline XBRL.[566] This will impose on Form N-1A and Form N-2 filers the cost of adding new data tags for the new disclosures on Form N-1A and Form N-2, but will not include any initial

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[563] *See supra* the text following footnote 525 through the text accompanying footnote 537 for a discussion of these costs.

[564] *See* instruction to Item 4(a)(1) of Form N-1A; instruction to Item 9(b)(1) of Form N-1A; instruction 2 to Item 8(2) of Form N-2; instruction 2 to Item 11 of Form N-8B-2, and instruction 1(a) of the Instructions as to the Prospectus of Form S-6. Based on the results of the PRA analysis provided in Tables 2, 3, 4, and 5 *infra* it is estimated that the annual internal costs, plus initial costs annualized over a 3-year period, attributable to information collection requirements associated with this aspect of the final amendments will be $53,694,312. The annual external costs are estimated to be $12,453,730. However, as we understand that including the prospectus disclosure that the final amendments would require is currently a common practice, the PRA estimates likely overestimate the costs associated with the final amendments for those funds whose disclosure is currently in line with the disclosure the amendments would require. *See infra* section V.C.

[565] *See* BlackRock Comment Letter.

[566] *See supra* footnote 508. Based on the results of the PRA analysis provided in Table 7 *infra* it is estimated that the ongoing external costs attributable to Inline XBRL tagging requirements will be $749,550 for Form N-1A, Form N-2, Form N-8B-2 and Form S-6 filers, and the ongoing internal costs, plus initial costs annualized over a 3-year period, will be $1,562,678 for those filers. Form N-8B-2 and Form S-6 filers (*i.e.*, UITs) are not subject to any current Inline XBRL requirements (or Inline XBRL requirements with compliance dates in the future) and will thus incur initial implementation costs associated with structuring disclosures in Inline XBRL (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors). For Form N-1A and Form N-2 filers, who are subject to current Inline XBRL requirements, the PRA estimate does not incorporate any such implementation costs.

implementation costs associated with structuring data, because those forms are already subject to structuring requirements. Thus, notwithstanding one commenter's statement that the costs associated with Inline XBRL tagging as proposed would be significant, we do not believe the Inline XBRL tagging requirement would impose significant costs on Form N-1A and Form N-2 filers.[567] For UITs and their sponsors, as noted by another commenter, the cost of adding new Inline XBRL tags for the new disclosures on Form N-8B-2 and Form S-6 is more likely to entail initial implementation costs because UITs are not currently subject to Inline XBRL requirements.[568] As discussed in further detail below, notwithstanding this commenter's recommendation to except UITs from Inline XBRL tagging requirements, we are including all funds (including UITs) within the scope of tagging requirements under the final rule.[569]

Plain English/Established Industry Use Requirement. For funds that are required to adopt an 80% investment policy, the final amendments would require that any terms used in the fund's name that suggest either an investment focus, or that the fund is a tax-exempt fund, must be consistent with those terms' plain English meaning or established industry use.[570] To the extent that funds are currently using terms in their names that are not consistent with either, funds would bear costs to either change their name or their investment policy so that they can define the terms in such a way that would comply with this provision. These costs will be similar to those described above for funds changing their name or investment policies and practices for other reasons.

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[567] *See* SIFMA Comment Letter.

[568] *See supra* text accompanying footnote 337; Invesco Comment Letter.

[569] *See infra* section IV.E.4.

[570] *See supra* footnote 341 and accompanying text.

New Form N-PORT Reporting Requirements. The final amendments include new Form N-PORT reporting items regarding the 80% investment policy that a fund will be required to adopt in compliance with the names rule.[571] As proposed, the final rule requires N-PORT funds that are required to adopt an 80% investment policy to report on Form N-PORT: (1) whether each investment in the fund's portfolio is in the fund's 80% basket; (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets. The final amendments also add a new reporting item, in which funds will report the definitions of terms used in the fund's name including specific criteria a fund uses to select the investments the term describes, if any.[572]

Under the baseline, funds covered by the rule likely already tracked whether a particular asset was a part of the fund's 80% basket, as well as the total value of the 80% basket as a share of the total assets of the fund, as an aspect of their compliance practices. However, we recognize that reporting these items on Form N-PORT could necessitate periodic reassessments that might not otherwise occur. It may also require modifications to compliance systems and the use of third-party service providers.

Although the final amendments will not increase the frequency of public disclosure, they will increase the amount of information available about certain funds' portfolio investments. Form N-PORT data, however, is made public only for the third month of each quarter, and on a

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571 Based on the results of the PRA analysis provided in Table 6, it is estimated that the ongoing annual internal costs, plus initial costs annualized over a 3-year period, attributable to information collection requirements for reporting about an 80% investment policy are $8,059,912. The annual external costs are estimated to be $11,216,380.

572 Based on the results of the PRA analysis provided in Table 6, it is estimated that the ongoing annual internal costs, plus initial costs annualized over a 3-year period, attributable to information collection requirements for investments to be included in a fund's 80% basket are $56,419,384. The annual external costs are estimated to be $11,216,380.

60-day delayed basis. We do not believe that quarterly public disclosure with a 60-day lag will have a significant, additional competitive impact.

The proposed rule required reporting information for each month of the quarter, while the final rule instead requires reporting information only for the last day of the third month of the quarter. The proposed rule also would have required certain information to be reported on Form N-PORT that is not included in the final Form N-PORT amendments (the number of days that that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period), although the final reporting requirements include a new reporting item that was not included in the proposal (the definitions of terms used in the fund's name and criteria for selecting the investments the name describes, if any). The final rule should, on balance, have lower costs compared to the proposal because of the reduced amount of information reported on net, and efficiency gains in aligning a fund's compliance review with its reporting obligations.[573]

The compliance cost associated with the new Form N-PORT reporting requirements includes the cost of adding new data tags for the newly reported items.[574] It does not include any initial implementation costs associated with structuring data, because the form is already subject to structuring requirements.

Recordkeeping. The final rule requires funds to maintain certain records if the fund is required to adopt an 80% investment policy.[575] The final rule does not prescribe the particular

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573 *See supra* section II.E.

574 *See supra* footnote 571.

575 *See* final rule 35d-1(b)(3). The recordkeeping requirements will apply to UITs only at the time of initial deposit, and with respect to any notice sent to shareholders.

form of documentation required to be maintained but would instead provide flexibility in how a fund documents the information delineated in the recordkeeping requirements. However, a fund that is subject to the requirement to adopt an 80% investment policy generally should maintain appropriate documentation that would be sufficient for a third party to verify the matter covered by each record and would be readily available to Commission staff.[576]

We anticipate that much of the recordkeeping required in this rule can be at least partially automated for most funds.[577] For example, we anticipate that records relating to the value of the fund's 80% basket and whether a particular investment is included in that basket can be automated for most funds, though for some funds this process may necessitate more manual steps as outlined above. For those records that can be automated, we believe that the marginal contribution to the costs of automating these systems above and beyond those which would be required to otherwise comply with the rule are relatively small, since the systems that retain this information will be similar to those necessary to ensure compliance at the time of investment or on a quarterly reassessment. We recognize, however, that some records, such as those documenting the reasons for any departures from the 80% investment policy, are unlikely to be easily automated.

The final rule differs from the proposed amended rule in ways that may reduce costs in comparison to the proposal. First, under the final amendments funds are required to reassess the characteristics of individual assets on only a quarterly rather than ongoing basis. Since it may be

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[576] Based on the results of the PRA analysis provided in Table 1, it is estimated that the internal annual costs, plus initial costs annualized over a 3-year period, attributable to recordkeeping requirements would be $30,450 per fund, with an additional $565 of external annual costs.

[577] *See supra* footnote 419 and accompanying text.

difficult for some funds to fully automate the creation of a record with the basis for an asset's inclusion in the 80% basket, particularly if its 80% investment policy relies on managerial judgment, this change could substantially lower the cost. However, to the extent that funds hold particular assets for less than two consecutive days, this change will not provide much cost mitigation since funds are also required to keep such records at the time of investment.

Further, this rule as initially proposed would have additionally required funds that are not required to adopt an 80% investment policy to also maintain records of their analysis in that determination. Since the final rule will omit this requirement, the cost of complying with the rule will be lower for these funds than under the proposal.

Notice Requirement. The names rule requires that unless the 80% investment policy is a fundamental policy of the fund, notice must be provided to fund shareholders of any change in the fund's 80% investment policy.[578] The final amendments would incorporate some modifications to the current notice requirement that are designed to better address the needs of shareholders who have elected electronic delivery and to incorporate additional specificity about the content and delivery of the notice. We do not believe that these alterations would materially increase the cost to prepare the notice.[579]

Quantified Compliance Costs. We estimate that the initial costs to establish and implement practices designed to meet the requirements of the final amendments as described above will range from $50,000 to $500,000 per fund, depending on the particular facts and

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578 Final rule 35d-1(a)(2)(ii).

579 Like the current rule, based on the results of the PRA analysis provided in Table 1, it is estimated that the internal annual costs, plus initial costs annualized over a 3-year period, attributable to notice requirements would be $8,500 per fund, for those funds providing notices. We also estimate an additional $565 in external annual costs attributable to notice requirements.

circumstances of the fund.[580] We believe the costs would be closer to the lower end of the range for funds whose current practices are more similar to the requirements of the final rule.[581]

The direct estimated costs of compliance are broadly attributable to the following activities: (1) reviewing the final rule's requirements; (2) determining whether to change a fund's name or comply with the new requirements, as applicable; (3) developing new (or modifying existing) practices, reporting, and recordkeeping requirements to align with the requirements of the final rule; (4) integrating and implementing those practices, reporting, and recordkeeping requirements to the rest of the funds' activities; and (5) preparing new training materials and administering training sessions for staff in affected areas.

The estimated range in this section is aimed at quantifying the full direct compliance cost associated with the final amendments' provisions. As a result, the estimates in this section encompass more costs than do the estimates discussed below in section V for purposes of the Paperwork Reduction Act of 1995 ("PRA"). Further, note that the estimated range of costs above is the same as that included in the economic analysis in the proposing release. Keeping the estimated range the same reflects our assessment that the funds with the highest compliance costs, such as those whose entire portfolio turns over on a nearly daily basis, will face costs similar to those that would have been incurred under the proposed rule. The low end of the range is reflective of a fund that only incurs cost associated with analyzing the requirements of the rule.

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[580] We believe that the low end of this range is reflective of a fund that incurs costs only to analyze the application of the rule, or that is covered by the rule and already has practices in place that could be readily adapted to meet the final rule's requirements. In the latter case the fund would incur costs associated with analyzing its current practices relative to the final rule's requirements.

[581] We believe the costs would be closer to the lower end of the range for funds that belong to large fund families because certain aspects of the costs, such as most aspects of system automation or the costs of reviewing rule requirements, are fixed costs that could be spread across multiple funds.

However, the final amendments are different from the proposed amendments in many ways that mitigate costs for most but not all funds. Compared to the Proposing Release, we believe that the largest reduction in cost comes from changing the provisions that would have effectively required continual, manual monitoring of whether funds' portfolio investments are consistent with the fund's 80% investment policy. This is consistent with many commenters' concerns.[582] Since this is not required under the final rule unless all assets are traded daily, and other changes have also been made to mitigate costs, we believe that the typical cost for a fund to comply with the final rule will, while still contained within the same range, be significantly lower than the cost of compliance under the approach that the Proposing Release described.

Some funds may change their name rather than comply with the amended rule. For these funds, we estimate that the total direct burden, including analyzing the rule and deciding to change their name, is a one-time cost range of $75,000 to $250,000. Funds that decide to change their name rather than comply with the new requirements will also incur indirect costs associated with changing fund names, which include a potential loss in market share. However, this will translate to a cost to investors only to the extent that there is a decrease in efficiency resulting from investors being less able to find appropriate funds as a result of the rule.

Without providing specifics, some commenters requested the Commission analyze Commission rules and proposals holistically.[583] The Commission's economic analysis in each

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582 *See, e.g.*, J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter; ICI Comment Letter.

583 *See, e.g.*, ICI Comment Letter III ("The Commission has issued a wide range of interconnected rule proposals . . . [that] in the aggregate warrant further analysis by the Commission. . . . The Commission's failure to consider the Interconnected Rules holistically is a widespread concern among other market participants."); USCOC Comment Letter (urging the Commission to "determine the cumulative impact of

adopting release considers the incremental benefits and costs for the specific rule—that is the benefits and costs stemming from that rule compared to the baseline. One commenter stated that the Commission should consider "practical realities such as the implementation timelines as well as operational and compliance requirements."[584] The Commission acknowledges that resource limitations can lead to higher compliance costs in some cases when two or more rules affecting the same parties have overlapping compliance periods. In determining compliance periods, the Commission considers the benefits of the rules as well as the costs of delayed compliance periods and potential overlapping compliance periods.

