SECURITIES AND EXCHANGE COMMISSION

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

[Release No. 33-11067; 34-94981; IC-34593; File No. S7-16-22]

RIN: 3235-AM72

Investment Company Names

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is proposing to amend the rule under the Investment Company Act of 1940 (the "Investment Company Act" or the "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 proposed amendments to this rule are designed to increase investor protection by improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission also is proposing 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 proposed names-related regulatory requirements.

DATES: Comments should be received on or before August 16, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (https://www.sec.gov/rules/submitcomments.htm); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-16-22 on the subject line;

Paper Comments:

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

All submissions should refer to File Number S7-16-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Pamela Ellis, Mykaila DeLesDernier, Bradley Gude, Senior Counsels; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551-6792, Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment: 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 239.13 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 name of a registered investment company or business development company ("BDC") is a means of communicating information about the fund to investors and is also an important marketing tool for the fund.[1] While the Commission has often cautioned against investors relying on a fund's name as the sole source of information about the fund's investments and risks, it has also recognized that the name of a fund may communicate a great deal to an investor.[2] A fund's name is often the first piece of fund information investors see and, while

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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. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)] ("Names Rule Adopting Release"); *see also* Request for Comments on Fund Names, Investment Company Act Release No. 33809 (Mar. 2, 2020) [85 FR 13221

investors should go beyond the name itself and look closely at a fund's underlying disclosures, a fund's name can have a significant impact on their investment decisions. These considerations provided the policy basis underlying the Commission's adoption of rule 35d-1 under the Act, the "names rule," in 2001.[3]

Congress provided the Commission with rulemaking authority to address materially deceptive or misleading fund names, recognizing the concern that investors may rely inordinately on a fund's name to determine its investments and risks.[4] The names rule, in turn, helps ensure that a fund's name does not misrepresent the fund's investments and risks. Consequently, the rule helps to ensure that investors' assets in funds are invested in accordance with their reasonable expectations based on the fund's name.[5] The role of this rule remains important and distinct from other disclosure requirements, in that fund names are subject to the unique practical constraint of being concise by necessity, but still convey significant information

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(Mar. 6, 2020)] ("2020 Request for Comment"), at n.11 and accompanying text. The comment letters on the 2020 Request for Comment (File No. S7-04-20) are available at https://www.sec.gov/comments/s7-04-20/s70420.htm. All references to comment letters in this release are available in this comment file.

3 Names Rule Adopting Release, *supra* footnote 2.

4 *See id.* at n.3 and accompanying text ("In amending section 35(d), Congress reaffirmed its concern that investors may focus on an investment company's name to determine the company's investments and risks, and recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.").

5 *See id.* at text preceding n.48; *see also, e.g.,* Comment Letter of the CFA Institute (May 5, 2020) ("CFA Institute Comment Letter"); Comment Letter of Chris Barnard (Mar. 9, 2020) ("Barnard Comment Letter"); Comment Letter of the University of Miami School of Law Investor Rights Clinic (Apr. 27, 2020) ("IRC Comment Letter"). *But see* ICI Comment Letter I (emphasizing that the Commission noted when it adopted the names rule that investors should not rely on a fund's name as the sole source of information about that fund).

to an investor. However, as the fund industry has developed, and practices regarding names rule compliance have continued to evolve over the past two decades, we believe that improvements to the names rule are appropriate for the rule to continue to meet this purpose.[6] For example, interpretive issues as to when a fund is subject to the names rule have raised questions about the rule's application with respect to particular fund names that could mislead investors about the fund's investment focus, such as when a fund's name suggests investment in companies that meet certain environmental, social, or governance ("ESG") criteria. Competitive market pressures create incentives for asset managers to include terminology in their funds' names designed to attract investor assets. We believe it is critical that fund names that suggest certain information about a fund's investments and attendant risks do so accurately. Under certain circumstances, the current structure of the rule also may permit funds to depart from the investment focus suggested by their name over time, which can deprive investors of the protections of the rule.

The rule also is not currently well-suited to address ways in which the fund industry has evolved since its adoption, both in terms of funds' increasing use of derivatives to further their investment strategies and investors' increasing election for the electronic delivery of fund

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[6] *See* Comment Letter of Allianz Global Investors U.S. Holdings LLC (May 27, 2020) ("AllianzGI Comment Letter"); *see also* Comment Letter of the Consumer Federation of America (May 12, 2020) ("CFA Comment Letter") (arguing that funds "clearly understand both how important fund names can be in communicating and advertising to investors and that fund names can influence investor decisions," and, as a result, funds "are very careful to choose names that are appealing to investors").

documents, such as prospectuses and shareholder reports. We are proposing to amend the names rule to address these and other concerns.

A. Overview of Section 35(d) of the Act and the Names Rule

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.[7] This section of the Act further authorizes the Commission to define such names or titles as are materially deceptive or misleading. Congress adopted this provision due to concerns that investors may focus on an investment company's name to determine the company's investment objectives and level of risk, and recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading fund names.[8]

The names rule generally requires that if a fund's name suggests a focus in a particular type of investment (*e.g.*, ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund), or in investments in a particular industry (*e.g.*, the ABC Utilities Fund or the XYZ Health Care Fund), or geographic focus (*e.g.*, the ABC Japan Fund or XYZ Latin America Fund), 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

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7 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].

8 *See* S. Rep. No. 293, 104th Cong., 2d Sess. 8-9 (1996).

name.[9] The names rule imposes a similar 80% investment policy 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").[10] 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.[11] However, an 80% investment policy relating to a tax-exempt fund name must be a fundamental policy. Further, unit investment trusts ("UITs") that have made their initial deposit prior to July 31, 2002 are not required to comply with the rule's requirements to adopt an 80% investment policy.[12]

Under the rule, a fund is required to invest in accordance with its 80% investment policy "under normal circumstances." In addition, the rule provides that a fund must apply its 80% investment policy at the time the fund invests its assets. If, subsequent to an investment, the

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9 "Assets" is currently defined in the names rule as net assets, plus the amount of any borrowings for investment purposes; *see also* section 2(a)(41) of the Act [15 U.S.C 80a-2(a)(41)] (defining "value").

10 Such a fund must adopt a fundamental policy: (1) to invest at least 80% of the value of its assets in investments whose income is exempt from federal income tax or from both federal and state income tax, or (2) to 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.

11 Under the Act, a fund may not depart 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 currently 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 proposing a parallel definition of "80% basket" in the proposed amendments to the names rule, and when referring to the proposed rule, references to a fund's "80% basket" refer to the proposed definition of this term. *See* proposed rule 35d-1(g)(1).

12 July 31, 2002 was the compliance date of the rule. *See* Names Rule Adopting Release, *supra* footnote 2. Based upon a review of Morningstar data as of October 2021, 222 currently-active UIT series were formed before this date.

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 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. These notices are required to be provided in plain English in a separate written document. A fund must also include a prominent statement reading "Important Notice Regarding Change in Investment Policy," or a similar clear and understandable statement, in bold-face type.

In adopting the names rule, the Commission made clear that it is not intended to be a safe harbor for materially deceptive or misleading names.[13] The prohibitions of section 35(d) and, indeed, 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.[14] A name that would lead a reasonable investor to conclude that the fund invests in a manner that is inconsistent with the fund's actual or intended investments or the risks of those investments would be

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13 *See* Names Rule Adopting Release, *supra* footnote 2, at n.16 and accompanying text.

14 *See, e.g.,* 15 U.S.C. 77q(a) and 17 CFR 240.10b-5(b) (prohibiting making untrue statements of material fact or making material omissions to obtain money or property in the offer or sale of securities or in connection with the purchase or sale of a security); 17 CFR 230.156 (prohibiting sales literature that is materially misleading in connection with the offer or sale of securities issued by an investment company); and 17 CFR 275.206(4)-8 (prohibiting investment advisers to pooled investment vehicles from making untrue statements of material fact or making material omissions to an investor or prospective investor in the pooled investment vehicle); *see also* In re Ambassador Capital Management, LLC, and Derek H. Oglesby, Initial Decision Rel. No. 672 (Sep. 19, 2014) (made final in Investment Company Act Release No. 31371 (Dec. 11, 2014)) (determining an adviser caused violations by a fund of sections 34(b) and 35(d) of the Act by causing violations of 17 CFR 270.2a-7 while still holding the fund out as a money market fund); Names Rule Adopting Release, *supra* footnote 2, at n.44 and accompanying text.

deceptive or misleading even if the fund is in compliance with its 80% investment policy.[15] 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 would include section 35(d) and the names rule.[16] Fund compliance officers are required to include a discussion of any material compliance matter involving the names rule in their required annual reports to the board addressing the operation of funds' compliance policies and procedures.[17]

B. Challenges Regarding Application of the Names Rule and Need for Modernization

The names rule has not been amended following its adoption in 2001, and since that time, the staff, members of the fund industry, and investor advocacy groups have identified a number of challenges regarding the application of the names rule that could have investor protection implications. The Commission published a Request for Comment on Fund Names in March 2020, which sought public comment on the framework for addressing funds' names, particularly in light of market and other developments since the rule's adoption.[18]

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15 Names Rule Adopting Release, *supra* footnote 2, at nn.16 and 44 and accompanying text; *see also* In the Matter of the Private Investment Fund for Governmental Personnel, Inc., Investment Company Act Release No. 2474 (Jan. 18, 1957) ("[The Commission] must take into account the effect which the name may have not only on the sophisticated and informed investor, but also on the unwary and the ignorant.... Actual deception of investors need not be shown; it is sufficient that the name of the company or its securities be found to have a tendency or capacity to deceive or mislead. Nor is it necessary that we sample public opinion to determine what the name in question may mean to investors...").

16 *See* 17 CFR 270.38a-1 ("rule 38a-1").

17 *See* rule 38a-1(a)(4)(iii).

18 2020 Request for Comment, *supra* footnote 2.

Commenters generally agreed that a fund's name is an 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 in light of their goals in communicating to investors.[19] They also agreed that the names rule provides important investor protections and stated that it has been largely effective in regulating misleading and deceptive fund names, but some commenters suggested further improvements.[20] Some provided context as to just how much the investment management industry has changed in the twenty years since the names rule was adopted and suggested updates may be appropriate. For example, commenters stated that registered investment companies manage considerably more assets than they did in 2001 ($22.8 trillion total net assets as of March 2020 compared to $7.2 trillion in 2001) and that the variety of fund types and fund strategies has increased since 2001, with exchange-traded funds ("ETFs") and funds of funds having grown since then and funds such as emerging market, international, and alternative strategy funds having attracted substantial amounts of investment.[21] The Commission staff have

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19 *See, e.g.,* Comment Letter of Aaron Cantrell, Head of Economic Research, Record Currency Management and Isabel Estevez, PhD Candidate, University of Cambridge (May 5, 2020) ("Cantrell and Estevez Comment Letter"); CFA Comment Letter; ICI Comment Letter I; AllianzGI Comment Letter.

20 *See, e.g.,* Comment Letter of Invesco Ltd. (May 5, 2020) ("Invesco Comment Letter"); Comment Letter of the Public Investors Advocate Bar Association (Apr. 15, 2020) ("PIABA Comment Letter"); CFA Institute Comment Letter.