In this regard, some commenters[585] mentioned the recent Shareholder Reports Final Rule[586] and the recent Money Market Funds Final Rule.[587] Overlapping compliance periods for these rules may result in economic costs for some entities that are also in the scope of the final

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its regulatory agenda upon economic activity or capital formation"). Commenters also specifically suggested the Commission consider the interaction between the final rule and the ESG Disclosure Proposal and/or its proposal relating to outsourcing by investment advisers. *See* Dechert Comment Letter, ICI Comment Letter, and AIC Comment Letter; *see also* Outsourcing by Investment Advisers, Investment Advisers Act Release No. 6176 (Oct. 26, 2022) [87 FR 68816 (Nov. 16, 2022)]. These proposals have not been adopted and thus have not been considered as part of the baseline here. To the extent those proposals are adopted in the future, the baseline in those subsequent rulemakings will reflect the regulatory landscape that is current at that time.

[584] ICI Comment Letter III. *See also* USCOC Comment Letter ("Regulated entities would have to divert substantial resources to comply with a host of new rules in a condensed time frame.").

[585] *See, e.g.*, ICI Comment Letter III.

[586] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] ("Shareholder Reports Final Rule"). The compliance date for those rules will be in July 2024. Certain fund managers, such as managers to mutual funds and ETFs, that will manage funds subject to the final rule are also generally subject to different aspects of the Shareholder Reports Final Rule.

[587] *See* Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A, Investment Company Act Release No. 34959 (Jul. 12, 2023) [88 FR 51404 (Aug. 3, 2023)] ("Money Market Fund Final Rule"). The compliance dates for these rules vary between Oct. 2023 and Oct. 2024. Certain fund managers, namely managers to money market funds, who will be subject to the final rule will also be subject to the Money Market Funds Final Rule.

amendments.[588] For the reasons discussed above, we have adopted longer compliance periods relative to the proposal.[589] In analyzing the costs of this final rule relative to the proposal, we believe the potential for heightened costs is mitigated by those longer compliance periods. The costs from overlapping compliance periods for smaller entities are even further mitigated by the longer compliance period for those entities relative to the compliance period for larger entities. Moreover, commenters raised concerns about the costs of overlapping compliance periods in the context of the proposal and, as discussed above, we have taken steps to reduce costs of the final rule in several ways from the proposal.[590]

As a result, we believe that for both larger and smaller entities, any higher costs due to overlapping compliance periods raised in the context of the proposal may generally be mitigated under the final rules. We therefore do not believe that the overlap between the final rules, the Shareholder Reports Final Rule, and the Money Market Funds Final Rule will significantly increase the compliance costs of the final rule for small or large entities.

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[588] The Commission also considered the fact that, to the extent recently adopted rules address matters related to those in the final rules, the benefits of the final rules may be impacted to the extent recently adopted rules already offer certain investor protections or to the extent that recently adopted rules and the final rules offer synergies. However, we do not believe that there are significant interacting effects with recently adopted rules with respect to benefits in this case, because recently adopted rules do not address the same set of issues as those addressed in the final rule.

[589] As discussed above, the tiered compliance period we are adopting is designed to strike the appropriate balance between allowing funds adequate time to adjust their compliance practices, and allowing investors and shareholders to benefit from the amended names rule framework. *See supra* section II.H; *see also infra* section IV.D.3.

[590] For example, as discussed throughout this section, relative to the proposed rule the final rule has fewer recordkeeping tasks, fewer items on Form N-PORT, and removes the need for daily assessments of portfolio compliance with an 80% investment policy for assets that are not actively traded. *See supra* section IV.D.2.

3. Effects on Efficiency, Competition and Capital Formation

To the extent the final amendments will help ensure that fund names are more appropriately representative of a fund's investment focus, we predict that investors will benefit. Developing a dollar figure for this predicted benefit is complex, however. We do not observe investors' decision-making and resources expended in the management of their investment portfolio, nor do we observe the cost to investors from being invested in a fund that does not match their preferences. To the extent fund names would be more appropriately representative of the fund investment focus under the final amendments and to the extent those more appropriately representative fund names will allow investors to more easily select funds that better match their preferences, however, we would expect the efficiency of investment to increase. Conversely, if, as a result of the final rules, some funds change their names and investment policies in ways that lead to less efficient matching between funds and some investors or increase search costs for some investors, capital allocation efficiency may decrease. For example, some funds may decide to use more generic names so as not to convey an investment focus with their name. If these funds previously had names that conveyed information that investors found more useful, then investors will either face higher costs in finding the funds best suited to their goals, or choose funds less tailored to those goals.

Additionally, the final amendments may disincentivize some funds from investing in assets with characteristics that do not readily lend themselves to popular investment focuses and incentivize investment in assets that do. Depending on whether any such change aligns with the preferences of investors or runs counter to their preferences, capital allocation efficiency may increase or decrease.

To the extent the final amendments increase efficiency of investment in the fund market, then we may observe a change in investment in funds. For example, if there are investors who currently do not invest in certain funds (or invest less than they would have) because they lack confidence that funds' names accurately convey funds' investment focuses, then to the extent the final amendments lower those costs and enhance investor protections, we would expect to observe more investors entering the funds market.[591] The increased demand for securities could, in turn, facilitate capital formation. We note, however, that to the extent increased investment in funds reflects substitution from other investments, the effect on capital formation would be attenuated.

More investors entering the funds market could also increase competition, to the extent that competition in a market is related to the size of the market. The final amendments may affect competition through an additional channel: certain funds may have established reputations for making investments consistent with the investment focus the fund's name suggests. Investors wishing to invest in funds with specific investment focuses may have greater confidence investing in funds with established reputations for investing in a way consistent with the investment focus the fund's name suggests.[592] There may be investors who do not invest in funds lacking established reputations for making investments consistent with the focuses their names suggest (or invest less than they would have) because those investors are less confident that such

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[591] For example, by decreasing potential greenwashing concerns, the final amendments, in turn, may increase investor confidence in selecting funds with names implying an ESG strategy and increase capital formation among ESG issuers.

[592] Investors may believe that these funds have an incentive to protect the value of their reputations by continuing to invest in ways consistent with their names. *See* Klein, Benjamin and Keith B. Leffler, *The Role of Market Forces in Assuring Contractual Performance*, Journal of Political Economy 89**,** 615–641 (1981) ("Klein Paper").

funds will make investments consistent with their names. We would expect the investor protections offered by the final amendments, which are designed to ensure that funds' names accurately convey funds' investment focuses, could enhance the ability of funds without established reputations to compete with those funds with established reputations. This could, in turn, lead to increased investment for funds without established reputations.[593]

However, the compliance costs of the rule may also result in negative competitive effects by causing firms to close their funds and reducing the competitive alternatives investors have. Relative to the proposed rule, the final rule took steps to mitigate these costs in several ways. For example, relative to the proposed rule, the final rule has fewer recordkeeping tasks, fewer items on Form N-PORT, and removes the need for daily assessments of portfolio compliance with an 80% investment policy for assets that are not actively traded.[594]

In addition, as stated above, some commenters requested the Commission consider interactions between the economic effects of the proposed rule and other recent Commission rules, as well as practical realities such as implementation timelines.[595] As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs.[596] This may be particularly true for smaller entities with more limited compliance resources. This effect can negatively impact competition because these entities may be less able to absorb or pass on these additional costs, making it more difficult for them to remain in business or compete. However, in addition to mitigating the overall costs of the final rules

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593 This argument assumes that fund reputation and investor protections provided by regulatory requirements are substitute mechanisms for providing assurances to investors.

594 *See supra* section IV.D.2.

595 *See supra* section IV.D.

596 *See supra* section IV.D.2.

relative to the proposal,[597] we believe we have mitigated the potential for heightened costs by adopting longer compliance periods for all entities relative to the proposal, and even longer compliance periods for smaller entities. The compliance periods for the rules mentioned by commenters, the Shareholder Reports Final Rule and the Money Market Funds Final Rule,[598] culminate in approximately July–October 2024 while the compliance dates for the final rule are December 11, 2025 for larger entities, and June 11, 2026 for smaller entities. We therefore do not expect the risk of negative competitive effects from increased compliance costs from simultaneous compliance periods to be significant.

Finally, to the extent that the final amendments disincentivize some funds from investing in assets with characteristics that do not readily lend themselves to popular investment focuses that fund names suggest and incentivizes investment in assets that do, the final amendments could affect capital formation. For example, it may be relatively more difficult for funds to conclude that certain issuers—for example, firms that are newer, smaller, or whose strategies and performance objectives are not as well publicized or as clearly articulated—should appropriately be included in a fund's 80% basket, and therefore funds that are within the scope of the 80% investment policy requirement may invest relatively less in these issuers. These issuers could consequently face increased costs of capital. Conversely, assets whose appropriate inclusion in a fund's 80% basket is relatively easier for a fund to determine (for example, because they exhibit quantifiable criteria that assist in this determination) may receive more fund attention and consequently face reduced costs of capital.

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[597] *See supra* footnote 594 and accompanying text.

[598] *See supra* section IV.D.2; *see also, e.g.*, ICI Comment Letter III.

E. Reasonable Alternatives Considered

1. Disclosure-Based Framework

The final rule expands the scope of names that require an 80% investment policy. For certain categories of names, we considered whether a disclosure-based framework would be more appropriate. Specifically, we considered whether a fund whose name suggests a particular investment focus should be required to have additional disclosure in that fund's prospectus describing the investment strategy in lieu of the requirement to maintain an 80% investment policy.[599] Such a requirement could have been accompanied either by no scope expansion at all for the 80% investment policy requirement or by a less-encompassing scope expansion. The additional disclosure could have included definitions of the terms in the name of the fund, criteria for investment selection, or other information that would clarify for investors how a fund's name relates to the investment strategy pursued by the fund.

We are cognizant of the differential cost and benefits of this alternative relative to the adopted expansion of the 80% investment policy requirement. In particular, funds whose names include terms that are defined at least partially using managerial judgment are likely to face higher costs and lower benefits from an 80% test relative to funds with names that include more objective terms.[600]

However, we also considered the costs associated with excluding certain terms or types of terms from the requirement. Excluding certain types of funds names, or terms used in fund

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[599] This approach was suggested by many commenters (*see*, *e.g.*, ICI Comment Letter, Dechert Comment Letter; Cato Institute Comment Letter) and offered by Commissioner Peirce (*see* statement, *available at* https://www.sec.gov/news/statement/peirce-fund-names-statement-052522).

[600] For a fuller discussion, *see supra* section IV.D.2.

names, from the requirement would incentivize funds to follow strategies associated with these exclusions and thus limit the investment options available to investors. This, however, may be balanced by the effect of investors seeking funds covered by the amended rule. In addition, to the extent that investor behavior is affected by the name of the fund itself, additional prospectus disclosure on its own would not provide additional investor protection. There is significant evidence from academic literature that a fund's name does affect investor behavior above and beyond what can be explained by any observable aspect of the fund's actual investment strategy.[601]

2. Alternatives to 90-day Temporary Departure Limit

The final amendments require a fund to invest consistent with its 80% investment policy under normal circumstances. In the event that a fund identifies that its portfolio is no longer invested consistent with its 80% investment policy, a fund must return to compliance as soon as is reasonably practicable and in no more than 90 consecutive days. Separately, if the fund decides to invest in a manner not consistent with the 80% investment policy under other-than-normal circumstances, the fund is not required to come back into compliance as soon as reasonably practicable but must come back into compliance within 90 consecutive days. As an alternative, we considered whether to require instead that, if a temporary departure persists past 30 days, the fund's board must approve, or be informed in writing about, the temporary departure. We also considered whether to adopt a limit greater than 90 days. In the context of requiring board approval, we also considered requiring a majority of the independent directors to approve the departure. In the context of requiring board notification, we considered requiring a

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[601] *See supra* section IV.C.

written report or notification that includes a recommendation from the fund's adviser to be provided to the board immediately or at the next regularly scheduled board meeting.

Collectively, these alternatives may provide more flexibility for funds to address the conditions that necessitate temporary departures than the final amendments. Either they would not limit the duration for which a fund could engage in a temporary departure, provided that the board either approves or is notified of the departure, or they would increase the allowable length of time that a fund could depart from its 80% investment policy. These approaches could provide funds with more flexibility to reduce loss during market crises and manage liquidity risk, which could, in turn, reduce any adverse effects that a fund's trading activity may have on the markets for the investments in its portfolio.

Conversely, these alternatives may have been less effective than the final amendments at addressing the concerns highlighted above regarding portfolio "drift" or extended-length intentional departures. That is, fund managers and boards may not fully internalize investors' preferences for certain elements of a portfolio, such as risk and diversification benefits, that a fund name suggests, and so could be willing to extend departures for longer than would be optimal for investors. For example, a fund board could determine to engage in a departure for longer than 90 days to address a market disruption, but this action might frustrate the expectation of investors who may expect the fund to invest consistent with its named investment focus even during market disruptions, and therefore may choose to rebalance investments on their own rather than relying upon the fund to do so. We also believe that the alternative that includes board notification or approval would increase burdens on fund boards, particularly if we were to require the approval or notification be immediate. Further, in determining not to use a longer time frame for this requirement, we considered the fact that in practice funds may be out of

compliance for more than 90 days, since funds will be required to reassess their portfolio assets' inclusion in the fund's 80% basket no less than quarterly and funds may unknowingly be out of compliance between assessments.

3. Permit But Not Require the Use of Derivatives' Notional Values for Purposes of Names Rule Compliance

As an alternative, we considered permitting, but not requiring, funds to value derivatives using notional values for purposes of assessing names rule compliance. As discussed in section II.A.3 above, an approach where a fund uses notional values for these purposes could allow a fund to use a name that effectively communicates its investments where it would not be able to do so under the current rule. However, allowing a fund to use derivatives instruments' market values for purposes of assessing names rule compliance could result in a fund being in compliance with the fund's 80% investment policy despite the fund having significant exposure to investments that are not suggested by the fund's name. Because we believe the use of notional values better reflects the investment exposure of derivatives investments than market values for purposes of assessing names rule compliance in most cases, we are requiring, rather than permitting, the use of notional values.

4. Exclude Unit Investment Trusts from Requirements for Tagging Prospectus Disclosure

Under the final amendments, the new prospectus disclosure of term definitions and investment selection criteria submitted by UITs on Form N-8B-2 and Form S-6 will be tagged in Inline XBRL. Alternatively, we could have changed the scope of the tagging requirement for the new prospectus disclosures by excepting UITs from this requirement. Such an exception was suggested by one commenter, who noted that UITs are not currently required to tag any filings in

Inline XBRL.[602] Under this alternative, UITs would submit their prospectus disclosures in unstructured HTML or ASCII, and forgo the initial Inline XBRL implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors) and ongoing Inline XBRL compliance burdens that would result from the tagging requirement.[603] However, narrowing the scope of tagging requirements to exclude UITs would diminish the extent of informational benefits that would accrue as a result of the disclosure requirements by making UITs' disclosures comparatively costlier to process and analyze.[604] As such, we are not excluding UITs from Inline XBRL tagging requirements.

V. PAPERWORK REDUCTION ACT ANALYSIS

A. Introduction

Certain provisions of the final rules and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[605] We are submitting the final collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[606] The titles for the collections of information are: (1) "Rule 35d-1 under the Investment Company Act of 1940, Investment

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[602] *See supra* footnote 433.

[603] *See infra* section V.E. Funds file registration statements and amendments using the Commission's EDGAR electronic filing system, which generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. EDGAR Filer Manual (Volume II) version 66 (June 2023), at 5-1; *see* 17 CFR 232.301 (incorporating EDGAR Filer Manual into Regulation S-T). To the extent UITs are part of the same fund family as other types of funds that are subject to Inline XBRL requirements, they may be able to leverage those other funds' existing Inline XBRL tagging experience and software, which would mitigate the initial Inline XBRL implementation costs that UITs will incur under the final amendments.

[604] In addition, one commenter noted that UITs can avail themselves of the same applications and processes used by other fund types that report information using Inline XBRL. *See supra* footnote 433.

[605] 44 U.S.C. 3501 *et seq*.

[606] 44 U.S.C. 3507(d); 5 CFR 1320.11.

Company Names" (OMB Control No. 3235-0548); (2) "Form N-1A under the Investment Company Act of 1940 and Securities Act of 1933, registration statement of Open-End Management Investment Companies" (OMB Control No. 3235-0307); (3) "Form N-2 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Closed-End Management Companies" (OMB Control No. 3235-0026); (4) "Form N-8B-2, Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities" (OMB Control No. 3235- 0186); (5) "Form S-6, Registration Under the Securities Act of 1933 of Unit Investment Trusts Registered on Form N-8B-2" (OMB Control No. 3235-0184); (6) "Form N-PORT under the Investment Company Act of 1940" (OMB Control No. 3235-730); and (7) "Investment Company Interactive Data" (OMB Control No. 3235-0642). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collections of information to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission received some comments that specifically addressed the estimated PRA burdens and costs in the Proposing Release, as well as some comments that discussed the overall burdens of implementing aspects of the proposal associated with collections of information. We discuss these comments below along with discussing updated estimates of the collection of information burdens associated with the final amendments to rule 35d-1, Form N-1A, Form N-2, Form N-8B-2, Form S-6, Form N-PORT; and the interactive data requirements under the final amendments. A description of the final amendments, including the need for the information and its use, as well

as a description of the likely respondents, may be found in sections I and II above, and a discussion of the economic effects of the final amendments may be found in section IV above.

B. Rule 35d-1

Rule 35d-1 is designed to address certain broad categories of investment company names that, in the Commission's view, are likely to mislead an investor about a company's investments and risks. The final amendments will expand the scope of funds covered by the 80% investment policy requirement of rule 35d-1. In addition to those fund names currently subject to the rule, the final amendments specify that any fund with a name suggesting that the fund focuses its investments in investments that have, or whose issuers have, particular characteristics will have to adopt an 80% investment policy.

We are also adopting amendments to the names rule's notice requirement. These amendments are designed to specify further the content and delivery of the notice, and address more directly the needs of investors who elect electronic delivery. The final amendments will require notices not only to describe a change in the fund's 80% investment policy, but also a change to the fund's name that accompanies the investment policy change.

The final amendments also include certain new recordkeeping requirements. These amendments will newly require a fund that is required to adopt an 80% investment policy to maintain a written record documenting its compliance with the rule, including among other things the fund's record of which assets are invested in the fund's 80% basket, the basis for including each such asset in the fund's 80% basket, and certain information regarding departures from the fund's 80% investment policy. A fund also will be required to keep records of any notice sent to the fund's shareholders pursuant to the rule. In a modification to the proposal, the

final amendments will *not* require funds that do not adopt an 80% policy to maintain a record of the fund's analysis that such policy is not required under the names rule.[607]

Rule 35d-1, including the final amendments to the rule, contains collection of information requirements. These collection of information requirements include, as detailed in the chart below, the notice requirement and recordkeeping requirements for funds that are required to adopt an 80% investment policy. Compliance with these requirements is mandatory. Responses to these requirements will not be kept confidential.

The Commission received only one comment that specifically addressed the PRA analysis for the proposed amendments to rule 35d-1, stating that the Commission had "significantly underestimated" the costs related to preparing and providing notices to shareholders.[608] The Commission received other comments that did not specifically address the PRA analysis but suggested that the Commission had generally underestimated the compliance costs associated with the proposed notice and recordkeeping requirements.[609] Some commenters stated that the costs of providing notices would likely increase in light of the rule's increase in scope.[610] With respect to the proposed recordkeeping requirements, commenters stated that funds would face significant compliance costs related to the requirement to document each investment included in the 80% basket.[611] Some commenters also stated that the proposed recordkeeping requirements may not be easily automated, including the requirement to include a basis for

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607 *See supra* section II.F.

608 ICI Comment Letter.

609 ICI Comment Letter; T. Rowe Comment Letter; SIFMA AMG Comment Letter; Seward & Kissel Comment Letter.

610 ICI Comment Letter; SIFMA AMG Comment Letter; T. Rowe Comment Letter; Dechert Comment Letter.

611 ICI Comment Letter; T. Rowe Comment Letter; SIFMA Comment Letter; Seward & Kissel Comment Letter.

including each investment in the 80% basket, and the reasons for departure from the fund's 80% investment policy.[612]

We have adjusted the proposal's estimated annual burden hours and total time costs to reflect these comments and to reflect changes from the proposal. Specifically, we are increasing the estimated annual burden associated with the recordkeeping requirement to reflect that certain records may not easily lend themselves to automation. The final estimate also reflects that funds will be required under the final amendments to reassess the characteristics of investments in the fund's 80% basket on a quarterly basis, in contrast to the proposed rule, which would have required funds to engage in continual compliance testing to reassess the characteristics of investments in the fund's 80% basket.[613] Because we are not adopting the proposed recordkeeping requirement for funds that are not required to adopt 80% investment policies, the burdens associated with that requirement are omitted from the final estimates below. We have also adjusted the proposal's estimated annual burden hours and total time costs to reflect updated wage rates. Because funds already have in place systems required to provide notice to shareholders, we do not believe that per-fund costs of providing notice to shareholders will materially increase as result of the rule's increased scope under the final amendments. We also do not believe that per-fund costs of providing notice will increase as a direct result of exception under the final amendments related to unlisted registered closed-end funds and BDCs because we believe that the costs associated with providing notice under this exception are comparable to the costs that a fund not relying on this exception would incur by providing notices associated

[612] Invesco Comment Letter; Seward & Kissel Comment Letter.

[613] *See supra* section II.A.2.

with the shareholder vote that would otherwise be required for a change to the fund's investment policy. The proposed estimate of funds that would provide notices under the names rule over-estimated the number of unlisted registered closed-end funds and BDCs that would provide notices, as it did not subtract unlisted registered closed-end funds and BDCs from the overall estimate of registered closed-end funds and BDCs (even though the proposal did not anticipate that unlisted registered closed-end funds and BDCs would provide notices under the names rule, as they would have to conduct a shareholder vote in connection with a change in an 80% investment policy). We are therefore not changing our analysis in our estimates of the final rules' PRA burdens to increase the proposed estimate, even though the final amendments (unlike the proposal) would permit unlisted registered closed-end funds and BDCs to send notices to shareholders in connection with a change in an 80% investment policy instead of holding a shareholder vote.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the final notice and recordkeeping amendments to rule 35d-1.

TABLE 1: PRA ESTIMATES FOR RULE 35d-1 AMENDMENTS

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
CURRENTLY APROVED BURDENS					
Notice Requirement	0	20 hours[3]	$425 (estimate of wage rate in most recently approved supporting statement)	$8,500	
Number of Funds		X 38 funds[4]		X 38 funds	
Current Burden Estimates		760 hours		$323,000	$0
PROPOSED ESTIMATED BURDENS					
Notice Requirement	0 hours	20 hours[5]	$425 (blended rate for attorneys)	$8,500	**$496**[7]
Number of Funds		X 34 funds[6]		X 34 funds	
Total New Burden for Notice Requirement (I)		680 hours		$289,000	**$16,864**

Recordkeeping for Funds with an 80% Policy[8] **Number of Funds**	9 hours[9]	50 hours X 10,394 funds	$356 (1:1 blend for compliance attorney and senior programmer)	$17,800 X 10,394 funds	**$496**
Total New Burden for Recordkeeping For Funds Required to Adopt 80% Policy (II)		519,700 hours		$185,013,200	**$5,155,424**
Recordkeeping For Funds Not Required to Adopt 80% Policy	0 hours	1 hour X 3,465 funds[10]	$425 (blended rate for attorneys)	$425 X 3,465 funds	**$496**
Total New Burden for Recordkeeping For Funds Not Required to Adopt 80% Policy (III)		3,465 hours		$1,472,625	**$1,718,640**
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II + III)		523,845 hours		$186,774,825	**$6,890,910**
FINAL ESTIMATED BURDENS					
Notice Requirement **Number of Funds**	0 hours	20 hours[5] X 34 funds[6]	$425 (blended rate for attorneys)	$8,500 X 34 funds	**$565[11]**
Total New Burden for Notice Requirement (I)		680 hours		$289,000	**$19,210**
Recordkeeping for Funds with an 80% Policy[8] **Number of Funds**	9 hours[9]	75 hours[12] X 10,291 funds	$406 (1:1 blend for compliance attorney and senior programmer)	$30,450 X 10,291 funds	**$565**
Total New Burden for Recordkeeping (II)		771,825 hours		$313,360,950	**$5,814,415**
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II)		772,505 hours		$313,649,950	**$5,833,625**

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimated figures for the proposed and final burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate assumed that these notices are typically short, one-page documents that are sent to shareholders with other written materials. The Commission anticipated that each respondent would only incur these burden hours once.

4. The currently-approved burden takes into account the Commission's previous estimate, across approximately 13,182 open-end funds and 676 closed-end funds then registered with the Commission, that there are approximately 11,502 funds that have names covered by the rule or 83% of funds covered by the rule (13,858 funds x 83% = 11,502). The Commission estimated that 1% of these funds, or 115 funds, would, within the next three years, provide a notice to shareholders pursuant to rule 35d-1. Therefore, over the course of 3 years, the Commission estimated that, on average approximately 38 funds per year would provide a notice to shareholders under rule 35d-1.

5. The final amendments would make some changes to the current notice requirement, including requiring funds to provide additional specificity about the content and delivery of notice. Because funds already have in place systems required to provide notice to shareholders, the Commission continues to believe, as in the proposal, that these proposed alterations would not increase the burden hours needed to prepare the notice. Although the final rules, unlike the proposed rules, would permit unlisted registered closed-end

funds and BDCs to make changes to their 80% investment policies without a shareholder vote under certain circumstances, including that a fund provide certain notice to shareholders, we have not increased our estimates as a result of this provision. The costs associated with providing notice under this exception are comparable to the costs that a fund would incur by providing notices associated with the shareholder vote that would otherwise be required for a CEF/BDC to change its 80% investment policy under the final rule.

6. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. The Commission at proposal estimated that 75% of funds would have names subject to the 80% investment policy. The prior PRA burden was based on an estimate using a different analytical approach than the Commission employed at proposal, based on its updated economic analysis. Based on that analysis, the Commission estimated that 62% of funds were subject to rule 35d-1 at the time of proposal and that the proposed rule amendments would increase this estimate to 75% of funds. The Commission estimated, across approximately 14,532 open-end and closed-end funds registered with the Commission, that there were approximately 10,394 funds that have names that would be covered by the proposed rule amendments, or 75% of funds covered by the rule amendments. The Commission estimated that 1% of these 10,394 funds, or 103 funds, would within the next three years provide a notice to shareholders pursuant to the proposed rule amendments. Therefore, over the course of 3 years, the Commission estimated that, on average approximately 34 funds per year would provide a notice to shareholders under the proposed rule amendments. The Commission now estimates, pursuant to its current economic analysis, that 60% of funds are currently subject to the 80% investment policy requirement, and that 76% of funds would be subject to this requirement under the final amendments. The Commission estimates, across approximately 13,541 open-end and closed-end funds registered with the Commission, that there are approximately 10,291 funds that have names that would be covered by the final rule amendments, or 76% of funds covered by the rule amendments (9,533 mutual funds (other than money market funds) + 2,735 non-UIT ETFs + 355 money market funds = 12,975 open end funds + 748 registered closed-end funds + 125 BDCs + 45 UITs = 13,541 funds x 76% = 10,291 funds). The Commission estimates that 1% of these 10,291 funds, or 103 funds, would within the next three years provide a notice to shareholders pursuant to the final rule amendments. Therefore, over the course of 3 years, the Commission estimates that on average approximately 34 funds per year would provide a notice to shareholders under the final rule amendments.

7. This estimate was based on the estimated wage rate of $496, for 1 hour of outside legal services. The Commission's estimate of the relevant wage rates for external time costs, such as outside legal services, took into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

8. For funds that adopt an 80% investment policy under the proposed rule, the recordkeeping requirements under proposed rule 35d-1(b)(3) would require records documenting the fund's compliance under paragraphs (a) and (b) of proposed rule 35d-1. Written records documenting the fund's compliance include: the fund's record of which assets are invested in the 80% basket and the basis for including each such asset in the fund's 80% basket; the percentage of the value of the fund's assets that are invested in the 80% basket; the reasons for any departures from the fund's 80% investment policy (including why the fund determined that circumstances are other-than-normal); the dates of any departures from the 80% investment policy; and any notice sent to the fund's shareholders pursuant to proposed rule 35d-1(e). The Commission based its proposed estimate on its understanding that these records would generally need to be made daily, but that the vast majority of records would be automated. The Commission stated that it understood, however, that some records, specifically, records documenting the reasons for any departures from the 80% investment policy, may not be automated and may require a fund to spend more time to make. The proposed PRA estimates took these considerations into account. The recordkeeping requirements under the final rule are substantially similar to the proposed requirements, but do not include the proposed requirement for funds that do not adopt an 80% investment policy to maintain a record of their analysis that such a policy is not required.

9. This estimate initial burden for the proposed recordkeeping requirement accounts for the time the Commission estimates that fund will need to establish recordkeeping procedures for the records that must be kept.

10. The Commission at proposal estimated that, across approximately 14,532 open-end and closed-end funds registered with the Commission, there were approximately 3,465 funds that have names that would be not covered by the proposed rule amendments, or 25% of funds covered by the rule amendments.

11. This estimate is based on the estimated wage rate of $565, for 1 hour of outside legal services. The Commission's estimate of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

12. The Commission's estimates of the internal annual time burdens associated with the recordkeeping requirement under the final rules have been increased by 50% from the proposal to account for records that may not be easily automatable. This estimate reflects that funds will be required under the final amendments to reassess the characteristics of investments in the fund's 80% basket on a quarterly—as opposed to continual—basis. Therefore, while we recognize that some records may not be able to be automated, as commenters discussed, we are not increasing the proposed estimates to the degree that commenters suggested would be appropriate in light of the final rule's comparatively less-burdensome approach to reassessing investments in the fund's 80% basket.

C. Prospectus Disclosure

We are adopting amendments to funds' registration forms—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—that will require each fund that is required to adopt and

implement an 80% investment policy to include disclosure in its prospectus that defines the terms used in its name, including the specific criteria the fund uses to select the investments that the term describes, if any. These amendments are designed to help investors better understand how a fund's investment strategy corresponds with the investment focus that the fund's name suggests as well as to provide additional information about how the fund's management seeks to achieve the fund's objective. While this is not currently required in a fund's prospectus, we understand that including similar disclosure is currently common industry practice, and believe that that the impact that the final amendments will have on funds subject to the names rule will generally be minor. Therefore, the PRA estimates for the final prospectus disclosure amendments likely overestimate the costs for those funds whose disclosure is currently in line with the disclosure the amendments would require.

The final amendments to Form N-1A, Form N-2, Form N-8B-2, and Form S-6 all contain collection of information requirements. Compliance with the disclosure requirements of each form is mandatory. Responses to these disclosure requirements will not be kept confidential.

The Commission received one comment stating that the costs of prospectus disclosure were underestimated.[614] We have adjusted the proposal's estimated annual burden hours and total time costs to reflect updated wage rates, and in light of developments in our analysis with respect to estimating the burdens associated with initial disclosure-related burdens.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to Form N-1A, Form N-2, Form N-8B-2, and Form S-6.

[614] *See supra* footnote 565.

1. Form N-1A

TABLE 2: FORM N-1A PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
CURRENTLY APROVED BURDENS					
Preparing and Filing Reports on Form N-1A Generally		278	$284 (estimate of wage rate in most recently approved supporting statement)	$78,952	**$21,849**
Number of Responses		6,002[3]		6,002	**6,002**
Current Burden Requirement		1,672,077 hours		$474,392,078	**$132,940,008**
PROPOSED BURDENS					
Proposed New Names Rule Disclosure	7 hours	10 hours	$356 (1:1 blend of attorney and senior programmer)	$3,560	**$992**[6]
Number of funds		× 9,731 funds[4]		× 9,731 funds	× 9,731 funds
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		97,310 hours		$34,643,250	$9,653,152
FINAL ESTIMATED BURDENS					
New Names Rule Disclosure	15 hours[5]	12 hours	$406 (1:1 blend of attorney and senior programmer)	$4,872	**$1,130**[6]
Number of funds		× 9,593 funds[7]		× 9,593 funds	× 9,593 funds
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		115,116 hours		$46,737,096	$10,840,090

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed and final burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. The currently-approved burden was based on the Commission's estimate that included all open-end funds, including ETFs, then registered on Form N-1A.

4. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. This estimate assumed that 75% of funds would be covered by our proposed rule amendments. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing. The Commission estimated at proposal that 62% of funds were currently subject to rule 35d-1, and that the proposed rule amendments would increase this estimate to 75% of funds. The Commission estimated, across approximately 12,975 open-end funds including ETFs registered with the Commission, that there are approximately 9,731 open-end funds that have names that would have been covered by the proposed rule amendments, or 75% of open-end funds covered by the rule amendments (10,223 mutual funds (other than money market funds) + 2,320 non-UIT ETFs + 432 money market funds = 12,975 open end funds x 75% = 9,731 open-end funds).

5. The estimated initial burden has been increased based on developments in our analysis with respect to estimating the burdens associated with initial disclosure-related burdens. This burden has been increased to reflect internal review processes that we understand are conventional when updating prospectus disclosures to reflect a new disclosure requirement, as well as the time that we understand, based on staff experience with the disclosure review process, drafting disclosure in response to new disclosure

requirements typically takes.

6. The estimated burdens at proposal were based on the estimated wage rate of $496/hour, and at adoption are based on the estimated wage rate of $565/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

7. Based on our current analysis, we estimate that 60% of funds are currently subject to rule 35d-1, and that the final amendments will increase this estimate to 76% of funds. The Commission estimates, across approximately 12,623 open-end funds including ETFs registered with the Commission, that there are approximately 9,467 open-end funds that have names that will be covered by the final amendments (9,533 mutual funds (other than money market funds) + 2,735 non-UIT ETFs + 355 money market funds = 12,623 x 76% = 9,593 open-end funds).

2. Form N-2

TABLE 3: FORM N-2 PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
CURRENTLY APROVED BURDENS					
Preparing and Filing Reports on Form N-2 Generally		2,426	$400 (estimate of wage rate in most recently approved supporting statement)	$970,533	**$160,523**
Number of Responses		298		298	**298**
Current Burden Requirement		722,948 hours		$289,218,834	**$47,835,854**
PROPOSED BURDENS					
Proposed New Names Rule Disclosure	7 hours	10 hours	$356 (1:1 blend of attorney and senior programmer)	$3,560	**$992**[5]
Number of Funds		× 626 funds[3]		× 626 funds	x 626
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		6,260 hours		$2,228,560	$620,992
FINAL ESTIMATED BURDENS					
New Names Rule Disclosure	15 hours[4]	12 hours	$406 (1:1 blend of attorney and senior programmer)	$4,872	**$1,130**[5]
Number of Funds		× 663 funds[6]		× 663 funds	x 663
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		7,956 hours		$3,230,136	$749,190

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed and final burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. We now estimate that 75% of funds would be covered by our proposed rule amendments. The prior PRA burden was based

on an estimate using a different analytical approach than we are now employing. The Commission estimated that 62% of funds were currently subject to rule 35d-1, and that the proposed rule amendments would increase this estimate to 75% of funds. The Commission estimated, across approximately 835 closed-end funds registered with the Commission, that there were approximately 626 closed-end funds that had names that would be covered by the proposed rule amendments, or 75% of closed-end funds covered by the rule amendments (736 registered closed-end funds +99 BDCs = 835 Form N-2 registrants x 75% = 626 Form N-2 registrants).

4. The estimated initial burden has been increased based on developments in our analysis with respect to estimating the burdens associated with initial disclosure-related burdens. This burden has been increased to reflect internal review processes that we understand are conventional when updating prospectus disclosures to reflect a new disclosure requirement, as well as the time that we understand, based on staff experience with the disclosure review process, drafting disclosure in response to new disclosure requirements typically takes.

5. The estimated burdens at proposal were based on the estimated wage rate of $496/hour, and at adoption are based on the estimated wage rate of $565/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

6. Based on our current analysis, we estimate that 60% of funds are currently subject to rule 35d-1, and that the final amendments will increase this estimate to 76% of funds. The Commission estimates, across approximately 873 closed-end funds registered with the Commission, that approximately 663 closed-end funds have names that will be covered by the final rule, or 76% of closed-end funds (748 registered closed-end funds + 125 BDCs = 873 Form N-2 registrants x 76% = 663 Form N-2 registrants.

3. Form N-8B-2

TABLE 4: FORM N-8B-2 PRA ESTIMATES

		Annual hours[1]	Wage rate[2]	Cost of Internal Burden per Portfolio	Annual Cost Burden per Portfolio
CURRENTLY APROVED BURDENS					
Preparing and Filing Reports on Form N-8B-2 Generally	UITs	10 hours	$351 (estimate of wage rate in most recently approved supporting statement)	$3,510	**$10,000**
	UIT ETFs	18 hours	$351 (estimate of wage rate in most recently approved supporting statement)	$6,318	**$0**
Number of Responses		1[3]		1	**1**
Current Burden Requirement		**28 hours**		**$9,828**	**$10,000**
PROPOSED BURDENS					
Proposed New Names Rule Disclosure	7	10 hours	$356 (1:1 blend of compliance attorney and senior programmer)	$3,560	**$992**[6]
Number of Responses		× 1 UIT[4]		× 1 UIT	× 1 UIT
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		**10 hours**		**$3,560**	**$992**
FINAL ESTIMATED BURDENS					
New Names Rule Disclosure	15[5]	12 hours	$406 (1:1 blend of compliance attorney and senior programmer)	$4,872	**$1,130**[6]
Number of Responses		× 1 UIT[4]		× 1 UIT	X1 UIT
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		**12 hours**		**$4,872**	**$1,130**

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed and final burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. Based on Commission records, in 2016, 2017, 2018, and 2019, during that four-year period, the Commission received 1 filing, submitted in 2019, on Form N-8B-2. The cumulative 4-year average is, therefore, 0.25 filings per year.

4. The Commission's proposed estimate was 1 annual filing and we continue to assume 1 filing annually.

5. The estimated initial burden has been increased based on developments in our analysis with respect to estimating the burdens associated with initial disclosure-related burdens. This burden has been increased to reflect internal review processes that we understand are conventional when updating prospectus disclosures to reflect a new disclosure requirement, as well as the time that we understand, based on staff experience with the disclosure review process, drafting disclosure in response to new disclosure requirements typically takes.

6. The estimated burdens at proposal were based on the estimated wage rate of $496/hour, and at adoption are based on the estimated wage rate of $565/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

4. Form S-6

TABLE 5: FORM S-6 PRA ESTIMATES

	Initial Hours	Annual hours[1]	Wage rate[2]	Internal Costs	Annual External Costs
CURRENTLY APROVED BURDENS					
Draft and Update Disclosures on Form S-6[3]	24 hours	18 hours	$356 (1:1 blend of compliance attorney and senior programmer)	$6,408	**$27,265**
Number of Responses		2,498		2,498	**2,498**
Current Burden Requirement		107,359		$16,007,184	**$68,107,970**
PROPOSED BURDENS					
Proposed New Names Rule Disclosure	7 hours	10 hours	$356 (1:1 blend of compliance attorney and senior programmer)	$3,560	**$992[6]**
Number of Responses		× 785 filings[4]		× 785 filings	785 filings
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		7,850 hours		$2,794,600	$778,720
FINAL ESTIMATED BURDENS					
New Names Rule Disclosure	15 hours[5]	12 hours	$406 (1:1 blend of compliance attorney and senior programmer)	$4,872	**$1,130[6]**
Number of Responses		× 764 filings[7]		× 764 filings	764 filings
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden		9,168 hours		$3,722,208	$863,320

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed and final burdens were multiplied by 5.35 to account for

bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. Form S-6 incorporates the disclosure requirements of Form N-8B-2 for UITs on an ongoing basis. Because Form S-6 incorporates the requirements of Form N-8B-2, the amendments would indirectly affect these entities. UITs that have made their initial deposit of securities prior to the effective date of any final rule would be required to update their disclosure on Form S-6 to comply with the amended requirements of Form N-8B-2. As discussed above, UITs formed after the adoption of any final rules would be required to comply with the proposed disclosure requirements upon formation when those UITs file Form N-8B-2 with the Commission.

4. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. The Commission estimated that 75% of funds would be covered by our proposed rule amendments, based on this proposal's economic analysis above. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing. The Commission estimated that 62% of funds are currently subject to rule 35d-1 and that our proposed rule amendments would increase this estimate to 75% of funds. The Commission estimated 49 non-separate account and non-ETF UITs registered with the Commission. However, the Commission based its estimate on the belief that using the number of filings instead of registrants would form a more accurate estimate of annual disclosure burdens. The Commission estimated 1,047 filings based on the average number of filings made on Form S-6 from 2018 to 2020. The Commission therefore estimated that there would be approximately 785 filings for funds that have names that would be covered by the proposed rule amendments, or 75% of the filings for UITs covered by the rule amendments (1,047 filings x 75% = 785 filings).

5. The estimated initial burden has been increased based on developments in our analysis with respect to estimating the burdens associated with initial disclosure-related burdens. This burden has been increased to reflect internal review processes that we understand are conventional when updating prospectus disclosures to reflect a new disclosure requirement, as well as the time that we understand, based on staff experience with the disclosure review process, drafting disclosure in response to new disclosure requirements typically takes.

6. The estimated burdens at proposal were based on the estimated wage rate of $496/hour, and at adoption are based on the estimated wage rate of $565/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

7. Based on our current analysis, we estimate that 60% of funds are currently subject to rule 35d-1, and that the final amendments will increase this estimate to 76% of funds. The Commission estimates 45 non-separate account and non-ETF UITs registered with the Commission. However, consistent with the Commission's methodology at proposal, we believe that using the number of filings instead of the number of registrants will form a more accurate estimate of annual disclosure burdens. The Commission estimates 1,005 filings based on the average number of filings made on Form S-6 from 2020 to 2022. The Commission therefore estimates that there will be approximately 764 filings for funds that have names that will be covered by the final amendments, or 76% of the filings for UITs covered by the rule amendments (1,005 filings x 76% = 764 filings).

D. Form N-PORT Reporting Requirements

We are adopting amendments to Form N-PORT to include new reporting items for N-PORT funds regarding the 80% investment policy that such a fund adopts in compliance with the names rule. As proposed, the final amendments require N-PORT funds that are required to adopt an 80% investment policy to report on Form N-PORT: (1) whether each investment in the fund's portfolio is in the fund's 80% basket; and (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets.

The final amendments contain some modifications from the proposal.[615] First, the final Form N-PORT amendments modify the proposed reporting approach by requiring reported

615 *See supra* section II.E.

information for the third month of each calendar quarter, instead of for every month. This modified reporting frame corresponds with the period for review that will otherwise be mandated by the final amendments. Secondly, the final amendments add a new reporting item, in which funds will be required to report the definitions of terms used in a fund's name. Lastly, we are not adopting the proposed requirement that funds report the number of days that that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period.

Form N-PORT, including the final amendments, contains collection of information requirements. Compliance with the requirements of the form is mandatory. Responses to these reporting requirements will be kept confidential, subject to the provisions of applicable law, for reports filed with respect to the first two months of each quarter. Responses to the new Form N-PORT reporting requirements for the third month of the quarter will not be kept confidential, but made public sixty days after the quarter end.

The Commission did not receive public comment regarding the PRA estimates for the amendments to Form N-PORT in the proposing release, but it did receive comments on the overall costs and burdens associated with this aspect of the proposal. Some commenters stated that the costs and operational burdens of the proposed requirement for N-PORT funds subject to the 80% investment policy requirement to indicate whether each of its portfolio investments is included in the fund's 80% basket would be significant.[616] Commenters specifically expressed concern about the costs and burden of reporting this information for each investment on a

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[616] *See, e.g.*, MFS Comment Letter; J.P. Morgan Asset Management Comment Letter; T. Rowe Comment Letter.

monthly basis.[617] Some commenters also stated that the proposed new reporting item would require the build-out of new systems, for daily testing and validation of names rule compliance information, and for mapping this information over for reporting on Form N-PORT.[618] Commenters also stated that funds may need to hire third-party vendors for supplemental and specially-tailored data on their portfolio investments, in order to comply with the proposed new reporting requirements.[619] With respect to the proposed requirement that a fund report the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's total assets during the reporting period, commenters stated that monitoring individual securities on a daily basis for name rule compliance would be operationally onerous.[620]

We have adjusted the proposal's estimated annual burden hours and total time costs to reflect these comments as well as the changes from the proposed requirements. We recognize that complying with the new reporting requirements will entail compliance activities, and potentially systems and operational modifications as well as the use of third-party service providers, and that reporting will be required for each of a fund's portfolio holdings. As a result, we have adjusted the estimated initial and annual hours associated with the requirement for funds to report whether each of its investments is part of its 80% basket. On the other hand, we expect that the modified reporting time frame will reduce the burdens associated with the final amendments' collection of information requirements. The burdens associated with the proposal will also be reduced because we are not adopting the proposed requirement to report the number

617 *See* MFS Comment Letter.

618 *See, e.g.*, T. Rowe Comment Letter; Invesco Comment Letter; Seward & Kissel Comment Letter.

619 *See, e.g.*, ICI Comment Letter; SIFMA AMG Comment Letter.

620 *See, e.g.*, J.P. Morgan Asset Management Comment Letter.

of days that the value of the 80% basket fell below 80% of the value of the fund's total assets. We do not anticipate the new reporting item under the final amendments requiring funds to include definitions of terms used in a fund's name will entail significant costs because this reporting requirement leverages the same disclosure that funds will also, under the final amendments, be required to include in their prospectuses. Moreover, any costs associated with this requirement should be recurring costs only to the extent a fund determines to change its name or its definition of the terms used in its name.

The table below summarizes the estimates for internal burdens associated with the new requirements under the final amendments to Form N-PORT.

TABLE 6: FORM N-PORT PRA ESTIMATES

	Initial hours	Annual hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
CURRENTLY APROVED BURDENS					
Preparing and Filing Reports on Form N-PORT Generally		44,500	$344.19 (estimate of wage rate in most recently approved supporting statement)	$15,316,455	**$4,684,296**
Number of Responses		2,696		2,696	**2,696**
Current Burden Requirement		1,839,903 hours		$654,658, 288	**$113,858,133**
PROPOSED BURDENS					
New Reporting About 80% Investment Policy[3]	4 hours	9 hours	$356 (blend of compliance attorney and senior programmer)	$3,204	**$992[4]**
Number of Funds		x 9,996 funds[3]		x 9,996 funds	x 9,996 funds
Total New Burden for New Reporting About 80% Investment Policy (I)		**89,964 hours**		**$32,027,184**	**$9,916,032**
Investments to be Included in a Fund's 80% Basket[4]	4 hours	10 hours	$356 (rate for compliance attorney and senior programmer)	$3,560	$992[6]
Number of Funds		X 9,996 funds[4]		X 9,996 funds	x 9,996 funds
Total New Burden for Investments to be Included in a Fund's 80% Basket (II)		**99,960 hours**		**$35,585,760**	$**9,916,032**
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					

Total New Annual Burden (I + II)		189,924 hours		$67,612,944	$19,832,064
FINAL ESTIMATED BURDENS					
New Reporting About 80% Investment Policy[3] **Number of Funds**	4 hours	2 hours x 9,926 funds[3]	$406 (blend of compliance attorney and senior programmer)	$812 x 9,926 funds	**$1,130**[4] x 9,926 funds
Total New Burden for New Reporting About 80% Investment Policy (I)		19,852 hours		$8,059,912	**$11,216,380**
Investments to be Included in a Fund's 80% Basket[4] **Number of Funds**	15 hours	14 hours X 9,926 funds[6]	$406 (rate for compliance attorney and senior programmer)	$5,684 X 9,926 funds	$1,130[6] x 9,926 funds
Total New Burden for Investments to be Included in a Fund's 80% Basket (II)		138,964 hours		$56,419,384	$**11,216,380**
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II)		158,816 hours		$64,479,296	$22,432,760

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed and final burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

3. This burden corresponds to the requirement for a fund to report the value of its 80% basket as a percentage of the value of its assets. The proposed estimate also reflects the burden associated with the requirement for funds to report the number of days that the value of the 80% basket fell below 80% of the value of the fund's total assets. Because we are not adopting this requirement under the final rule, the final annual hours burden estimate has been reduced by 33% compared to the proposed estimate. The final annual hours estimate has also been reduced by a factor of 3 to reflect the modified reporting timeframe under the final amendments (i.e. quarterly as opposed to monthly). Accordingly, the adjustment from proposed annual hours burden estimate to the final estimate reflects the following calculation: 9 hours x (2/3) = 6 hours /3 = 2 hours.

4. This burden corresponds to the requirement for funds that are required to adopt 80% policies to indicate, with respect to each portfolio investment, whether the investment is included in the fund's calculation of assets in the fund's 80% basket; and for the final estimate (but not the proposed estimate), the requirement for funds to report definitions of the terms used in their names. Our final estimate of the initial hours burden has been increased by a factor of 2 compared to the proposed estimate to reflect costs associated with systems and operational modifications that may be required for compliance with these requirements. Our final estimate of the annual hours burden also reflects these increased costs compared to the proposed estimate; however it has been reduced in order to reflect the modified reporting timeframe under the final amendments (i.e. quarterly as opposed to monthly), resulting in an overall estimate for the annual hours burden that is lower that the proposed estimate. Specifically, the adjustment from the proposed annual hours burden estimate to the final estimate reflects the following calculation: 10 hours x 2 = 20 hours /3 = 6.67 (rounded to 7 hours).

3. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. The Commission estimated that 75% of funds would be covered by our proposed rule amendments. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing. The Commission estimated that 62% of funds are currently subject to rule 35d-1 and that the proposed rule amendments would increase this estimate to 75% of funds. The Commission estimated, across approximately 14,001 open-end and closed-end funds registered with the Commission, not including money market funds, that there would have been approximately 10,394 funds that have names that would be covered by the proposed rule amendments, or 75% of funds covered by the rule amendments (10,223 mutual funds (other than money market funds) + 2,320 non-UIT ETFs = 12,543 open end funds + 736 registered closed-end funds + 49 UITs = 13,328 funds x 75% = 9,996 funds).

4. *See id*.

5. The estimated burdens at proposal were based on the estimated wage rate of $496/hour, and at adoption are based on the estimated wage rate of $565/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for

external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

6. Based on our current analysis, we estimate that that 60% of funds are currently subject to rule 35d-1, and that the final amendments will increase this estimate to 76% of funds. The Commission estimates, across approximately 13,061 open-end and closed-end funds registered with the Commission, not including money market funds, that there will be approximately 10,318 funds that have names that will be covered by the proposed rule amendments, or 76% of the funds covered by the rule amendments (9,533 mutual funds (other than money market funds) + 2,735 non-UIT ETFs + = 12,268 open end funds + registered closed-end funds + 45 UITs = 13,061 funds x 76% = 10,318 funds).

E. Investment Company Interactive Data

We are adopting amendments to Form N-2, Form N-8B-2, and Form S-6, as well as rules 485 and 497 under the Securities Act and rule 11 and 405 of Regulation S-T, to require certain new structured data reporting requirements for funds.[621] The final amendments include new structured data requirements that will require funds to tag the information in their registration statements about their fund name using Inline XBRL.[622] The purpose of these information collections is to make information regarding fund names easier for investors to analyze and to help automate regulatory filings and business information processing, and to improve consistency across all types of funds with respect to the accessibility of fund name information they provide to the market.

Funds filing registration statements on Form N-2 already submit certain information using Inline XBRL format. Based on filing data as of December 2022, we estimate that 663 funds filing registration statements on these forms would be subject to the proposed interactive

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[621] The Investment Company Interactive Data collection of information do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information. The amendments we are adopting to rules 485 and 497 under the Securities Act, as well as rules 11 and 405 to Regulation S-T, are conforming amendments that have no associated PRA burden. While the new names-related information that open-end funds will be required to disclose under our final amendments to Form N-1A also will be required to be tagged using Inline XBRL, the final amendments to Form N-1A will create no additional PRA burden. The final rule amends Item 4 of Form N-1A; Form N-1A registrants are already required to submit the information that they provide in response to Item 4 using Inline XBRL. *See supra* footnote 115. Therefore, the burdens associated with tagging Item 4 disclosure are already accounted for under the current Investment Company Interactive Data collection of information.