21 *See* ICI Comment Letter I; *see also* SIFMA AMG Comment Letter (stating that there have been significant evolution and innovation in the asset management industry since 2001); Comment Letter of T. Rowe Price (May 21, 2020) ("T. Rowe Price Comment Letter") (stating that since the adoption of the names rule, funds have "expanded their strategies, increased the use of derivatives and new types of financial instruments, and expanded the diversity of products available to investors"); and Comment Letter of State Street Global Advisors (May 5, 2020) ("SSGA Comment Letter") ("[t]he investment management industry has changed considerably since the Names Rule was adopted in 2001").

also observed an increase in filings by funds with investment focuses in ESG or "thematic" areas such as cybersecurity, blockchain, and artificial intelligence. Further, as highlighted in the 2020 Request for Comment, since the Commission adopted the names rule there has been significant growth in "passive management" funds that seek to replicate the return on a particular index.[22]

The current scope of the rule has created interpretive issues. 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.[23] 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. Certain funds with names that may raise the same types of concerns as those that the rule's current scope directly addresses may therefore not have adopted an 80% investment policy.

The potential investor protection issues that these interpretive scoping considerations raise are particularly evident in the treatment of funds with names that suggest an investment focus in companies that meet certain ESG standards. Investors may reasonably expect funds with

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[22] 2020 Request for Comment, *supra* footnote 2, at n.22; *see also* Investment Company Institute, 2021 Fact Book: A Review of Trends and Activities in the Investment Company Industry, at 48-49, *available at* https://www.ici.org/system/files/2021-05/2021_factbook.pdf ("2021 ICI Fact Book") (stating that at the end of 2020, index mutual funds and index ETFs together had $9.9 trillion in total net assets and accounted for 40% of assets in long-term funds, as compared to 19% at the end of 2010).

[23] Names Rule Adopting Release, *supra* footnote 2, at n.43 and accompanying text. ("In addition, the rule does not apply to fund names that incorporate terms such as "growth" and "value" that connote types of investment strategies as opposed to types of investments.")

these names to invest in companies with policies, practices, or characteristics that are consistent with these standards, particularly when the fund's name contains the term "ESG" or similar terminology (such as "sustainable," "green," or "socially responsible").[24] As discussed in more detail below, this type of terminology may be particularly powerful in fund names, as funds can attract significant interest and stand out to investors by using these terms in their names.[25] The proposed amendments to the names rule would address fund names with ESG and similar terminology by providing that funds whose names include these terms are subject to the rule's 80% investment policy requirement, and by defining certain uses of ESG terminology in fund names as materially deceptive and misleading. This would help to prevent potential "greenwashing" in fund names by requiring a fund's investment activity to support the investment focus its name communicates so that investors will not be deceived or misled by the fund's name. Interpretive positions taken by funds that these kinds of names are not subject to the rule have resulted in investors in these funds not receiving these protections.

The 2020 Request for Comment also asked questions exploring whether the names rule is as effective as it could be at addressing changes to funds' portfolios over time, for example by asking whether compliance with the rule's 80% investment policy requirements should continue to be determined as of the time of investment, as opposed to a fund maintaining the required level of investment at all times. A fund in some circumstances can drift away over time from the

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[24] *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) ("ESG Proposing Release"), published elsewhere in this issue of the Federal Register.

[25] *See infra* footnote 124 and accompanying text.

type of investment focus that the fund's name suggests.[26] The current names rule may not be as effective as it could be at addressing changes in funds over time, both due to possible "drift" and the current rule's allowing a fund to comply with its 80% investment policy only under "normal circumstances."

The 2020 Request for Comment also raised the issue that, in the years following the names rule's adoption in 2001, funds have increasingly used derivatives and other financial instruments to execute their strategies.[27] The Commission has interpreted the names rule to permit funds to include synthetic instruments, such as derivatives, in the fund's 80% basket if the instrument has economic characteristics similar to the securities included in the 80% basket.[28] However, the Commission has not specifically addressed how to include a derivatives instrument in that calculation. This, in turn, may have implications for whether a fund's name accurately reflects the economic reality of the fund's sources of returns and risk.

Lastly, the rule's requirements for delivering notices of changes to a fund's investment policy are worded in a way that could suggest that funds must deliver these notices in paper. For

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26 This drift, however, currently may be limited in that any future investment must be made in a manner that will bring the fund into compliance with the 80% investment requirement. *See* rule 35d-1(b).

27 *See* 2020 Request for Comment, *supra* footnote 2, at 7-8; *see also, e.g.*, Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Release No. 33704 (Nov. 25, 2019) [85 FR 446 (Jan. 24, 2020)] 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 Rule Adopting Release").

28 Names Rule Adopting Release, *supra* footnote 2, at section II.A.1.

example, the rule includes requirements on the envelope in which the notice is delivered. A number of commenters raised this issue given many investors have elected to receive fund materials electronically, stating that the rule should provide funds with more flexibility on delivery method.[29] We believe that we could provide greater specificity about the application of the notice requirement to investors who have elected electronic delivery.[30]

C. Overview of Rule Proposal

After consideration of these issues, we are proposing amendments to the names rule to modernize and enhance the investor protections that it currently provides.

- *Expansion of Scope.* We are proposing to 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 would include, for example, fund names with terms indicating that the fund's investment decisions incorporate one or more ESG factors.
- *Changes Over Time and Temporary Departures from a Fund's 80% Investment Policy.* To address concerns as to whether the rule effectively addresses changes to fund names and portfolios over time and about when a fund must be in compliance with its 80% investment policy, we are proposing amendments to the current requirement that a fund's policy apply at the time of investment, and "under normal circumstances." Instead, the proposed amendments specify the particular

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29 *See, e.g.,* Fidelity Comment Letter; Invesco Comment Letter; ICI Comment Letter I.

30 *See infra* footnote 136.

circumstances under which a fund may depart from its 80% investment policy, including specific time frames for getting back into compliance.

- *Derivatives.* To address the rule's application to derivatives investments, we are proposing to amend it to require funds to use a derivatives instrument's notional amount, rather than its market value, for the purpose of determining the fund's compliance with its 80% investment policy. Also, we are proposing to amend the names rule to address the derivatives instruments that a fund may include in its 80% basket.
- *Unlisted Closed-End Funds and BDCs.* We are proposing to require that 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, must make its 80% investment policy a fundamental policy in all cases. As a result, these funds would not be permitted to change their 80% investment policies without a shareholder vote. This proposed amendment is meant to address investor protection concerns regarding funds that can change their 80% investment policies without shareholders having the ability to vote on the change or readily exit the fund.
- *Enhanced Prospectus Disclosure.* We also are proposing amendments to funds' prospectus disclosure requirements that would 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.* We are proposing effectively to 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.

- *Materially Deceptive and Misleading Use of ESG Terminology.* The use of ESG or similar terminology in a fund's name would deceive and mislead investors where the identified ESG factors do not play a central role in the fund's strategy. Accordingly, we would define the names of "integration funds" as materially deceptive or misleading if the name indicates that the fund's investment decisions incorporate one or more ESG factors. For purposes of this release, an integration fund is a fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but such 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.
- *Modernization of Notice Requirement.* We are further proposing to update the names rule's notice requirement to expressly address funds that use electronic delivery methods to provide information to their shareholders. The proposed amendments also would require notices to describe not only a change in the fund's 80% investment policy, but also a change to the fund's name that accompanies the investment policy change.
- *Form N-PORT Reporting Requirements.* We are proposing amendments to Form N-PORT to require greater transparency on how fund investment selection methods match the investment focus that the fund's name suggests. These proposed amendments would include a new reporting item regarding a fund's names rule compliance. They also would include a new reporting item requiring a fund 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.

- *Recordkeeping.* The proposed amendments would require funds that must adopt an 80% investment policy to adhere to recordkeeping requirements that are designed to provide the Commission and staff, as well as the fund's compliance personnel, the ability to evaluate the fund's compliance with the rule's requirements.

  Funds that do not adopt an 80% investment policy would be required to maintain a written record of their analysis that such a policy is not required under the names rule.

II. DISCUSSION

A. 80% Investment Policy Requirement

1. Names Suggesting an Investment Focus

We are proposing to broaden the scope of the names rule's current 80% investment policy requirement also to apply to fund names that include terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics.[31] The proposed amendments provide as examples fund names with terms such as "growth" or "value," or terms indicating that the fund's investment decisions incorporate one or more ESG factors.[32] This would be in addition to fund names that currently require an 80% investment policy, which

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31 We are also proposing to add BDCs to the definition of "fund" in the rule. *See* proposed rule 35d-1(g)(5) (defining "fund").

32 Proposed rule 35d-1(a)(2). The term "ESG" encompasses terms such as "socially responsible investing," "sustainable," "green," "ethical," "impact," or "good governance" to the extent they describe environmental, social, and/or governance factors that may be considered when making an investment decision.

are funds whose names suggest a focus in a particular type of investments or industry, or in particular countries or geographic regions, or those that suggest certain tax treatment.

This scope expansion is designed to help ensure that fund names that communicate to investors that the fund focuses its investments in a particular way are addressed by the rule. The names rule is designed to ensure that a fund's investment activity supports the investment focus its name communicates and, thus, the investor expectations the name creates.[33] The proposed scope expansion recognizes that even where a fund's name could be construed as referring to an investment strategy, it nevertheless can also connote an investment focus, and we believe this connotation is likely to be materially deceptive and misleading unless supported by an 80% investment policy.[34] That is, 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.[35] Further, as we note below, academic research indicates that a

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33 As used in this release, consistent with proposed 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. As discussed in more detail below, under the proposed amendments, where a fund's name suggests an investment focus that has multiple elements, the fund's 80% investment policy must address each element.

34 *See supra* paragraph accompanying footnote 23.

35 Distinguishing whether a term connotes a "strategy" versus a "type of investment" can be a subjective determination, prone to second guessing, and the categories of "strategy" versus "type of investments" are not mutually exclusive. Interpretive questions caused by these issues draw Commission resources to address. For example, the Division of Investment Management's Disclosure Review and Accounting Office staff spends a significant amount of time and attention on names rule compliance issues. We also believe that the proposal would address concerns raised by commenters regarding inconsistent treatment across funds in interpreting "strategy" by expanding the rule's coverage, rendering moot the need to determine whether a fund name describes a type of investment versus an investment strategy. *See, e.g.*, SIFMA AMG Comment Letter; T. Rowe Price Comment Letter.

significant number of funds follow an investment strategy that does not align with the investment strategy identified in the fund's name and, thus, we believe that the proposed scope expansion would better define and help prevent materially deceptive and misleading fund names in light of the investor protection concerns that this practice raises.[36]

Investors' expectations as to the composition of a fund's portfolio can result even when investment-focus-suggesting terms used in a fund's name may have more than one reasonable definition. For example, terms like "green" or "sustainable" may be more subjective than a term like "large cap equity" and thus not always viewed as referring to a "type" of investment. But these terms still communicate to investors that the fund will concentrate in investments that the fund considers "green" or "sustainable." Current fund practices are mixed on how funds understand the scope of the names rule, in that some funds consider certain terminology in their names to require an 80% investment policy under the rule, while others do not.[37]

Some commenters responding to the 2020 Request for Comment supported an approach similar to our proposal.[38] Some of these commenters asserted that many investors often rely on fund names, rather than disclosures such as those concerning the fund's objective, strategies, and risks, when making an investment decision and that fund managers purposefully adopt names designed to draw interest in their fund.[39] Some also stated that funds with certain names not currently required to adopt an 80% investment policy can often connote an investment focus to

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36 *See infra* footnote 165 and accompanying text.

37 *See* ICI Comment Letter I.

38 *See, e.g.,* Crowley Comment Letter; Silver Comment Letter; CFA Comment Letter.

39 *See* IRC Comment Letter; Silver Comment Letter; CFA Comment Letter.

investors and, therefore, can have the effect of misleading or deceiving investors.[40] Commenters similarly said the inclusion of "buzzwords" in funds' names can "give the illusion of safety or preservation of capital as objectives."[41] One commenter also stated that investors do not make a distinction between "strategies" and "types of investments" when making an investment decision and, instead, will assume that the fund will invest in the ways suggested by the name.[42]

Other commenters objected to any expansion of the rule to require an 80% investment policy for fund names that suggest an investment strategy.[43] These commenters' concerns generally centered around perceived complexity and subjectivity in determining what assets are appropriate for the 80% basket. Specifically, these commenters argued that investment strategies are too subjective to be quantifiably measured in an asset-based test like the 80% investment policy requirement and that there can often be many investment methods to achieve the same strategy.[44] A number of commenters raised these points specifically in discussing an approach

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40 *See* PIABA Comment Letter ("PIABA contends that the Names Rule should apply to the investment strategy of a fund, particularly where the investment strategy entails a high degree of risk. The terms "growth" and "value" should not [be] used to mislead investors as to aggressive, high risk funds."); CFA Comment Letter; *see also* CFA Institute Comment Letter (stating that the rule is limited in its effectiveness but that it should not be expanded to cover strategies).

41 *See* Silver Comment Letter; *see also* PIABA Comment Letter (discussing funds—registered funds as well as hedge funds—that have been marketed using language such as "high-grade" although the funds employ risky (including leveraged) investment strategies); CFA Comment Letter.

42 *See* CFA Institute Comment Letter.

43 *See, e.g.,* SIFMA AMG Comment Letter; Comment Letter of Capital Research and Management Company (May 5, 2020) ("Capital Group Comment Letter"); ICI Comment Letter I. *But see, e.g.,* CFA Comment Letter; Practus Comment Letter; PIABA Comment Letter; MSCI Comment Letter (arguing that names suggesting strategies should be subject to the 80% investment policy requirement).

44 *See, e.g.,* Nia Impact Capital Comment Letter (stating that the terms "sustainable" and "ESG" are "still quite subjective in nature"); SIFMA AMG Comment Letter; T. Rowe Price Comment

that would require funds with ESG terminology in their names to adopt an 80% investment policy.[45] Some commenters also stated that application of the 80% investment policy requirement to a strategy could lead to standardization in funds' investment portfolios that is not market-driven and limit fund flexibility to change strategies in response to market changes or events.[46] For these reasons, a number of commenters suggested that fund disclosure would be a more appropriate tool for investors to educate themselves about the strategy better, rather than requiring funds whose names describe a strategy to adopt an 80% investment policy.[47]

As discussed above, we believe that fund names included in the proposed expanded scope—such as names with terms like "growth," "value," or "sustainable" where a fund may not have adopted an 80% investment policy under the current rule—communicate to investors that the fund will concentrate in investments that the fund believes have those particular characteristics. The proposed amendment also would apply to other fund names that historically may have not required an 80% investment policy (depending on the context), such as names that

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Letter; *see also* CFA Comment Letter (arguing that while the rule should apply to strategies, a different approach than an 80% investment policy should be taken).

45 *See, e.g.*, Cantrell & Estevez Comment Letter; Credit Suisse Comment Letter; Invesco Comment Letter. Some commenters also recommended avoiding prescriptive definitions of terms like "ESG" and sustainable." *See, e.g.*, BlackRock Comment Letter; Cantrell & Estevez Comment Letter; Ceres Comment Letter. *But see*, *e.g.*, Beirbaum Comment Letter; Global Affairs Associates Comment Letter; Janain Comment Letter (each maintaining that funds that include ESG terms or similar terminology in their names should be subject to the requirement to adopt an 80% investment policy).

46 *See* Capital Group Comment Letter; ICI Comment Letter I; Invesco Comment Letter; SIFMA AMG Comment Letter.

47 *See* SIFMA AMG Comment Letter; Capital Group Comment Letter; T. Rowe Price Comment Letter.

include terms like "global," "international," "income," or "intermediate term (or similar) bond."[48]

Conversely, 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 under the proposal. For example, these would include names that reference characteristics of a fund's portfolio as a whole, or that reference elements of an investment thesis without specificity as to the particular characteristics of the component portfolio investments. We do not believe that such names suggest that the fund focuses its investments in any of the ways covered under the proposed expanded scope, though such names would continue to be subject to section 35(d)'s prohibition on materially misleading or deceptive names, and funds with these names would continue to be subject to the anti-fraud provisions of the federal securities laws regarding disclosures to investors. These names would include, for instance, names that suggest characteristics of the fund's overall portfolio, such as a name indicating the fund seeks to achieve a certain portfolio "duration" or that the fund is "balanced."[49] They also include names that

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[48] *See* Names Rule Adopting Release, *supra* footnote 2, at n.42 and Division of Investment Management, Frequently Asked Questions about Rule 35d-1(Investment Company Names) (*available at* https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm) at Questions 8, 9, and 11. These FAQs represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the FAQs' content. The FAQs, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[49] To the extent that a term used in a fund name could reasonably be understood to describe the characteristics of the portfolio as well as, or alternatively, the characteristics of the component portfolio investments—for example, the term "global"—we believe such a name would suggest an investment focus under the proposed amendments. Nevertheless, as discussed in more detail

reference a particular investment technique, such as "long/short." We also believe that names that suggest a possible result to be achieved, such as "real return," or a name that references a retirement target date, similarly do not suggest a focus in a particular type of investment or investments that have particular characteristics. In these cases the name indicates the fund's objectives but without specifying the fund's investments or intended investments. 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 include section 35(d) and the names rule.[50]

Where a fund's name suggests an investment focus that has multiple elements, the fund's 80% investment policy must address all of the elements in the name. Take, for example, the fund name "ABC Wind and Solar Power Fund." The fund's investment policy could provide that each security included in the 80% basket must be in both the wind and solar industries, or instead that 80% of the value of the fund's assets will be invested in a mix of investments, with some solar investments, some wind investments, and some investments in both industries. Similarly, the "XYZ Preferred Securities and Income Fund" could adopt a policy to invest at least 80% of the value of its assets in preferred securities and securities that meet the fund's standards for being income-producing. A fund's 80% investment policy must address each element in the fund name that suggests an investment focus, but permits the fund to take a reasonable approach in

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below, a "global" fund could use any reasonable definition of "global" as we are not proposing to mandate any particular test for what this term means.

50 *See supra* footnote 16 and accompanying text.

specifying how the fund's investments will incorporate each such element in the name. For example, the "XYZ Environmental, Social, and Governance Fund" must adopt an 80% investment policy to address all three of those elements, and we recognize that there are multiple reasonable ways the policy could address these elements. 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.

In some cases, what would be appropriate to include in the fund's 80% basket would be context-specific. For example, we understand that funds currently do not include the value of short positions, including short-exposure derivatives, related to the investment focus suggested by a fund's name in their 80% baskets, absent some terminology in the fund's name such as "inverse," "hedged," or "long/short" that suggests to investors that short activity is or may be part of the fund's investment approach (*e.g.*, the "XYZ Long/Short Equity Fund").[51] We request comment below on funds' current practices regarding including or excluding short positions in their 80% baskets and whether any changes in this area would be appropriate.

Consistent with the current names rule, funds would be able to define terms used in their names in a reasonable way, but, in a change from the current rule, would be subject to the

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[51] This hypothetical fund would be subject to the 80% investment requirement because of the inclusion of the term "equity," which suggests a type of investment, and not because of the term "long/short," which does not suggest an investment focus.

proposed requirement that any terms used in the fund's name that suggest an investment focus must be consistent with those terms' plain English meaning or established industry use.[52] What constitutes "reasonable" in this context could vary depending on the fund name, but requires a meaningful nexus between the given investment and the focus suggested by the name. For instance, when the investment focus relates to an industry, 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. For example, we believe it would be reasonable for a fund to define securities in a given industry as securities issued by companies that derive more than 50% of their revenue or income from, or own significant assets in, the industry. In such cases, there may be instances where the percentage could be smaller, such as where a large company is a dominant firm in a given industry (*e.g.*, the firm is an acknowledged leader in the industry). A fund's compliance policies and procedures could address its processes to allocate portfolio companies in its 80% basket, for example, by reference to a specific test based on the source of the companies' revenue.

We understand that some funds also use text analytics to assign issuers to industries based on the frequency of particular terms in an issuer's disclosures. For example, if an issuer's public disclosure documents repeatedly use a term like "blockchain," some funds would assign the issuer to the blockchain or fintech industry without further analysis. Although text analysis may be a helpful component of a fund's analysis, we do not believe it is reasonable to conclude

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[52] *Cf.* Names Rule Adopting Release, *supra* footnote 2, at n.43 ("As a general matter, an investment company may use any reasonable definition of the terms used in its name and should define the terms used in its name in discussing its investment objectives and strategies in the prospectus.").

that an issuer is in a given industry solely because the issuer's disclosure documents frequently include words associated with the industry.

Further, we believe 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.

We request comment on the proposed requirement for funds with names that suggest an investment focus to adopt and implement an 80% investment policy.

1. Should we expand the requirement for certain funds to adopt an 80% investment policy, as proposed, to cover names that include terms suggesting an investment focus in investments or issuers that have particular characteristics? Is it clear what types of names would subject a fund to the expanded scope of this requirement under the proposed rule? Should we only require certain fund names that suggest an investment focus, such as those that "reasonably suggest" an investment focus, to adopt an 80% investment policy? Would the proposed amendments address all types of names that connote an investment focus to investors, or otherwise create investor expectations regarding the composition of the fund's portfolio? Conversely, are there certain names that would be included under the expanded scope for which investors would not have these types of expectations?

2. Is it appropriate to retain, as proposed, the requirement for fund names that suggest a focus in a particular type of investment or investments, investments in a particular industry or group of industries, or particular countries or geographic regions to adopt an 80% investment policy? Should we eliminate or add to these types of names in the rule text, given the proposed expanded scope of the requirement (*i.e.*, including within the scope names that include terms suggesting a focus in investments or issuers that have particular characteristics)?

3. Should we, as proposed, adopt a scoping requirement that does not distinguish between types of investments and investment strategies? Do investors make a distinction between investment strategies and types of investments when assessing fund names in making an investment decision?

4. Should the names rule's 80% investment policy requirement apply, as proposed, to fund names with terms such as "ESG" and "sustainable" that reflect certain qualitative characteristics of an investment? Why or why not? Are investors relying on these terms as indications of the kinds of companies in which the fund invests or does not invest? Would this be the case even to the extent that funds with ESG and similar terminology in their names may use disparate means to select their portfolio investments? Should there be any additional requirements for funds that use ESG or similar terminology in their names?

5. As an alternative to basing the calculation of the 80% basket on the fund's assets, should we instead use a different method of calculation? As discussed in more detail below, we considered, as a reasonable alternative to the proposal, whether to require funds' historical returns to exhibit minimum exposures to certain risk

factors in lieu of the percentage of assets test. Should we instead adopt this sort of method of calculation that assesses the returns that a fund's investments contribute to the fund's overall performance, or that requires a fund with a name suggesting a particular investment focus to exhibit minimum exposures to certain risk factors that correlate with the investment focus its name suggests?