[622] *See supra* section II.B; *see also* instruction to Item 4(a)(1) of Form N-1A; instruction to Item 9(b)(1) of Form N-1A; instruction to Item 8(2) of Form N-2; instruction to Item 11 of Form N-8B-2.

data amendments. UITs filing initial registration statements on Form N-8B-2 and post-effective amendments on Form S-6 are not currently subject to requirements to submit information in structured form. Because these UITs have not previously been subject to Inline XBRL requirements, we assume that these funds will experience additional burdens related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs will include, for example, the acquisition of new software or the services of consultants, and the training of staff. Based on filing data as of December 30, 2020, we estimate that 796 filings would be subject to these proposed amendments. In our most recent Paperwork Reduction Act submission for Investment Company Interactive Data, we estimated a total aggregate annual hour burden of 323,724 hours, and a total aggregate annual external cost burden of $16,041,450. Compliance with the interactive data requirements is mandatory, and the responses will not be kept confidential.

The Commission did not receive public comment regarding the PRA estimates for the investment company interactive data requirements. We have adjusted the proposal's estimated annual burden hours and total time costs, however, to reflect updated wage rates.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N-1A, Form N-2, Form N-8B-2, and Form S-6, as well as Regulation S-T.

TABLE 7: INVESTMENT COMPANY INTERACTIVE DATA PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED BURDENS					
Names rule information for current XBRL filers[3]	1 hour	1 hour[4]	$356 (blended rate for compliance attorney and	$356	**$50[5]**

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
			senior programmer)		
Number of funds		× 626 funds[6]		× 626 funds	× 626 funds
Names rule information for new XBRL filers[7]	9 hours	4 hours[8]	$356 (blended rate for compliance attorney and senior programmer)	$1,424	**$900**[9]
Number of filings		× 785 filings[10]		× 785 filings	x 785 filings
Total new aggregate annual burden		3,766 hours[11]		$1,340,696[12]	$737,800 [13]
TOTAL PROPOSED ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates		+ 252,602 hours			+ $15,350,750
Revised aggregate annual burden estimates		256,368 hours			$16,088,550
FINAL ESTIMATED BURDENS					
Names rule information for current XBRL filers[3]	1 hour	1 hour[4]	$406 (blended rate for compliance attorney and senior programmer)	$406	**$50**[5]
Number of funds		× 663 funds[6]		× 663funds	× 663funds
Names rule information for new XBRL filers[7]	9 hours	4 hours[8]	$406 (blended rate for compliance attorney and senior programmer)	$1,625	**$900**[9]
Number of filings		× 796 filings[14]		× 796filings	x 796filings
Total new aggregate annual burden		3,847 hours[11]		$1,562,678[12]	$749,550 [13]
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates		+ 323,724hours			+ $16,041,450
Revised aggregate annual burden estimates		324,571 hours			$16,791,000

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. *See supra* table 1 regarding estimated wage rates.

3. This estimate represents the average burden for a filer on Form N-2 that is currently subject to interactive data requirements.

4. This estimate included initial burden estimates annualized over a three-year period, plus 0.67 hour of ongoing annual burden hours. The estimate of 1 hour was based on the following calculation: ((1 initial hour /3) + 0.67 hour of additional ongoing burden hours) = 1 hour.

5. The Commission estimated an incremental external cost for filers on Form N-2, as they already submit certain information using Inline XBRL.

6. Based on filing data as of December 30, 2020, the Commission estimated 626 funds, including BDCs, filing on Form N-2. Based on filing data as of December 2022, we have adjusted that estimate to 663 funds.

7. This estimate represents the average burden for a filer on Form N-8B-2 and Form S-6 that is not currently subject to interactive data requirements.

8. Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burden hours. The estimate of 10 hours is based on the following calculation: ((27 initial hours /3) + 1 hour of additional ongoing burden hours) = 10 hours.

9. This estimate assumes an external cost for filers on Form N-8B-2 and Form S-6 of $900 to reflect one-time compliance and initial set-up costs. Because these filers have not been previously been subject to Inline XBRL requirements, this estimate reflects that these funds would experience additional burdens related to one time-costs associated with becoming familiar with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants.

10. The Commission estimated 49 non-separate account and non-ETF UITs registered with the Commission. However, the Commission based the proposed estimate on the belief that the number of filings instead of registrants would form a more accurate estimate of annual burdens. The Commission estimated 1,047 filings based on the average number of filings made on Form S-6 from 2018 to 2020, and therefore estimated that there are approximately 785 filings for funds that have names that would have been covered by the proposed rule amendments, or 75% of the filings for UITs covered by the rule amendments (1,047 filings x 75% = 785 filings).

11. With respect to the proposed estimate, 3,766 hours = (626 funds x 1 hour = 626 hours) + (785 filings x 4 hours = 3,140 hours). With respect to the final estimate, 3,847 hours = (663 funds x 1 hours = 663 hours) + (796 filings x 4 hours = 3,184 hours).

12. With respect to the proposed estimate, $1,340,696 internal time cost = (626 funds x $356 = $222,856) + (785 filings x $1,424 = $1,117,840). With respect to the final estimate, $1,562,678 internal time cost = (663 funds x $406 = $269,178) + (796 filings x $1,625 = $1,293,500).

13. With respect to the proposed estimate, $737,800 annual external cost = (626 funds x $50 = $31,300) + (785 filings x $900 = $706,500). With respect to the final estimate, $749,550 annual external cost = (663 funds x $50 = $33,150) + (796 filings x $900 = $716,400).

14. Based on our current analysis, we estimate that 76% of funds will be subject to rule 35d-1 under the final amendments, and therefore estimate that 796 filings for funds that have names that will be covered by the final amendments (1,047 filings x 76% = 796 filings).

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with section 604 of the Regulatory Flexibility Act ("RFA").[623] It relates to final amendments to rule 35d-1 and Forms N-1A, N-2, N-8B-2, S-6, and N-PORT, as well as final conforming amendments to rules 11 and 405 of Regulation S-T and rules 485 and 497 under the Securities Act (collectively, "final amendments").

A. Need for and Objectives of the Rule and Form Amendments

Section 35(d) of the Act prohibits a registered investment company from adopting as part of its name or title any word or words that the Commission finds are materially deceptive or misleading. Rule 35d-1 addresses certain broad categories of investment company names that are likely to mislead an investor about a company's investments and risks. We are adopting final amendments designed to increase investor protection by improving, and broadening the scope of,

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623 5 U.S.C. 603(a).

the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission also is adopting enhanced prospectus disclosure requirements for terminology used in fund names and additional requirements for funds to report information on Form N-PORT regarding compliance with the names-related regulatory requirements. The reasons for, and objectives of, the final amendments are discussed in more detail in sections I and II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on every aspect of the Initial Regulatory Flexibility Analysis ("IRFA"), including the number of small entities that would be affected by the proposed rule and form amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. The Commission also requested comment on the proposed compliance burdens and the effect these burdens would have on small entities.

Although the Commission did not receive comments specifically addressing the IRFA, one commenter stated that many small or innovative funds would be "disproportionately" burdened by the legal and compliance costs of the expanded scope of fund names that would be subject to the proposed amendments.[624] In addition, the Commission received comments stating that the proposed requirement that funds use a derivatives instrument's notional amount to

[624] *See* Freeman Capital Management Comment Letter. *But see* PIABA Comment Letter (stating that most instances of misleading fund names involve small and medium funds).

determine the fund's compliance with its 80% investment policy would create costly technical and operational challenges for small fund groups.[625]

Smaller funds may incur costs associated with the final amendments as funds comply with all aspects of the final amendments, including the specific aspects that commenters discussing small entities highlighted.[626] As discussed above, compliance costs associated with the final amendments, particularly those that expand the current scope of the names rule, would vary based on a fund's current practices with respect to adopting policies to invest a particular percentage of fund assets in investments that have, or whose issuers have, particular characteristics. With respect to potential costs incurred to comply with other aspects of the amendments that commenters discussing small entities identified, we expect that funds would incur costs to review the final amendments' requirements and modify, as necessary, their investing practices, policies and procedures, and recordkeeping practices to comply with these requirements, or may decide to instead change their names.

C. Small Entities Subject to Rule Amendments

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year ("small fund").[627] Commission staff estimates that, as of December 2022, approximately 34 registered open-end mutual funds (including one money market fund), 9

[625] *See* Dechert Comment Letter; ICI Comment Letter; Center for American Progress Comment Letter.

[626] *See supra* sections IV.D.2 and V for a discussion of costs associated with the final amendments.

[627] *See* rule 0-10(a) under the Act [17 CFR 270.0-10(a)].

registered ETFs, 27 registered closed-end funds, 3 UITs, and 10 BDCs (collectively, 83 funds) are small entities.[628]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments include reporting, recordkeeping, and other compliance requirements. First, the final amendments expand the types of fund names subject to the names rule's 80% investment policy requirement, and any fund that has or adopts a newly covered name will need to adopt an 80% investment policy.[629] The final amendments also include other changes to the current names rule, such as permitting a fund to engage in temporary departures from an 80% investment requirement for a limited period of time under other than normal circumstances, which will also necessitate an update to funds' existing practices regarding names rule compliance. Funds will be required to review their portfolio investments to determine whether they continue to be consistent with the fund's 80% investment policy at least quarterly. The final amendments also specify that a fund's name may be materially deceptive or misleading under section 35(d) even if the fund adopts an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy. The final amendments further require a fund that is required to adopt an 80% investment policy to maintain certain records documenting its compliance with the rule, including, the fund's record of which assets are

[628] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 2022.

[629] While the final rule amendments will add BDCs to the definition of "fund" under the rule, we do not anticipate that this addition will have a significant impact on small entities. BDCs are currently subject to the requirements of section 35(d) pursuant to section 59 of the Act. We understand that BDCs currently comply with the names rule because they are subject to the requirements of section 35(d). *See also supra* footnote 13.

invested in accordance with the investment focus that the fund's name suggests (or consistent with the tax-exempt treatment its name suggests).

The final amendments also require disclosure in the fund's prospectus regarding the definitions of terms used in the fund's name, including a requirement that funds must tag new information that will be included using Inline XBRL. Under the final amendments, funds (other than money market funds and BDCs) that are required to adopt an 80% investment policy also newly must report certain information on Form N-PORT regarding names rule matters. This will necessitate that certain funds either must change their names or adjust their investment strategies, and thus potentially their portfolio investments, to ensure compliance. Lastly, the final amendments include exceptions for certain UITs. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with the final amendments will require.

1. 80% Investment Policy Requirements – Scope Expansion and Other Amendments

All funds, including small funds, that have names that include terms suggesting that the fund focuses its investments in investments that have, or whose issuers have, particular characteristics will be required to adopt an 80% investment policy under the final amendments.[630] Further, in order to comply with this element of the final amendments, a fund may have to engage in a name change or change its portfolio investments so that the fund's name reflects its 80% basket or vice-versa. Funds that have an existing 80% investment policy will

[630] *See supra* section VI.C for a discussion of the number of small entities subject to the amendments.

need to change their practices to comply with the names rule to address other aspects of the final amendments: (1) changes to how the rule addresses temporary departures from the 80% investment requirement, (2) changes to address derivatives in calculating compliance with the 80% investment policy requirement, (3) the plain English/established industry use requirement, and (4) updates to the rule's notice requirement. Lastly, a fund that is an unlisted registered closed-end fund or BDC may be required to amend its existing 80% investment policy so that it is a fundamental policy and, on a going-forward basis, engage in shareholder votes to change its 80% investment policy.[631]

These requirements are designed to help ensure that a fund's investment activity is consistent with the investment focus its name communicates and, thus, the investor expectations the name creates. These requirements will impose burdens on all funds, including those that are small entities.

While we expect larger funds or funds that are part of a large fund complex to incur higher costs related to these requirements in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we generally expect a smaller fund to find it more costly, per dollar managed, to comply with the final requirements because it will not be able to benefit from a larger fund complex's economies of scale. Smaller funds may be more likely than larger funds with significant in-house resources to hire outside assistance in connection with understanding and assisting in compliance with the final amendments—for example, retaining

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[631] As discussed above, under the final amendments such funds will be permitted to make changes to their 80% policies without this vote if the fund conducts a tender or repurchase offer in advance of the change, the fund provides at least 60 days' prior notice of any change in the policy in advance of that offer, and that offer is not oversubscribed, and in the event of a tender offer, the fund purchases shares at their net asset value.

outside counsel to analyze the implications of the final amendments' scope expansion on existing fund names. And a larger fund complex may be able to develop a process with in-house or outside counsel or utilize existing systems to make these changes more efficiently across all of their funds that a smaller fund with less resources may find too costly. For example, a larger unlisted BDC or closed-end fund may be able to use existing procedures to develop a method of soliciting shareholder votes regarding name changes that smaller unlisted BDCs or closed-end funds do not have.[632] Notwithstanding the economies of scale experienced by larger versus smaller funds, we generally do not expect the costs of compliance associated with the new requirements to be meaningfully different for smaller versus larger funds. The costs of compliance will vary only based on fund characteristics tied to their name. That is, whether a fund would now need to adopt, or change, its 80% investment policy, or its practices to comply with the names rule, will be as a consequence of that fund having a name that suggests an investment focus under the final amendments, not based upon the size of the fund.