6. Will funds be able to reasonably determine what investments qualify for their 80% baskets under the proposed rule? What steps and tools will funds use to make these determinations? If not, what steps should we take to clarify this, particularly given the proposed expanded scope of the 80% investment policy requirement? Is it likely that funds with similar names will come to different reasonable determinations as to what investments qualify for inclusion in their 80% baskets? If so, will investors be confused by these names?

7. Should funds with names with multiple elements be required to address all of those elements? Should this be required at all times or, if not, what limits, if any, should there be regarding fund names with multiple elements in light of the prohibition against materially deceptive or misleading names under the Act? Should a fund whose name includes multiple elements be required to invest some specific minimum percentage (*e.g.*, 5%, 10%, 25%) in each element?

8. Is there any particular topic or issue that funds encounter in complying with the 80% investment policy currently, or that they would encounter in complying with the proposed amendments to the 80% investment policy requirement, that should be addressed by Commission guidance? For example, would funds benefit from

guidance about what procedures might be reasonable for a fund whose name indicates a focus in a particular industry to select its 80% basket investments?

9. As discussed above, we understand that, absent a term in a fund's name such as "inverse," funds do not currently include short positions in the fund's 80% basket. Should the Commission address by guidance or a provision in the names rule the inclusion of short positions in a fund's 80% basket related to the fund's investment focus, and if so, what practices with respect to the inclusion or exclusion of short positions would be appropriate in light of section 35(d) and the policy goals of the names rule's 80% investment policy requirement? For example, assume a fund with "equity" in its name and nothing in the name suggesting that the fund also engages in short sales, such as the phrase "long/short." If the fund had $100 and invested it all in equity securities, then were to sell short equity securities with a value of $50, how should that short sale affect the fund's compliance with its 80% investment policy? Should the short sale reduce the value of the equity investments included in the 80% basket, and are there specific circumstances where a short sale should *not* reduce the value of the fund's 80% basket securities? How should we address short sales where the returns of the assets sold short are correlated with returns of securities (or the asset class) in the fund's 80% basket, but the assets sold short are not identical to any of the securities in the 80% basket (or are not in the same asset class as the securities in the 80% basket)? If the short sale should reduce the value of the equity investment in the 80% basket in the example above, what reduction would

be appropriate—*e.g.*, should the reduction be $50, the value of the equity securities sold short?[53]

10. Should we provide a specific provision in the rule requiring funds with ESG (or similar terminology) in their names only to attribute a particular type of investment towards their 80% basket, or guidance that addresses this? Why or why not? Are there other types of guidance regarding ESG investing and the names rule that we should provide?

11. Should we adopt any specific requirements with regards to the portion of the fund's assets not included in the 80% basket? For fund names that suggest an investment focus that has multiple elements, should we adopt any specific requirements, such as a specific minimum percentage (*e.g.*, 20%, 25%, etc.) of assets invested, with regards to how each element must be accounted for in the fund's 80% investment policy?

12. Are there any other particular types of fund names we have not specifically addressed above, for which we should require a specific treatment under the names rule as we propose to amend it? Should those particular names be subject to the requirement to adopt an 80% investment policy or not?

13. Should we codify any of the guidance provided above? For example, should we add an exception to the rule that permits funds of funds, and other acquiring funds, to include the entire value of their investment in an appropriate acquired

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53 *See infra* section II.A.3 (addressing the valuation of derivatives instruments for the purpose of determining a fund's compliance with its 80% investment policy).

fund in calculating their 80% basket without looking through to the acquired fund's underlying investments?

14. With respect to certain name terms that could connote both an investment focus and the characteristics of the fund's overall portfolio (*e.g.*, "global"), should we, as proposed, require funds with names including these terms to adopt an 80% investment policy? If not, how should we differentiate when these terms are being used to suggest an investment focus and when they are not?

15. Consistent with the current names rule, the proposed amendments would generally apply to money market funds. 17 CFR 270.2a-7 ("rule 2a-7") also requires funds that use the term "money market" in their names to comply with the requirements of that rule. Are the requirements of rule 2a-7 sufficient to prevent materially misleading or deceptive money market funds names, or should we continue to apply the names rule to those funds?

2. Temporary Departures from the 80% Investment Requirement

The proposed amendments would 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 or tax treatment its name suggests ("80% investment requirement") only under certain specified circumstances.[54] These temporary departures would be 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

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[54] The proposed temporary departure provision would be applicable not only to funds whose names suggest a particular investment focus, but also to tax-exempt funds that are required to invest their assets in accordance with the provisions of proposed rule 35d-1(a)(3)(i).

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.[55] Under each of these circumstances except fund launches (where accompanying temporary departures could not exceed a period of 180 consecutive days), reorganizations (for which the proposed rule does not specify a required time frame for accompanying temporary departures), or where the 60-day notice has been provided to shareholders, a fund would have to bring its investments back into compliance with the 80% investment requirement within 30 consecutive days.[56] In all cases, a fund would have to come back into compliance as soon as reasonably practicable.[57]

In contrast, the names rule currently provides that a fund's 80% investment policy applies "under normal circumstances," leaving it to funds to determine what constitutes something other than a normal circumstance. This aspect of the current rule was designed to provide funds

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55 "Reorganization" is defined in section 2(a)(33) of the Act and includes actions such as voluntary liquidations.

56 Proposed rule 35d-1(b)(1) and (g)(7) (defining "launch" as a period, not to exceed 180 consecutive days, starting from the date the fund commences operations).

57 "As soon as reasonably practicable" would not strictly mean "as soon as possible" in all cases and is intended to allow for consideration by the adviser of how to return to compliance in a manner that best serves the interest of the fund and its shareholders (but in no case longer than the proposed 30-day limit where applicable). For example, a fund need not return to compliance within 2 days, even if doing so is technically possible, if such an approach would harm the fund or its shareholders by, for instance, causing the fund to purchase illiquid assets at a premium.

flexibility to manage their portfolios while requiring that they normally invest 80% of their assets consistent with their 80% investment policy.[58] In addition, under the current rule, compliance with the 80% investment requirement is determined at the time a fund invests its assets. This provision was designed 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.[59] The rule currently requires that if, subsequent to an investment, the 80% investment requirements of the rule are no longer met, the fund's future investments must be made in a manner that will bring the fund into compliance with those requirements.

The new approach we are proposing is designed 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, while providing additional parameters designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time. The new approach continues to address, for instance, certain circumstances in a fund's life cycle in which it might not be invested fully in its 80% basket, as well as circumstances in which external events could cause the portfolio to "drift" in a way that causes the fund to depart temporarily from the 80% investment requirement. For example, a new fund may need a reasonable amount of time after commencing operations to

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58 *See* Names Rule Adopting Release, *supra* footnote 2, at nn.37-40 and accompanying text.

59 *See* Investment Company Names, Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955 (Mar. 10, 1997)] at n.28 and accompanying text.

comply with the 80% investment requirement, or a fund with "small cap" in its name may see certain of its investments grow such that they are no longer "small cap" and need to re-invest in relative short order.[60] An investor choosing to invest in a fund with a name conveying a particular investment focus may expect that the fund will not stray from this investment focus for a protracted period of time in these and similar examples. While the current rule includes a requirement that a fund must make future investments in a manner to bring the fund into compliance with the 80% investment requirement, this provision does not address situations where the fund is not investing its assets in a given period of time.

Moreover, the parameters we are including in the proposal reflect our belief that investors' expectations for funds' investment focuses may not depend on whether market events negatively affect the investment in the fund's portfolio. For example, investors increasingly seek out funds that are structured as passive investment vehicles, such as index-based mutual funds and ETFs, in order to obtain specific types of investment exposure for their portfolios.[61] These investors are specifically seeking a return tied to the investment focus suggested in the fund's name.[62] These investors may expect the fund to invest in a manner that is consistent with its stated investment focus with the understanding that investors may rebalance their own portfolios

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60 *See also* Names Rule Adopting Release, *supra* footnote 2, at n.39 and accompanying text.

61 Based on data obtained from Morningstar Direct, in 2001 there were approximately 432 mutual fund and ETF index funds. As of the end of 2019, there were approximately 2,311 index funds. 2020 Request for Comment, *supra* footnote 2, at n.22. At the end of 2020, index mutual funds and index ETFs together had $9.9 trillion in total net assets and accounted for 40% of assets in long-term funds, as compared to 19% at the end of 2010. *See* 2021 ICI Fact Book.

62 *See* CFA Comment Letter (stating that when funds deviate from their 80% investment policy for extended periods of time, this can affect asset allocation programs some investors use to determine which funds to buy or sell by changing the nature of the investment).

if desired rather than expecting the fund to do so. 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.[63] As a result, consistency with the investment focus suggested by the fund's name would seem to be a primary concern for these investors.

To address these concerns, the proposed rule amendments specify that a fund departing from the 80% investment requirement must bring its investments back into compliance as soon as reasonably practicable, and that the maximum amount of time for the departure would be 30 consecutive days, other than in the case of a fund launch (which would be limited to 180 consecutive days starting from the day the fund commences operations) or a reorganization (for which the proposed rule does not specify a required time frame for accompanying temporary departures). We are proposing this "as soon as reasonably practicable" standard because we anticipate that most temporary departures would last substantially less than 30 days, though this could depend on the specific facts and circumstances. We recognize that some investors may prefer for a fund to be permitted 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. We believe, however, that, at some point, departures may begin to change the nature of the fund

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63 *See id.*; *see also* Names Rule Adopting Release, *supra* footnote 2, at n.8 and accompanying text.

fundamentally, which would undermine investor expectations created by the fund's name.[64] The proposed time limits are designed to prevent such a fundamental change.

A shorter required time period to come back into compliance, for example seven days, would ensure a fund rapidly rebalances its portfolio, but could result in forced sales at depressed prices or in a tax-disadvantaged manner, to the detriment of investors.[65] As another example, purchasing less liquid securities in a compressed timeframe in order to comply with the fund's 80% investment policy could drive up the price for those securities, also potentially adversely affecting investors. While there is still the possibility that these adverse effects could occur with the proposed, longer periods, we believe that it is a lessened concern in those time frames given the increased flexibility that a longer period of time would provide to rebalance the portfolio and for any market-wide issue to resolve.

We are proposing to give fund launches a longer period, 180 consecutive days, in recognition of 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.[66] We acknowledge that establishing a set time frame to return to the 80% investment requirement may result in operational changes for some funds, in order to assess the new time limits on temporary departures relative to the current rule's requirement to assess compliance with the 80%

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64 *See* Janain Comment Letter (recommending limiting the amount of time funds can engage in temporary defensive positions as they believe that some funds have taken liberties and that "[a]t some point, temporary becomes normal"); *see also* CFA Comment Letter (highlighting concerns about "drift"); Crowley Comment Letter (expressing concerns about extended departures from the 80% investment requirement).

65 Some commenters highlighted these sorts of challenges while expressing concerns regarding changing the rule to include a maintenance test for the 80% investment requirement. *See, e.g.*, BlackRock Comment Letter; Capital Group Comment Letter; ICI Comment Letter I.

66 *See also* Names Rule Adopting Release, *supra* footnote 2, at n.39 and accompanying text.

investment requirement at the time of investment. However, we anticipate many funds, particularly open-end funds, already assess their names rule compliance daily or intra-daily (for example, those that trade portfolio assets daily). Therefore we anticipate that for many funds, the proposed new approach, which would require compliance with the 80% investment requirement except under the rule's specified limited circumstances, would not result in significant operational changes although we acknowledge that may not be the case for all funds.

While we continue to believe that there are circumstances where a fund's temporary departure from the 80% investment requirement would be appropriate, we believe that specifying these circumstances in the rule, as opposed to a more principles-based approach, would help ensure that these departures are temporary in nature and limited in scope.[67] Thus, in place of the rule's current standard that a fund's 80% investment policy applies "under normal circumstances," we are proposing four specific exceptions that address circumstances where such departures would be limited in time, have investor protection benefits, and/or involve circumstances where an investor is unlikely to be materially misled or deceived.

First, the proposed rule would permit temporary departures that occur 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. This recognizes that a fund may not be in compliance with the 80% investment requirement for a short period of time while the fund addresses such an event. For example, the investments in a fund's 80% basket may decline in value such that they fall below 80% of the fund's assets.

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67 *See, e.g.,* SIFMA AMG Comment Letter; BlackRock Comment Letter; T. Rowe Price Comment Letter.

Further, the underlying index of an index fund could rebalance, which may cause the fund to have less than 80% of its assets invested in the reconstituted index until the fund has the opportunity to realign its investments.

The proposed rule also would permit funds experiencing unusually large cash inflows or outflows in response to redemption requests to depart temporarily from the 80% investment requirement. This would provide a fund the opportunity to depart temporarily from the fund's 80% investment requirement in order to invest the incoming cash, or sell investments to meet the outflow, in an orderly way. Similarly, the proposed rule would permit temporary departures for funds to take temporary defensive positions in cash, cash equivalents, or government securities to react to adverse conditions.[68] These generally reflect prior Commission statements regarding some circumstances in which departures from the 80% investment requirement would be appropriate under the current rule.[69]

We are also proposing to permit funds temporarily to invest less than 80% of their assets in the 80% basket to reposition or liquidate assets in connection with a reorganization or to launch the fund. For fund launches, the temporary period would not be permitted to exceed 180 consecutive days starting from the day the fund commences operations. Both reorganizations and

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68 *See, e.g.,* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)]. The proposed provision permitting temporary departures to avoid losses in response to adverse market, economic, political, or other conditions in the names rule reflects the formulation of temporary defensive positions from Form N-1A. *See* Form N-1A, Instruction 6 to Item 9(b)(1). As a result, funds should understand this provision as consistent with this disclosure requirement and any related disclosure the fund provides. Further, we believe that context dictates that "other conditions" is not all-encompassing, but rather would be other conditions similar to an adverse market, economic, or political condition.

69 *See* Names Rule Adopting Release, *supra* footnote 2, at section II.A.4 (describing ways in which funds might use the "under normal circumstances" standard to engage in temporary departures).

launches may result in a fund holding assets in a way that is inconsistent with its 80% investment policy in order to complete the action. 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 hold cash in the interim. In the case of a merger, a target fund may need to rebalance its portfolio to more closely mirror the investments held by the acquiring fund.

Unlike the other circumstances in which the proposed rule amendments would permit temporary departures, the proposed rule amendments would not limit the time of departures associated with fund reorganizations or where the fund has provided notice it intends to change its 80% investment policy, and additionally the time for departures associated with fund launches could last for 180 consecutive days from the date the fund commences operations. Planned reorganizations may take longer to complete than 30 days or even 180 days. Moreover, the planned action will be disclosed and the reorganization is likely to be a permanent change to the nature of the investor's investment.[70] Similarly, a change to a fund's 80% investment policy is a permanent change to the fund's investments, about which funds notify investors pursuant to the provisions of the rule. Thus, we do not believe that changes in the fund's investment portfolio to support the 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, like all of the proposed departures, would still be required to be resolved as soon as reasonably practicable.

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

In the case of the launch of a new fund, it may be better for investors if the fund takes additional time to invest in a manner consistent with the fund's 80% investment policy in order 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 believe that, consistent with current guidance, such a period should not exceed 180 consecutive days.[71] The proposed amendments therefore would not permit any fund to exceed 180 consecutive days to invest its assets consistent with the 80% investment requirements when launching a fund.[72] Further, in effect, the proposed amendments would generally require open-end funds to be fully invested within a much shorter time than 180 days, consistent with the proposed requirement to do so "as soon as reasonably practicable." These funds should be able to fully invest in their investment focus relatively quickly because they invest in relatively liquid assets and because they receive cash from share purchases on an ongoing basis. Accordingly, if a new open-end fund were to acquire assets at the time of launch that largely mirrored the assets in another pre-existing fund in the fund family, but with a different name that reflects a different set of investment parameters that would be applied to that portfolio in the future, the manager should generally adjust the new fund's portfolio to the new parameters in a much shorter time than 180 days in accordance with an 80% investment policy based on the investment focus the fund's name suggests.

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71 *See* Names Rule Adopting Release, *supra* footnote 2, at n.39 and accompanying text.

72 *Cf. id.* at n.40 (stating that, in very limited circumstances, it may be appropriate for a closed-end fund that invests in securities whose supply is limited to take longer than six months to invest offering proceeds).

We request comment on the proposed treatment of temporary departures from the 80% investment requirement.

16. To what extent do funds currently "drift" away from the investment focus suggested by their name? If they do, to what extent is this attributable to the provisions of the current names rule, such as the time of investment test? In general, how effective is this provision, and the "under normal circumstances" provision, at addressing materially deceptive or misleading names over time?

17. Should we limit the exceptions for market fluctuations, unusually large cash flows, and temporary defensive positions to 30 days as proposed or some other amount of time? Does the proposed 30-day limit raise any interpretive questions or potential compliance concerns the Commission should address in the rule text or as guidance? Are we correct in our belief that it will be unusual for funds to need to engage in these activities past that period? At what point can it be reasonably said that the nature of the fund has changed in these circumstances?

18. Should funds be limited, as proposed, to taking positions in cash and cash equivalents or government securities outside of their 80% investment policies in the case of a temporary defensive position? Are there other investments that funds use to protect the fund in the case of adverse market, economic, political, or other conditions? For example, should the rule allow funds to invest in securities that are similar to these investments? What kinds of investments do funds hold currently when taking defensive positions?

19. Is the requirement to bring a fund back into compliance with the 80% investment requirement as soon as reasonably practicable appropriate? Is it sufficient to protect against concerns about portfolio drift?

20. Is "as soon as reasonably practicable" readily understood? Would funds benefit from additional guidance on what would (or would not) satisfy this standard? How long would it typically take for a fund to come back into compliance with its 80% investment policy where a fund asset has increased or decreased in value?

21. Under the proposed amendments, the 30-day period runs from the time the fund invests less than 80% of the value of its assets in accordance with its 80% investment policy. Should the rule instead specify that it run from the beginning of one of the precipitating sets of circumstances that the rule describes?

22. Under what circumstances do funds currently depart from the 80% investment requirement? Are there any circumstances not covered by the proposed rule amendments that an investor would expect? For example, should we also exempt departures relating to a name or investment policy change? If so, how long do these actions typically take? Should we limit such departures to 30 days? To what extent do these actions typically fall within the definition of "reorganization" under the Act, for example, by resulting in the sale of 75% or more in value of the assets of a fund?

23. Instead of specifying the circumstances in which a fund may depart from the 80% investment requirement, should we retain the current provision that an 80% investment policy applies under normal circumstances but specify that, in any

event, departures may not persist for more than 30 days? Would investor expectations be met under these circumstances?

24. Instead of limiting temporary departures (except in the context of fund reorganizations or launches) to 30 days, should the rule instead provide that, if a temporary departure persists past 30 days, the fund's board must approve, or be informed in writing about, the temporary departure? If we were to require board approval, should we require that a majority of the independent directors also approve of the departure? Should the approval or written report be required to be given by, or provided to, the board immediately, or no later than its next regularly scheduled board meeting? To the extent that the rule were to include board reporting, should we also require the report to include a recommendation from the fund's adviser about whether to rebalance the fund's holdings over a longer period of time, or to initiate a name change? Should we include a recordkeeping requirement for the report? Should we also require reporting to the Commission on a non-public basis regarding a departure that lasts longer than 30 days, the reasons for the departure, and the adviser's plan to resolve the departure, with a follow-up report to the Commission once the departure has been resolved? Should we require a fund to notify the board about temporary departures even if they do not persist beyond 30 days? For example, while funds would be required to include a discussion of material compliance matters involving the names rule in their annual reports required under rule 38a-1, should we further require that these reports, or board reports in connection with regularly scheduled board meetings,

identify the number of and reason for temporary departures during the period covered by the report?[73]

25. Does the proposed 30-day limitation create any compliance issues with other provisions of the federal securities laws? For example, how would a fund address a situation where, in order to meet the 30-day limit, it had to invest more than 15% of its net assets in illiquid investments, contrary to 17 CFR 270.22e-4 ("rule 22e-4," or the "liquidity rule")? Should we permit temporary departures to exceed the 30- or 180-day limits where meeting the 80% investment requirement would conflict with the requirements of the liquidity rule, and if so, how should we address any attendant investor protection concerns? Are there any circumstances when the investments suggested by a fund's name become illiquid for more than 30 days?

26. Should we provide a specific time limit on temporary departures relating to fund reorganizations? If so, how long should it be?

27. Similarly, should we provide a specific time limit on the temporary departure where the fund has provided notice to shareholders under the rule? If so, should it be 60 days consistent with the rule's notice requirements or some other time? Should we extend a similar provision to funds with redeemable securities that have suspended redemptions under section 22(e) of the Act, or under analogous

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[73] *See supra* footnote 17.

circumstances, such as market closures, for funds that do not issue redeemable securities?

28. Is 180 consecutive days the appropriate time to permit temporary departures relating to fund launches? If not, what would be a more appropriate time? Should we generally provide different time frames depending on the type of fund? For example, should we require a shorter period than 180 days for launches of open-end funds, which typically invest in relatively liquid assets and which receive cash from share purchases on an ongoing basis, to avoid harm to early investors in those funds? Is the proposed definition of "launch" appropriate, or would a different definition (*e.g.*, the date that a fund's registration statement becomes effective) be more appropriate?

29. To what extent do portfolio managers keep funds close to the 80% investment requirement currently, or do they typically retain some buffer above that amount?

30. How often do different types of funds currently assess compliance with an 80% investment policy? Are we correct in our assessment that many funds already review their names rule compliance daily or on an intraday basis? How does this compliance assessment take into account whether characteristics of an investment may have changed (*e.g.*, changes in market capitalization of equity holdings, or changes with respect to whether a particular holding continues to be an investment in a particular industry)? To the extent that certain funds generally assess compliance at least daily, does the proposed alternative approach to the current time of investment test increase investor protection, both for these funds specifically and across the fund industry?

31. Should we make any changes to the proposed temporary departure provisions to more specifically address tax-exempt funds? For example, should the provisions' 30-day limit specifically address tax-exempt funds that adopt a policy to invest their assets so that at least 80% of the income they distribute is tax-exempt, given that income distributions can be less frequent than monthly? How often do such funds engage in temporary departures under the current rule?

3. Considerations Regarding Derivatives in Assessing Names Rule Compliance

We are proposing to address both the valuation of derivatives instruments for purposes of determining compliance with its 80% investment policy, as well the derivatives that a fund may include in its 80% basket. Specifically, the proposed amendments would 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 discussed below, and reduce the value of its assets by excluding cash and cash equivalents up to the notional amounts of the derivatives instrument(s).[74] The proposed amendments also would 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 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 investments suggested by the fund's name.[75] Accordingly, when a fund determines its compliance with its 80% investment policy, all derivatives instruments would be included in the denominator in the calculation, as well as any

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[74] *See* proposed rule 35d-1(g)(2).