2. Effect of Compliance with an 80% Investment Policy

We are adopting a new provision in the names rule providing that a fund's name may be materially deceptive or misleading under section 35(d) even if the fund adopts an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy. The final provision makes clear that a fund name may be materially deceptive or misleading even where the fund complies with its 80% investment policy, for example,

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[632] The final amendments' approach that permits unlisted registered closed-end funds and BDCs to make changes to their 80% investment policies without a shareholder vote under certain circumstances could, however, result in fewer costs to smaller unlisted registered closed-end funds and BDCs, to the extent that this additional permissible approach to changing their 80% investment policies is less costly than obtaining a shareholder vote. *See supra* sections II.A.4; IV.D.2.

potentially where a fund complies with its 80% investment policy but invests in a way such that the source of a substantial portion of the fund's risks or returns is materially different from that which an investor reasonably would expect based on the fund's name. This new provision is consistent with prior Commission statements that the 80% investment requirement under the names rule is not intended to create a safe harbor from liability under section 35(d) for materially deceptive or misleading fund names.

This provision applies to all funds subject to the names rule's 80% investment policy requirement, including those that are small entities. However, because this provision restates section 35(d), we believe that it will not result in any additional costs beyond those already attendant on compliance with the Act itself.

3. Recordkeeping Requirements

The recordkeeping requirements are designed to help ensure compliance with the rule's requirements and aid in oversight. A fund that will be required to adopt an 80% investment policy under the final amendments will be required to maintain a written record documenting its compliance under the 80% investment policy provisions of the rule. Specifically, the written records documenting the fund's compliance that these funds will be required to maintain include: (1) the fund's record of which assets are invested in accordance with the investment focus the fund's name suggests (or, as applicable, consistent with the tax treatment suggested by a tax-exempt fund's name) and the basis for including each such asset in the 80% basket; (2) the value of the fund's 80% basket, as a percentage of the value of the fund's assets; (3) the reasons for any departures from the 80% investment policy; (4) the dates that the fund identifies any departures from the 80% investment policy; and (5) any notice sent to the fund's shareholders pursuant to the rule. The records under this requirement must be maintained for at least 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.

These requirements impose burdens on all funds, including those that are small entities. We expect that smaller funds – and more specifically, smaller funds that are not part of a fund complex – may not have recordkeeping systems that will meet all the elements that will be required under the final amendments. Also, while we expect larger funds or funds that are part of a large fund complex to incur higher costs related to the requirements in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we expect a smaller fund to find it more costly, per dollar managed, to comply with the requirements because it will not be able to benefit from a larger fund complex's economies of scale.

4. Disclosure and Reporting Requirements

The requirement for a fund that is subject to the 80% investment policy requirement to define the terms used in the fund's name, including the specific criteria the fund uses to select the investments the term describes, if any, in the fund's prospectus is designed to help investors better understand how the fund's investment strategies correspond with the investment focus that the fund's name suggests as well as to provide additional information about how the fund's management seeks to achieve the fund's objective. The final amendments require funds to tag this disclosure in Inline XBRL.

The final amendments also require funds (other than money market funds and BDCs) that will be required to adopt an 80% investment policy to report certain new information on Form N-PORT: (1) the percentage of the value of the fund's assets that are invested in accordance with the investment focus that the fund's name suggests (or consistent with the tax treatment suggested by a tax-exempt fund's name); (2) with respect to each portfolio investment, whether

the investment is included in the fund's calculation of assets in the fund's 80% basket; and (3) the definitions of the terms used in the fund's name, including the specific criteria the fund uses to select the investments that the term describes, if any. These Form N-PORT reporting requirements are designed to provide investors with information that may allow them to make better investment choices consistent with their investment preferences, as well as to increase the effectiveness of the Commission's oversight of a fund's compliance with the names rule.

These requirements will impose burdens on all funds, including those that are small entities. While we expect larger funds or funds that are part of a large fund complex to incur higher costs related to these requirements in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we expect a smaller fund to find it more costly, per dollar managed, to comply with these requirements because it would not be able to benefit from a larger fund complex's economies of scale. Notwithstanding the economies of scale experienced by larger versus smaller funds, we do not expect the costs of compliance associated with the new Form N-PORT requirements to be meaningfully different for smaller versus larger funds. The costs of compliance vary only based on fund characteristics tied to their name. For example, a fund whose investments move relatively more frequently in and out of the fund's 80% basket may incur a higher burden to comply with the requirement to report whether each portfolio investment is included in the fund's 80% basket, than a fund whose investments' inclusion in the 80% basket is relatively more stable. Furthermore, based on our experience implementing tagging requirements that use the XBRL, we recognize that some funds that will be affected by the requirement, particularly filers with no Inline XBRL tagging experience, likely will incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL. The incremental effect of any fixed costs,

including ongoing fixed costs, of complying with the Inline XBRL requirement may be greater for smaller filers. However, we believe that smaller funds in particular may benefit more from any enhanced exposure to investors that could result from these requirements. If reporting the disclosures in structured data language increases the availability of, or reduces the cost of collecting and analyzing, key information about funds, smaller funds may benefit from improved coverage by third-party information providers and data aggregators.

5. Treatment of UITs

The final rule amendments provide that the 80% investment policy and recordkeeping requirements will apply to UITs only at the time of initial deposit. This modification is designed to accommodate the practical realities that UITs would encounter if required to comply with the new provisions in the final amendments that require periodic review and potential rebalancing of a fund's portfolio. As a result, UITs that have names that are implicated by the final amendments and whose initial deposit occurs after the compliance date of the final amendments will need to adopt an appropriate 80% investment policy, including making such a policy fundamental or providing notice to investors in the event of a change of the policy, if appropriate. However, such UITs will not be required to engage in the monitoring and other requirements associated with the final amendments' temporary departure requirements nor will they be required to keep records under the final amendments beyond the initial deposit. All UITs will be subject to the rule's other requirements under the final amendments, as applicable, as well as those of the Federal securities laws generally, including section 35(d) of the Investment Company Act. This treatment will be available to UITs of all sizes, including smaller UITs.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to our proposal: (1) exempting funds that are small entities from the proposed reporting, recordkeeping, and other compliance requirements, to account for resources available to small entities; (2) establishing different reporting, recordkeeping, and other compliance requirements or frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance and reporting requirements under the proposal for small entities; and (4) using performance rather than design standards.

We do not believe that exempting small funds from the provisions of the final amendments will permit us to achieve our stated objectives. Only those investment companies that have certain names, such as those suggesting an investment focus or particular tax treatment, will be required to comply with most of the aspects of the final amendments. Further, consistent with the current rule, the 80% investment requirement in the final amendments allows a fund to maintain up to 20% of its assets in other investments. A fund seeking maximum flexibility with respect to its investments will continue to be free to use a name that does not require the fund to adopt an 80% investment policy.

We estimate that 82% of funds have investment policies specifying a minimum percentage of investments consistent with a certain investment focus and, of these, approximately 67% have an investment policy requiring at least 80% of fund investments be

consistent with a certain investment focus.[633] This estimate indicates that some funds, including some small funds, will not bear the costs of adopting a new 80% investment policy, though such funds will likely need to update existing policies to account for elements of the final amendments. However, for small funds that will be more significantly affected by the final amendments, providing an exemption for them could subject investors in small funds to a higher degree of risk than investors to large funds that will be required to comply with the 80% investment policy and related elements of the final amendments.

We also do not believe, as a general matter, that it is appropriate to subject small funds to different reporting, recordkeeping, and other compliance requirements or frequency. Similar to the concerns discussed above, if the final rules were to include different requirements for small funds, this could raise investor protection concerns for investors in small funds in that a small fund would not be subject to requirements addressing materially deceptive and misleading fund names that are as robust as those requirements on a large fund. Also, this would result in the Commission and other market participants having less transparency and insight with respect to those smaller funds' 80% investment policies and related investments. However, as discussed in detail above, we do agree that additional time for smaller entities, which would include small funds, to come into compliance with the final rules would be appropriate to the extent that these entities may face additional or different challenges in coming into compliance with the amendments than larger entities. As result, small funds will have an additional six months to come into compliance with the final rules relative to larger entities.

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633 *See supra* footnotes 468 and 469.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the final amendments for small funds, beyond that already required for all funds, would permit us to achieve our stated objectives. Again, this approach would raise investor protection concerns for investors in small funds and, as discussed above, the final amendments apply most of the rule's requirements and corresponding compliance burdens – only to certain fund names that are required to adopt an 80% investment policy.

The costs associated with the final amendments will vary depending on the fund's particular circumstances, and thus the amendments may result in different burdens on funds' resources. In particular, we expect that a fund that has a name that will be required to adopt an 80% investment policy under the final amendments will have higher costs than those that do not. Thus, to the extent a fund that is a small entity has a name that will not require the fund to adopt an 80% investment policy under the final amendments, we believe it will incur relatively low compliance costs. Further, some funds with names that will be newly subject to the 80% investment policy requirement may already have adopted an investment policy that requires them to invest 80% or more of the value of their assets in investments consistent with the name, or otherwise may already have investments that reflect the name's focus totaling 80% or more of the value of the fund's assets. These funds will not have to bear the burden of adjusting their portfolios or changing their name, and the burden of adopting an investment policy consistent with the names rule's requirements also could be relatively lower for these funds. However, we believe that it is appropriate for the costs associated with the final amendments to correlate with the costs of ensuring that the fund's name reflects its investments (and thus the expectations fostered with investors), as opposed to adjusting these costs to account for a fund's size, in light of how the final amendments are designed to further our investor protection objectives.

Finally, with respect to the use of performance rather than design standards, the final amendments generally use performance standards for all funds subject to the amendments, regardless of size. We believe that providing funds with the flexibility permitted in the final amendments with respect to designing 80% investment policies is appropriate because of the fact-specific nature of the investment focus of funds.

STATUTORY AUTHORITY

The Commission is adopting the amendments to rule 35d-1 under the authority set forth in sections 8, 30, 31, 34, 35, 38, 59, and 64 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-33, 80a-34, 80a-37, 80a-58, and 80a-63]. The Commission is adopting amendments to Form N-1A, Form N-2, Form N-8B-2, Form S-6, and Form N-PORT under the authority set forth in sections 8, 30, 35, and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-18, 80a-34, and 80a-37], sections 5, 6, 7, 8, 10, and 19 of the Securities Act of 1933 [15 U.S.C. 77e, 77f, 77g(a), 77h, 77j, and 77s(a)], and sections 10, 13, 15, 23, and 35A of the Exchange Act [15 U.S.C. 78j, 78m, 78o, 78w, and 78*ll*]. The Commission is adopting amendments to rules 11 and 405 of Regulation S-T under the authority set forth in section 23 of the Exchange Act [15 U.S.C. 78w]. The Commission is adopting amendments to rules 485 and 497 under the authority set forth in sections 10 and 19 of the Securities Act [15 U.S.C. 77j and 77s].

List of Subjects

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities

Text of Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78*o*, 78*o*-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

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Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

2. Amend § 230.485 by revising paragraph (c)(3) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

*   *   *   *   *

(c) *   *   *

(3) A registrant's ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit any Interactive Data File (as defined in § 232.11 of this chapter) required by the registration form on which the registrant is filing the post-effective amendment. A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit an Interactive Data File as required by the relevant registration form. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted the Interactive Data File required by the relevant registration form.

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3. Amend § 230.497 by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses - number of copies.

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(b) For unit investment trusts filing on § 274.12 of this chapter (Form N-8B-2) or § 239.16 of this chapter (Form S-6), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus used after the effective

date in connection with such offering shall be filed with the Commission in the exact form in which it was used. A registrant must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the form on which it files its registration statement.

(c) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N-1A), §§ 239.17a and 274.11b of this chapter (Form N-3), §§ 239.17b and 274.11c of this chapter (Form N-4), or §§ 239.17c and 274.11d of this chapter (Form N-6), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used. A registrant must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the form on which it files its registration statement.

(d) After the effective date of a registration statement no prospectus which purports to comply with section 10 of the Act and which varies from any form of prospectus filed pursuant to paragraph (b) or (c) of this section shall be used until 10 copies thereof have been filed with, or mailed for filing to, the Commission. A registrant must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which it files its registration statement.

(e) For investment companies filing on Form N-1A, Form N-3, Form N-4, or Form N-6, after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or

mailed for filing to the Commission. A registrant must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which it files its registration statement.

* * * * *

PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

4. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 80b-4, 80b-6a, 80b-10, 80b-11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

5. Amend § 232.11 by revising the definition of "Related Official Filing" to read as follows:

§ 232.11 Definition of terms used in this part.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which all or part of an Interactive Data File appears as an exhibit or, in the case of a filing on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), Form N-3 (§§ 239.17a and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), Form N-6 (§§ 239.17c and 274.11d of this chapter), Form N-8B-2 (§ 274.12 of this chapter), Form S-6 (§ 239.16 of this chapter), and Form N-CSR (§ 274.128 of this chapter), and, to the extent required by § 232.405 (Rule 405 of Regulation S-T) for a business development company as defined in Section 2(a)(48) of the

Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), Form 10-K (§ 249.310 of this chapter), Form 10-Q (§ 249.308a of this chapter), and Form 8-K (§ 249.308 of this chapter), the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

*   *   *   *   *

6. Amend § 232.405 by:

a. Revising the introductory text;

b. Revising paragraphs (a)(2), (a)(3)(i) introductory text, (a)(3)(ii), and (a)(4);

c. Revising paragraphs (b)(1) introductory text, (b)(2) introductory text, and (b)(2)(iv) and (v);

d. Adding paragraph (b)(2)(vi); and

e. Revising the last sentence in Note 1 to § 232.405.