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

derivatives in the fund's 80% basket, *i.e.*, the numerator in the calculation. We designed these proposed amendments to reflect the investment exposure derivatives investments create better 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.[76] The amendments are designed both to allow funds to use names that may more effectively communicate their investments and risks to investors 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.

Funds currently are permitted to include synthetic instruments, such as derivatives instruments, in the fund's 80% basket if the synthetic instrument has economic characteristics similar to the securities included in the 80% basket.[77] A fund, therefore, currently could include derivatives with these characteristics along with cash market investments in assessing whether 80% of the value of its assets is invested in accordance with the investment focus that the fund's name suggests. A derivatives instrument's "value," as defined in the Act, however, may bear no relation to the investment exposure created by the derivatives instrument.[78] For example, a total

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76 *See, e.g.,* Capital Markets Comment Letter (stating that "[i]n practice, however, funds have been inconsistent in how derivative investments apply towards the 80% investment requirement: while some funds assert that a derivative's notional value is more appropriate than its market value for purposes of complying with the 80% investment policy, many funds employ a derivative's market value for the asset-based test").

77 Names Rule Adopting Release, *supra* footnote 2, at 8511, n.13 (stating that the rule's reference to "investments," rather than "securities" as proposed, would permit a fund in appropriate circumstances to include a synthetic instrument in the 80% basket if it has economic characteristics similar to the securities included in that basket).

78 15 U.S.C §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).

return swap on a market index generally will have a zero market value at inception, and will change in market value based on any appreciation or depreciation in the index, not on the fund's investment exposure. A fund entering into a swap or other derivative referencing a market index with a notional amount of $1 million would achieve the same economic exposure as investing $1 million in the underlying securities directly, but the swap's market value therefore generally would be far smaller than $1 million and would not reflect the swap's investment exposure.

Further, 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. Take, for example, a fund with the term "emerging market debt" in its name. While the fund could directly own emerging market debt securities, this could be inefficient due to transaction and custody costs, foreign regulatory requirements, and reduced liquidity. It may be most efficient for the fund to enter into a total return swap that provides economic exposure to the emerging market debt securities. However, the swap's market value may be a small percentage of the fund's net assets such that the fund's emerging market debt investments would not be sufficient to comply with the fund's 80% investment policy.

Moreover, 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. For example, a fund with emerging market debt in its name could invest 80% of its assets in emerging market debt, but also could use derivatives to obtain substantial investment exposure to U.S. equities. The fund might satisfy its 80% investment policy using the derivatives' market values for this purpose because the market value of a fund's derivatives investment can be small and unrelated to its investment exposure, as discussed above. But this

fund's name could be deceptive and misleading if the performance of U.S. equities and not emerging market debt were the primary driver of the fund's risk and returns.

Use of derivatives' notional amounts

The names rule is designed to ensure that a fund's investment activity supports the investment focus its name communicates, and for funds that use derivatives instruments, the investment exposure of those derivatives instruments is generally better reflected by a derivatives instrument's notional amount than by its market value. 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. 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. Accordingly, we are proposing that for purposes of determining a fund's compliance with its 80% investment policy, the fund must value a derivatives instrument using its notional amount with certain adjustments.[79]

In calculating notional amounts for these purposes, a fund would be required to convert interest rate derivatives to their 10-year bond equivalents and to delta adjust the notional amounts of options contracts. The proposed requirement to convert interest rate derivatives to 10-year bond equivalents is designed to result in adjusted notional amounts that better represent a fund's exposure to interest rate changes.[80] We believe that, absent this adjustment, short-term interest

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[79] A fund's use of notional amounts when determining the value of the fund's assets in the 80% basket would not affect the fund's valuation practices under rule 2a-5 under the Act [17 CFR 270.2a-5].

[80] *See* Derivatives Rule Adopting Release, *supra* footnote 27, at section II.E.1.

rate derivatives can produce large unadjusted notional amounts that may not correspond to large exposures to interest rate changes.[81] Further, the proposed 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.[82] We 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. 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.

Scope of the proposed approach

Our proposed approach would apply to all of a fund's derivatives instruments. That is, when assessing compliance with a fund's 80% investment policy, the fund would be required to value all of its derivatives positions using notional amounts. The proposed approach would apply to both the numerator and the denominator in the calculation that the fund would use to determine compliance with its 80% investment policy.[83]

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81 *Id.*

82 *Id.*

83 Our proposed approach to value derivatives instruments using their notional amounts does not distinguish between derivatives instruments that are assets versus derivatives that are liabilities of the fund. For example, assume a fund enters into a total return swap based on an index with a notional amount of $100 million, and that index declines a very small amount. The total return swap would be a liability of the fund until the fund extinguishes that liability through the payment

Deduction from assets of cash and cash equivalents up to notional amounts

Funds that use derivatives instruments to gain exposure to the markets in which they invest may maintain portions of their assets in cash and cash equivalents. For purposes of determining such a fund's compliance with its 80% investment policy, our proposed approach would require the deduction of cash and cash equivalents from assets (*i.e.*, the denominator in the 80% calculation) up to the notional amounts of the fund's derivatives instruments.[84] This aspect of the proposed approach is designed to remove from the calculation cash and cash equivalents, which do not themselves provide market exposure, where they effectively function as low-risk collateral for the derivatives instruments whose notional amounts already are included in the denominator and thus including this collateral would effectively "double-count" the fund's exposure.[85] That is, where a fund holds derivatives and cash and cash equivalents, the fund is obtaining its investment exposure through the derivatives, not the cash and cash equivalents, and including both the derivatives measured at their notional amounts and the value of the cash and cash equivalents would overstate the scale of the fund's market exposure obtained through the derivatives instruments. If a fund held derivatives and cash market securities, like investments in equity securities or bonds, both the notional amounts of the derivatives and the value of the

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of variation margin. The notional amount of the swap would still reflect the magnitude of the fund's investment exposure notwithstanding the fund's then-current loss on the investment. For this reason, the proposal would require funds, in measuring their assets for purposes of names rule compliance, to include the notional amount of any derivatives instrument, regardless of whether it is an asset or liability of the fund.

84 *See* proposed rule 35d-1(g)(2).

85 *Cf.* Invesco Comment Letter (recommending that a fund electing to include derivatives in its 80% investment policy be required to deduct the value of cash and cash equivalents when determining the denominator for its 80% test).

securities would be required to be included because the fund would be obtaining market exposure through both kinds of investments.

Using an example, assume an equity fund enters into an equity swap with a notional amount of $80 and holds $80 in U.S. Treasury bills and $20 in other securities.[86] Assume the swap has a market value of $0. If the equity fund were to include the notional amount of the swap in numerator and in the denominator when determining the fund's compliance with its 80% investment policy without excluding the U.S. Treasury bills, the fund would not be in compliance with the 80% investment requirement ($80 swap notional amount /$180 = 44%). This would be the case even though, economically, the fund is achieving an investment exposure akin to investing $80 in equity securities directly (*i.e.*, the swap could be viewed as a synthetic position in equity securities). If the equity fund were to deduct the $80 in U.S. Treasury bills from the denominator when determining the fund's compliance with its 80% investment policy, the fund would satisfy that requirement ($80 swap notional amount / $100 = 80%). By way of contrast, however, assume that the fund invests the $80 in corporate debt instead. Now, the fund would fail the 80% investment requirement: $80 swap notional amount / $180, composed of $80 swap notional + $80 corporate debt + $20 other investments = 44%. The equity fund would not predominately have the equity exposure that its name would suggest.

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86 *See, e.g.,* Derivatives Rule Adopting Release, *supra* footnote 27, at text accompanying n.749 (stating that "[t]he Commission has also stated that items commonly considered to be cash equivalents include Treasury bills, agency securities, bank deposits, commercial paper, and shares of money market funds").

Derivatives instruments included in the 80% basket

We recognize 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, credit spread risk, and foreign currency risk). Those instruments may have very high notional amounts. For example, a foreign equity or bond fund may hold substantial currency forwards or swaps to hedge foreign currency risk. 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. For example, if ABC Foreign Equity Fund invested $100 in foreign equity securities, $100 in currency forwards, and held no other assets, the fund would not satisfy its 80% investment policy if the currency forwards were not included in the fund's 80% basket ($100 in foreign equity securities / $100 in foreign equity securities + $100 currency forwards = 50%).

Thus, in addition to any derivatives instrument that the fund includes in its 80% basket because it provides investment exposure to the investments suggested by the fund's name, our proposed approach would 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 investments suggested by the fund's name. As a result, 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 or 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. We believe that our proposed approach would help ensure that the fund's use of

derivatives would not be inconsistent with investors' reasonable expectations of the fund's investment activity.

As illustrated in the example above regarding ABC Foreign Equity Fund, a foreign equity fund may hedge currency risks by entering in currency forwards with high notional amounts. If these notional amounts were not included in the fund's 80% basket, the fund might not be able to comply with its 80% investment policy even though the currency forwards relate to the foreign equity securities suggested by the fund's name. Accordingly, we believe it would be reasonable for a fund to include a derivatives instrument in its 80% basket where the derivatives instrument provides investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name. As another example, the XYZ Corporate Bond Fund, whose portfolio includes corporate bonds as well as interest rate swaps to manage the portfolio's overall duration, could include the interest rate derivatives in its 80% basket.

Comments received

Several commenters responding to the 2020 Request for Comment addressed the valuation of derivatives in measuring a fund's compliance with its 80% investment policy. Many commenters urged the Commission to permit funds to use notional amounts to value derivatives instruments because a derivatives instrument's market value may bear little relation to the fund's investment exposure to the kinds of investments suggested by the fund's name.[87] Further, one commenter suggested amendments to the names rule that generally would require a fund that

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87 *See, e.g.,* BlackRock Comment Letter; Capital Group Comment Letter; ICI Comment Letter I; T. Rowe Price Comment Letter.

includes derivatives in its 80% basket to use the notional value of derivatives instruments, adjusted as this proposal reflects, when measuring its compliance with its 80% investment policy.[88] We agree with commenters that notional amounts better reflect the fund's investment exposure. For the reasons discussed above, our proposed approach would require a fund to use the notional amounts of its derivatives instruments when measuring the fund's compliance with its 80% investment policy.

In contrast, other commenters suggested that a fund's derivatives investments generally should be valued at market value for these purposes.[89] Some commenters stated that this approach better indicates price sensitivity, the risks to a fund's portfolio, and comparability across funds.[90] A derivative's market value reflects profits and losses that the fund has incurred on any given date, and we agree that the concerns that commenters discuss are important for funds to consider as part of their valuation and risk management processes. However, we believe these topics are less relevant to the names rule's policy goal of ensuring that a fund's investments, and the sources of the fund's returns, are in line with the investment focus that the

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88 S*ee* Invesco Comment Letter (suggesting that a fund should generally value a derivatives instrument included in its 80% basket using the derivatives instrument's notional value, "gross up" the denominator in the 80% test to include these derivatives' notional amounts, and suggesting adjustments for interest rate derivatives and involving the "delta adjustments" of the notional value of options positions; also suggesting that the fund deduct the value of cash and cash equivalents when determining the denominator for its compliance with the 80% investment policy requirement); *see also* BlackRock Comment Letter (requesting clarification that the market value of cash and cash equivalents should be deemed an eligible asset that is included in a fund's 80% basket and considered part of the derivatives exposure in determining compliance with a fund's 80% investment policy).

89 *See, e.g.,* Council of Institutional Investors Comment Letter; Nuckolls Comment Letter.

90 *Id.*

fund's name reflects. This is because, as discussed above, a fund's gains and losses on a derivatives investment do not reflect the investment exposure the derivatives create. We also believe that transparency regarding a fund's compliance with its 80% investment policy and the investments a fund includes in its 80% basket are important. Our proposal would provide transparency, which in turn would permit additional comparability, in the proposed Form N-PORT reporting requirements that would require funds to identify each investment that is included their 80% baskets.[91] Current Form N-PORT reporting requirements would continue to provide transparency regarding the market value of each of these investments.

Another commenter addressed the use of derivatives instruments more generally. This commenter suggested that the Commission "limit" an approach that would permit funds to use notional values for purposes of names rule compliance, stating that derivatives instruments have risks that differentiate them from cash market holdings.[92] That commenter also stated that it would be misleading or deceptive for a fund to gain significant exposure through a derivative to a particular asset class but use a name that reflects exposure to a different asset class.[93] Alternatively, a commenter suggested that a fund's name should reflect the use of derivatives when a fund uses derivatives frequently or when the fund uses derivatives for frequent, non-tactical uses and creates exposures equal to or greater than one-third of the total exposures for all investment vehicles in the fund's portfolio.[94]

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91 *See infra* section II.F; *see also* proposed Item C.2.e of Form N-PORT.

92 Consumer Federation of America Comment Letter.

93 *Id.*

94 CFA Institute Comment Letter.

We agree that funds' use of derivatives presents unique risks. After the compliance date of rule 18f-4 (17 CFR 270.18f-4), funds that enter into derivatives under that rule will be required to satisfy that rule's conditions.[95] We do not believe that a fund's name generally would provide such specific information about fund risks—such as differences in risks between derivatives and cash-market investments—which instead must be disclosed in a fund's prospectus. Particularly where a fund name refers to asset classes like "equity" or "credit," investors might not form specific expectations about how the fund would obtain that investment exposure—in contrast to fund names that refer to categories of instruments like "stock" that may result in these types of investor expectations.

However, we do agree that it could be misleading or deceptive for a fund to gain significant exposure through a derivatives instrument to a particular asset class but use a name that reflects exposure to a different asset class. Our proposed approach is designed to address this concern, in requiring a fund to value all of its derivatives instruments using their notional amounts for purposes of determining names rule compliance as this would better reflect the investment exposure of all of the fund's derivatives investments.

We request comment on our proposed approach with regard to the valuation of derivatives instruments when assessing the fund's compliance with its 80% investment policy, as well as the derivatives that a fund may include in its 80% basket:

32. Is it appropriate to require a fund to use a derivatives instrument's notional amount, with certain adjustments, and to reduce the value of its assets for this purpose by excluding any cash and cash equivalents up to the notional amount of

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[95] *See* Derivatives Rule Adopting Release, *supra* footnote 27.

the derivatives instrument, as proposed? Are there circumstances in which the use of market values would be more appropriate, and if so, what are these circumstances? Should we restrict the use of notional amounts in cases where investors place importance on the fund holding the underlying assets, as opposed to cases where investors place importance on the exposures that the fund's investments create? How would we identify those cases? For example, should we limit the extent to which an ESG-focused fund, or some subset of ESG-focused funds, may use derivatives' notional amounts? Alternatively, rather than focusing on the fund's financial exposure, should we, for example, focus on measures of risk? If so, which risk measures would be most effective for this purpose and why?

33. Is it appropriate to require a fund to convert the notional amounts of interest rate derivatives into 10-year bond equivalents and to delta adjust the notional amounts of options contracts for purposes of determining compliance with the 80% investment policy, as proposed? Are there compliance or other challenges associated with the proposed approach for interest rate derivatives and options contracts? Are there additional adjustments that should be made for purposes of assessing a fund's compliance with its 80% investment policy? Should we permit these adjustments rather than require them? Is it sufficiently clear that funds would eliminate from the 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 should the rule address these positions? What

positions do funds treat as closed-out currently when determining compliance with the names rule?

34. For purposes of determining a fund's compliance with its 80% investment policy, we are proposing that the fund reduce the value of its assets by excluding any cash and cash equivalents up to the notional amount of the derivatives instruments. Is this reduction appropriate? Does this exclusion of cash and cash equivalents up to the notional amount of the derivatives instruments reduce the value of the fund's assets by too much or too little? Are there other low-risk collateral investments that may be used for cash management, such as short-term bonds, that also should be excluded for this purpose? Should only assets that may be used as collateral for derivatives instruments be excluded for this purpose? If so, how should we determine if those assets may be used as collateral for derivatives instruments? Alternatively, rather than excluding cash and cash equivalents from the value of assets, should we permit a fund to include in its 80% basket cash and cash equivalents used as collateral for derivatives instruments that provide synthetic exposure to the type of investment(s) in which the fund's name suggests a focus?

35. As proposed, the derivatives valuation approach would apply not only to non-tax-exempt funds that are required to adopt an 80% investment policy, but also to funds that have adopted a policy to invest at least 80% of the value of their assets in investments the income from which is exempt, as applicable, from federal income tax or from both federal or state income tax. We are not aware of circumstances in which the returns of a derivatives instrument referencing a tax-

free security are themselves tax-free. Are there such circumstances? If not, should we specifically exclude tax-exempt funds from the requirement to use derivative instruments' notional amounts for purposes of determining their assets under the names rule?

36. Should we permit, rather than require as proposed, a fund to use notional amounts of derivatives instruments for purposes of determining the fund's compliance with its 80% investment policy? If so, are there any limits that the rule should include—or guidance the Commission should provide—on funds' ability to use notional amounts for these purposes, or to switch between notional and market values? For example, should a fund that chooses to use notional amounts to value derivatives instruments for purposes of determining names rule compliance, but then later chooses to use their market value for these purposes, be required to provide prior notice to investors, for example, 60 days before the change were effected? Would investors find such information helpful? Should the fund's board be informed of, or approve, such a change?

37. Would permitting the use of notional amounts, rather than requiring this approach, as proposed, result in a fund valuing similar derivatives instruments differently for purposes of complying with the fund's 80% investment policy? Should a fund be permitted to value similar derivatives instruments differently for purposes of complying with the fund's 80% investment policy as long as the fund discloses that difference in its prospectus? Would an investor find that disclosure helpful?

38. Are there operational or interpretive challenges associated with the proposed approach to addressing derivatives instruments in the names rule, and if so, what are these and how should the Commission's rules and/or guidance address those challenges?

39. If a fund were to use derivatives instruments to obtain exposure to short positions in one or more reference assets, the proposed amendments would require a fund to use these derivatives instruments' notional amounts for purposes of determining compliance with its 80% investment policy. These investments therefore 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. Is this treatment appropriate, or would the use of market values for short positions in the context of assessing names rule compliance be more appropriate? If funds currently subject to the 80% investment policy requirement include short positions in their 80% baskets, how are these positions valued for these purposes (*e.g.*, using the value of the short position, the value of the asset sold short, or if the fund obtains short exposure using derivatives, the derivatives' notional amounts)? Should the names rule address the valuation of physical short sales, and if so, how should these be valued for purposes of assessing names rule compliance? Should we provide in the rule that, for purpose of the names rule, a short sale's value is the value of the security or other asset sold short? Would that provide reasonably comparable treatment for physical short sales and derivatives that provide short investment exposure? Should the rule prohibit a fund from including derivatives instruments in its 80%

basket when those instruments provide inverse exposure to the investments suggested by the fund's name?

40. In addition to any derivatives instrument that the fund includes in its 80% basket because it provides investment exposure to the investments suggested by the fund's name, we are proposing to permit a fund to include in its 80% basket derivatives instruments that provide investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name. What types of funds, and derivatives use, would be implicated by our proposed approach? Would this proposed approach raise investor protection issues? Alternatively, should we require, rather than permit, a fund to include in its 80% basket derivatives instruments that provide investment exposure to one or more of the market risk factors associated with those investments? Are there circumstances in which exposure to associated risk factors provided by the derivatives instruments may be contrary to, or otherwise different from, the investments suggested by the fund's name and should not be permitted?

41. Are there limits to the derivatives instruments that a fund should be permitted to include in its 80% basket because they provide investment exposure to one or more of the market risk factors associated with the investments suggested by a fund's name? For example, should the rule permit a fund only to include derivatives instruments in its 80% basket when they hedge currency or interest rate risks associated with one or more specific investments that the fund holds in its 80% basket?

42. A fund's name generally does not provide investors with specific information about fund risks, such as differences in risks between derivatives and cash-market investments—which instead must be disclosed in a fund's prospectus. However, where a fund's name refers to certain asset classes, for example "stocks" and "bonds," do investors form specific expectations about how the fund would obtain that investment exposure? In those cases, should we prohibit a fund from including derivatives in its 80% basket on the basis that investors expect the fund to invest directly in those kinds of securities in the cash markets? Alternatively, should we require a fund that includes derivatives instruments in the fund's 80% basket to include "derivatives" (or similar terminology) in its name? Are there other cases where we should require a fund that includes derivatives instruments in the fund's 80% basket to include this type of terminology in its name?

43. In addition to derivatives, are there other asset types or instruments that would benefit from more clarification about how they should be valued for purposes of determining compliance with the fund's 80% investment policy?

4. Unlisted Closed-End Funds and BDCs

We are proposing to require that a fund's 80% investment policy must always be a fundamental investment policy if the fund is a registered closed-end investment company or BDC that does not have shares that are listed on a national securities exchange (together, "unlisted closed-end funds and BDCs").[96] A "fundamental investment policy" under the proposed rule amendments would be a policy adopted under section 8(b)(3) of the Act or, if the

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[96] *See* proposed rule 35d-1(a)(2)(ii).

fund is a BDC, a policy that is changeable only if authorized by the vote of a majority of the outstanding voting securities of the fund.[97] As a result, unlisted closed-end funds and BDCs would not be permitted to change their 80% investment policies without shareholder approval.

Under the current rule, unless a fund's name suggests that it is a tax-exempt fund, an unlisted 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. The Commission permitted funds to provide shareholders advance notice, in lieu of adopting a fundamental policy, because the advance notice would provide shareholders sufficient time to decide whether to redeem their shares in the event that the investment company decides to pursue a strategy involving a different investment focus.[98] Unlisted closed-end funds and BDCs, however, do not issue redeemable shares or list their shares on a national securities exchange. A shareholder in an unlisted 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.[99] We therefore do not

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97 Proposed rule 35d-1(g)(6). Section 8(b)(3) of the Act requires a registered investment company to recite all of its policies that it deems matters of fundamental policy in its registration statement. For a registered investment company, section 13(a)(1) of the Act requires a vote of a majority of its outstanding voting securities for changes to policies adopted under section 8(b)(3). The proposed amendments would only permit BDCs to change such policies if authorized by the vote of a majority of the outstanding voting securities of the BDC.