The revision and addition read as follows.

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), General Instruction F of § 249.311 (Form 11-K), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F-10), § 240.13a-21 of this chapter (Rule 13a-21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K), § 240.17Ad-27(d) of this chapter (Rule 17Ad-27(d) under the Exchange Act), Note D.5 of § 240.14a-101 of this chapter (Rule 14a-101 under the Exchange Act), Item 1

of § 240.14c-101 of this chapter (Rule 14c-101 under the Exchange Act), General Instruction I of § 249.333 of this chapter (Form F-SR), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N-1A), General Instruction I of §§ 239.14 and 274.11a-1 of this chapter (Form N-2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N-3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N-4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N-6), General Instruction 2.(*l*) of § 274.12 of this chapter (Form N-8B-2), General Instruction 5 of § 239.16 of this chapter (Form S-6), and General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N-CSR) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (as defined in § 232.11 of this chapter).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S-K, General Instruction F of § 249.311 (Form 11-K), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F-10), § 240.13a-21 of this chapter (Rule 13a-21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K), Rule 17Ad-27(d) under the Exchange Act, Note D.5 of Rule 14a-101 under the Exchange Act), Item 1 of Rule 14c-101 under the Exchange Act, General Instruction I to §

249.333 of this chapter (Form F-SR), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N-1A), General Instruction I of §§ 239.14 and 274.11a-1 of this chapter (Form N-2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N-3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N-4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N-6), General Instruction 2.(*l*) of § 274.12 of this chapter (Form N-8B-2), General Instruction 5 of § 239.16 of this chapter (Form S-6), or General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N-CSR), as applicable;

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the

Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), General Instruction F of § 249.311 of this chapter (Form 11-K), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F-10), § 240.13a-21 of this chapter (Rule 13a-21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K), Rule 17Ad-27(d) under the Exchange Act, Note D.5 of Rule 14a-101 under the Exchange Act, Item 1 of Rule 14c-101 under the Exchange Act, General Instruction I to § 249.333 of this chapter (Form F-SR), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N-1A), General Instruction I of §§ 239.14 and 274.11a-1 of this chapter (Form N-2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N-3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N-4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N-6); Instruction 2.(*l*) of § 274.12 of this chapter (Form N-8B-2); General Instruction 5 of § 239.16 of this chapter (Form S-6); or General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N-CSR).

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, a separate account (as defined in section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the information set forth in:

* * * * *

(iv) Items 2, 4, 5, 10, 11, and 18 of §§ 239.17c and 274.11d of this chapter (Form N-6);

(v) Any disclosure provided in response to Item 18 of §§ 249.331 and 274.128 of this chapter (Form N-CSR), or

(vi) Item 11 of § 274.12 of this chapter (Form N-8B-2) pursuant to Instruction 2, including to the extent required by § 239.16 of this chapter (Form S-6); as applicable.

* * * * *

Note 1 to § 232.405:

* * *

For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(*l*) of Form N-8B-2 (§ 274.12 of this chapter), General Instruction 5 of Form S-6 (§ 239.16 of this chapter), and General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239 — FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78*o*-7 note, 78u-5, 78w(a), 78*ll*, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and sec. 71003 and sec. 84001, Pub. L. 114-94, 129 Stat. 1321, unless otherwise noted.

*   *   *   *   *

8. Amend Form S-6 (referenced in §§ 239.16) by adding General Instruction 5.

Note: Form S-6 is attached as Appendix A to this document. Form S-6 will not appear in the Code of Federal Regulations.

*   *   *   *   *

PART 270 – RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

9. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq*., 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

*   *   *   *   *

10. Section 270.35d-1 is revised to read as follows:

§ 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 environmental, social, or governance factors), unless:

(i) The fund has adopted a policy to invest, under normal circumstances, 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; 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, under normal circumstances, 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, under normal circumstances, 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) The fund 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, as applicable, are no longer met, the fund must make future investments in a manner that will bring the fund into compliance with 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;

(ii) 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) 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 the investment focus that the fund's name suggests.

(3) A fund must maintain written records documenting its compliance under paragraphs (a) and (b) of this section, 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 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. 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) of this section, 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, 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) 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) of this section, or as described in paragraph (b)(1)(iii) of this

section, the fund must keep records documenting: the date of any departure from the policies described in paragraphs (a)(2)(i) and (a)(3)(i) 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 (d) 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.

(c) *Effect of compliance with policy adopted under paragraph (a)(2)(i) or (a)(3)(i).* 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) *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.

(e) *Unit investment trusts.* The requirements of paragraphs (a)(2)(i), (a)(3)(i), and (b)(3) of this section shall apply to any unit investment trust (as defined in section 4(2) of the Act (15 U.S.C. 80a-4(2)) only at the time of 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:

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.

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

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).

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

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.

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.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The authority for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78*o*(d), 80a-8, 80a-24, 80a-26, 80a-29, and 80a-37 unless otherwise noted.

12. Amend Form N-1A (referenced in §§ 239.15A and 274.11A) by revising paragraph (a)(1) of Item 4 and adding new instruction 8 to paragraph (b)(1) of Item 9.

Note: Form N-1A is attached as Appendix B to this document. Form N-1A will not appear in the Code of Federal Regulations.

13. Amend Form N-2 (referenced in §§ 239.14 and 274.11a-1) by revising Item 8.

Note: Form N-2 is attached as Appendix C to this document. Form N-2 will not appear in the Code of Federal Regulations.

14. Amend Form N-8B-2 (referenced in § 274.12) by adding new General Instruction 2.(*l*) and by revising the Instruction to Item 11.

Note: Form N-8B-2 is attached as Appendix D to this document. Form N-8B-2 will not appear in the Code of Federal Regulations.

15. Amend Form N-PORT (referenced in § 274.150) by revising General Instruction A, Part B, and Part C.

Note: Form N-PORT is attached as Appendix E to this document. Form N-PORT will not appear in the Code of Federal Regulations.

By the Commission.

Dated: September 20, 2023.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form S-6

Form S-6

*   *   *   *   *

GENERAL INSTRUCTIONS

*   *   *   *   *

Instruction 5. Interactive Data

(a) An Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by § 232.405 of this chapter (Rule 405 of Regulation S-T) for any registration statement or post-effective amendment thereto filed on Form S-6 that includes or amends information provided in response to Instruction 2 to Item 11 of Form N-8B-2 (as provided on this Form pursuant to Instruction 1(a) of the Instructions as to the Prospectus of this Form).

(1) Except as required by paragraph (a)(2), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(2) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of § 230.485 of this chapter (Rule 485 under the Securities Act), the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.

(b) An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any form of prospectus filed pursuant to paragraphs (b) or (d) of Rule 497 under the Securities Act that includes information provided in response to Instruction 2 to Item 11 of Form N-8B-2 (as provided on this Form pursuant to Instruction 1(a) of the Instructions as to the Prospectus of this Form) that varies from the

registration statement. The Interactive Data File must be submitted with the filing made pursuant to Rule 497.

(c) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

*   *   *   *   *

Appendix B—Form N-1A

Form N-1A

*   *   *   *   *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) Principal Investment Strategies of the Fund.

(1) Based on the information given in response to Item 9(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

Instruction: If the Fund is subject to paragraph (a)(2)(i) or (a)(3)(i) of rule 35d-1 [17 CFR 270.35d-1], the Fund's disclosure provided in response to Item 4(a)(1) must summarize the definitions of the terms used in its name, including the specific criteria the Fund uses to select the investments the term describes, if any. For purposes of this instruction, "terms" means any word or phrase used in a Fund's name, other than any trade name of the Fund or its adviser, related to the Fund's investment focus or strategies.

*   *   *   *   *

Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings

*   *   *   *   *

(b)   *   *   ***Instructions**

*　　*　　*

8. If the Fund is subject to paragraph (a)(2)(i) or (a)(3)(i) of rule 35d-1 [17 CFR 270.35d-1], the Fund's disclosure provided in response to Item 9(b)(1) must include the definitions of the terms used in its name, including the specific criteria the Fund uses to select the investments the term describes, if any. For purposes of this instruction, "terms" means any word or phrase used in a Fund's name, other than any trade name of the Fund or its adviser, related to the Fund's investment focus or strategies.

Appendix C—Form N-2

Form N-2

*   *   *   *   *

Part A – INFORMATION REQUIRED IN A PROSPECTUS

*   *   *   *   *

Item 8. General Description of the Registrant.

*   *   *   *   *

2.   *   *   *

b.   *   *   *

Instructions

1. Concentration, for purposes of this Item, is deemed 25 percent or more of the value of the Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with the Registrant's name.

2. If the Fund is subject to paragraph (a)(2)(i) or (a)(3)(i) of rule 35d-1 [17 CFR 270.35d-1], the Fund's disclosure provided in response to Item 8(2)(b)(2) must include definitions of the terms used in its name, including the specific criteria the Fund uses to select the investments the term describes, if any. For purposes of this instruction, "terms" means any word or phrase used in a Fund's name, other than any trade name of the Fund or its adviser, related to the Fund's investment focus or strategies.

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Appendix D—Form N-8B-2

Form N-8B-2

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GENERAL INSTRUCTIONS FOR FORM N-8B-2

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2. Preparation and Filing of Registration Statement

(*l*) *Interactive Data*

(1) An Interactive Data File as defined in rule 11 of Regulation S-T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T [17 CFR 232.405] for any registration statement on Form N-8B-2 that includes information provided in response to Item 11 pursuant to Instruction 2 of that Item. The Interactive Data File must be submitted with the filing to which it relates on the date such filing becomes effective.

(2) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

*   *   *   *   *

II. GENERAL DESCRIPTION OF THE TRUST AND SECURITIES OF THE TRUST

*   *   *   *   *

Information Concerning the Securities Underlying the Trust's Securities

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Instructions:

1. The registrant need disclose information only with respect to an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the registrant has issued more than one class or series of securities, the requested information must be disclosed for the class or series that has securities that are being registered.

2. If the trust is subject to paragraph (a)(2)(i) or (a)(3)(i) of rule 35d-1 [17 CFR 270.35d-1], the trust's disclosure provided in response to item 11 must include definitions of the terms used in its name, including the specific criteria used to select the investments the term describes, if any. For purposes of this instruction, "terms" means any word or phrase used in a trust's name, other than any trade name of the trust or its depositor, related to the trust's investment focus.

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Appendix E—Form N-PORT

Form N-PORT

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GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-PORT

Form N-PORT is the reporting form that is to be used for monthly reports of Funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1-9 under the Act (17 CFR 270.30b1-9). Funds must report information quarterly about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of each month, other than the information reported in Items B.11 and C.2.e, which Funds must report quarterly about their portfolios and each of their portfolio holdings as of the last business day, or calendar day, of the third month of the quarter. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Reports on Form N-PORT must disclose portfolio information as calculated by the fund for the reporting period's ending net asset value (commonly, and as permitted by rule 2a-4, the first business day following the trade date). A Fund must maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month, other than the information reported in Items B.11 and C.2.e which is required to be maintained no later than 30 days after the end of each quarter. Such information shall be treated as a record under section 31(a)(1) of the Act and rule 31a-1(b) thereunder subject to the

requirements of rule 31a-2(a)(2). Reports on Form N-PORT for each month in each fiscal quarter of a fund must be filed with the Commission no later than 60 days after the end of such fiscal quarter. If the due date falls on a weekend or holiday, the filing deadline will be the next business day.

A Fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A Fund that files an amendment to a previously filed report must provide information in response to all items of Form N-PORT, regardless of why the amendment is filed.

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Part B: Information About the Fund

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Item B.11 Investment Company Act Names Rule Investment Policy. If the Fund is required to adopt a policy as described in rule 35d-1(a)(2)(i) or (a)(3)(i) [17 CFR 270.35d-1(a)(2)(i) or (3)(i)], provide the following:

a. The definitions of the terms used in the Fund's name, including the specific criteria the Fund uses to select the investments the term describes, if any; and

b. The value of the Fund's 80% basket, as defined in rule 35d-1(g)(1), as a percentage of the value of the Fund's assets.

Instruction to Item B.11:

Consistent with rule 35d-1(g)(2), if the Fund uses a derivatives instrument's notional amount (which must be converted to 10-year bond equivalents for interest rate derivatives and delta adjusted for options contracts) and/or values a physical short position using the value of the asset sold short, for purposes of determining the fund's compliance with an investment policy

adopted under rule 35d-1(a)(2)(i) or (a)(3)(i)(A), the percentage that the Fund reports in response to Item B.11.b must reflect the use of notional amounts with certain adjustments (and/or the value of the asset sold short) as set forth above. This percentage also must reflect any reduction of the value of the Fund's assets resulting from, as applicable, the fund's exclusion of cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less, closed-out derivatives positions, and currency derivatives instruments, each as provided in rule 35d-1(g)(2).

*   *   *   *   *

Part C: Schedule of Portfolio Investments

*   *   *   *   *

Item C.2. Amount of each investment

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e. If the Fund is required to adopt a policy as described in rule 35d-1(a)(2)(i) or (a)(3)(i) [17 CFR 270.35d-1(a)(2)(i) or (3)(i)], is the investment included in the Fund's 80% basket, as defined in rule 35d-1(g), as applicable? [Y/N]

*   *   *   *   *