98 Names Rule Adopting Release, *supra* footnote 2, at n.19 and accompanying text.

99 While unlisted closed-end funds and BDCs often offer a periodic issuer repurchase tender offer, these can be discretionary on behalf of the issuer or adviser, only offered at specific intervals (*e.g.*, quarterly), and limited to a certain percentage or amount to repurchase, such as participation in the issuer's dividend re-investment program. *See, e.g.,* FS Energy and Power Fund, SEC Staff No-Action Letter (Jan. 10, 2012), *available at* https://www.sec.gov/divisions/marketreg/mr-noaction/2012/fsenergy-011012.pdf (discussing one such BDC's repurchase program). These share repurchases can take an extended period of time, and shareholders may be unable to fully divest their shares.

believe that advance notice is effective in the case of unlisted closed-end funds and BDCs because their shareholders generally cannot use the time provided by the notice to exit their investments if they do not wish to remain invested after the change in the fund's investment policy. For example, absent this proposed change, these funds could launch with one name and corresponding 80% investment policy but then change that policy with little to no recourse for their shareholders. The proposal would address this by ensuring that investors in unlisted closed-end funds and BDCs would be able to vote on a change in investment policy in light of their limited options to exit their investments if the change were made.

We request comment on the proposed requirement for unlisted closed-end funds and BDCs that any 80% investment policy they adopt in compliance with the names rule must be a fundamental investment policy.

44. Should we expand this requirement to any other type of fund? For example, secondary-market liquidity for some listed closed-end funds and BDCs may not be sufficient for shareholders to exit their investments within the 60-day notice period without needing to sell at a price that represents a significant discount from net asset value either because of the introduction of significant new sell-side interest or because of an existing discount in the market. Should we require that any 80% investment policy that these funds adopt also be a fundamental investment policy?

45. Are there any unlisted closed-end funds or BDCs for which our proposed approach may be less necessary to address investor protection considerations? For example, are there any unlisted closed-end funds or BDCs that offer shareholders

liquidity through discretionary repurchase programs sufficient to allow shareholders to tender all of their shares within the 60-day notice period?

46. As an alternative to this requirement, should we require longer advance notice than 60 days for these funds? If so, what length of time would be necessary for shareholders to exit their investments? Further, should we not require fundamental policies of unlisted interval funds that provide advance notice and make a discretionary repurchase offer under 17 CFR 270.23c-3(c) for their outstanding shares? Would the current regulatory limits on interval funds' repurchases affect the investor protection considerations of this alternative approach?

47. Should potential barriers to exit be the primary consideration underlying whether we require funds' names rule investment policies to be fundamental investment policies? For example, should we only require unlisted closed-end funds or BDCs to adopt their names rule investment policies as fundamental investment policies, and remove the current requirement for tax-exempt funds' names rule investment policies to be fundamental investment policies?

48. Should we require any other protections for investors in unlisted closed-end funds and BDCs? For example, should we mandate that these funds must make an issuer tender offer or a repurchase offer when they change an 80% investment policy and are not already required to redeem their shares? Should we offer this as an alternative in the names rule to the proposed fundamental policy requirement? If so, how much should we require these funds to offer to repurchase, for example, 100% or some other percentage?

5. Effect of Compliance with an 80% Investment Policy

We are proposing 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.[100] 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 we are proposing to codify 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.[101]

The rule requires, and proposed rule amendments would continue to require, a fund to invest at least 80% of its assets consistent with its name, but do not prescribe how the fund invests the remaining 20%. A fund's name could be materially deceptive or misleading for purposes of section 35(d) if, for example, a fund complies with its 80% investment policy but makes a substantial investment that is antithetical to the fund's investment focus (*e.g.*, a "fossil fuel-free" fund making a substantial investment in an issuer with fossil fuel reserves). Similarly, 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 risk or returns is 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 short-term bond fund using the 20% basket to invest in highly volatile equity securities that introduce

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100 Proposed rule 35d-1(c).

101 Names Rule Adopting Release, *supra* footnote 2 ("We note, however, that the 80% investment requirement is not intended to create a safe harbor for investment company names. A name may be materially deceptive and misleading even if the investment company meets the 80% requirement.").

significant volatility into a fund that investors would expect to have lower levels of volatility associated with short-term bonds). In discussing fund names that may be materially deceptive and misleading notwithstanding the fund's compliance with its 80% investment policy, the Commission previously stated that index funds generally would be expected to invest more than 80% of the value of their assets in investments connoted by the applicable index.[102] As noted in the 2020 Request for Comment, a fund may be invested 80% or more in an index included in the fund's name, but that underlying index may have components that are contradictory to the index's name. 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.[103] As a final 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.

We request comment on the proposed provision stating that technical compliance with an 80% investment policy does not cure a fund name that is otherwise materially deceptive or misleading.

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[102] *See* Names Rule Adopting Release, *supra* footnote 2, at section II.A.1 (also stating that a UIT with a name indicating that its distributions are tax-exempt may have a misleading name even if it invests 80% of its assets in tax-exempt investments).

[103] *See also, e.g.,* IRC Comment Letter; Silent Majority Comment Letter; PIABA Comment Letter (recommending treating names of indexes used in fund names the same as fund names themselves). *But see* BlackRock Comment Letter; Invesco Comment Letter; SIFMA AMG Comment Letter (recommending the Commission clarify that index funds can meet their 80% investment policies if they invest 80% of the value of their assets in the constituents of the underlying index).

49. Should we codify in the rule, as proposed, the position that the names rule's 80% investment policy requirement is not intended to create a safe harbor for fund names? Is the proposed provision clear?

50. Under what circumstances would a fund's name be misleading or deceptive under section 35(d) even where the fund complies with its 80% investment policy? Should we identify any of these circumstances in the rule? For example, when a fund uses terminology such as "XYX-free" in its name, or any similar terminology suggesting exclusionary screens in its investment selection process, would the fund's name be materially deceptive or misleading if the fund's portfolio were to include investments, in any amount, that contradict this terminology? As another example, should the rule define a fund's name as materially deceptive or misleading if the name includes the term "XYX Index," where the fund's 80% basket investments include components of the XYZ Index, but those component securities themselves are not closely tied to the type of investments suggested by the "XYZ" term in the fund's name? Conversely, should the rule specify that a fund's 80% investment policy meets the requirements of the rule if the fund invests 80% or more of the value of its assets in the components of the underlying index, regardless of whether that index has components that are not closely tied to the type of investments suggested by the "XYZ" term in the fund's name?

51. Should the rule require certain funds, such as index funds, to invest a greater percentage of their assets in the investments suggested by the fund's name (*e.g.*,

95%)? As another example, should ESG-focused funds be subject to a greater percentage (*e.g.*, 95%) than the proposed 80%? Why or why not?

B. Prospectus Disclosure Defining Terms Used in Fund Name

We are proposing amendments to funds' registration forms—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—that would 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.[104] We are also proposing a requirement that funds must tag new information that would be included using a structured data language (specifically Inline eXtensible Business Reporting Language or "Inline XBRL").[105] For purposes of the proposed disclosure requirements, "terms" would 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 would not need to be defined. The proposed amendments are designed to help investors better understand how the fund's investment strategies correspond

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104 *See* proposed instruction to Item 4(a)(1) of Form N-1A; proposed instruction to Item 8(2) of Form N-2; and proposed instruction to Item 11 of Form N-8B-2.

105 *See* General Instruction C.3.(g) of Form N-1A; General Instruction I of Form N-2; proposed General Instruction 2.(*l*) of Form N-8B-2; and proposed General Instruction 5 of Form S-6; *see also infra* footnote 114.

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.

Neither the names rule nor funds' registration forms currently incorporate a general requirement for a fund that is subject to the names rule to include disclosure in its prospectus defining the terms used in the fund's name. However, the names rule does currently include this requirement for funds with names suggesting investment in particular countries or geographic regions.[106] These funds must disclose in their prospectuses the specific criteria used by the fund to select these investments.

Similarly, in adopting the names rule, 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.[107] Further, the Commission also stated that, generally, a fund may use any reasonable definition of the terms used in its name and should define the terms used in its name in discussing its investment objectives and strategies in the prospectus.[108] Therefore, although there is not currently a general requirement for funds to define the terms used in their names, we understand that it is currently common practice for funds to include prospectus disclosure that describes their 80% investment policies and that defines any terms that their names include. The amendments we are proposing would codify certain best practices of

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106 *See* rule 35d-1(a)(3)(ii).

107 *See* Names Rule Adopting Release, *supra* footnote 2, at n.15.

108 *See id.* at n.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).

some funds that currently provide disclosure defining terms used in a fund's name.[109] The proposed disclosure requirement would not, however, otherwise alter or address disclosure that funds currently provide, for example in response to prospectus disclosure requirements regarding the fund's investment policies.

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 defined would provide greater clarity to an investor about the investment focus that the name suggests. We are therefore proposing to replace the specific disclosure requirement for fund names focusing on particular countries or geographic regions with the general requirement to define terms used in the fund's name whenever the fund's name suggests an investment focus requiring an 80% investment policy.

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 may not, however,

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[109] Codifying these practices might especially be helpful for a fund that relies on rule 498 under the Securities Act of 1933 to send a summary prospectus, since such a fund would include only content that the form requirements specifically require or permit to be included in the summary prospectus. The proposal would amend Item 4 of Form N-1A, which is one of the items that is required to be included in a summary prospectus that an open-end fund uses. *See* rule 498(b)(2) under the Securities Act of 1933 [17 CFR §230.498(b)(2)]; *see also* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (permitting the use of a summary prospectus by registered open-end management investment companies).

under the proposed rule otherwise change the meaning of these terms to be inconsistent with their plain English meaning or established industry use.[110] As discussed above, definitions should have a meaningful nexus between the term used in the fund's name and the fund's investment focus.[111] However, there could be multiple reasonable definitions of the same term that multiple funds use in their names, so understanding additional detail about these definitions would help investors better distinguish among funds.[112] For example, multiple funds may include the term "large-cap" in their name to indicate that they invest in "large-capitalization" stock. There could be multiple reasonable definitions of the term "large cap," however, because these funds may have different ways of analyzing pertinent references (including, for example, common indices, classifications used by rating organizations, and definitions used in financial publications).

We are proposing to require that all funds that would be subject to the proposed new prospectus disclosure requirements would have to tag the information we are proposing to require funds disclose on their registration forms in a structured, machine-readable data

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110 *See* proposed rule 35d-1(a)(2)(iii) and 35d-1(a)(3)(ii); *see also infra* section II.C (discussion of the proposed requirement that terms used in a fund's name be consistent with those terms' plain English meaning or established industry use).

111 *See supra* discussion accompanying footnote 52. 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.

112 *See supra* section II.A.1 discussing how a fund may make determinations for what investments are appropriate for the 80% basket.

language.[113] The proposed requirements would 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. Specifically, we are proposing to require funds to tag the disclosures in Inline XBRL in accordance with Rule 405 of Regulation S-T (17 CFR 232.405) and the EDGAR Filer Manual.[114]

Many funds are already required to tag certain registration statement disclosure items using Inline XBRL.[115] Requiring Inline XBRL tagging of names rule disclosure for all funds that

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113 Many funds are already required to tag certain registration statement disclosure items using Inline XBRL. *See infra* footnote 115. However, UITs that register on Form N-8B-2 and file post-effective amendments on Form S-6 are not currently subject to any tagging requirements. The costs of these requirements for funds that are currently subject to tagging requirements and those that newly would be required to tag certain disclosure items are discussed in the Economic Analysis and the Paperwork Reduction Act Analysis sections below. *See infra* discussion in sections III.D.2 and IV.E.

114 This proposed 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 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 proposing conforming amendments to rule 485 and rule 497 under the Securities Act. 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.

115 The Commission has adopted rules requiring funds registering on Forms N-1A and N-2 to submit certain information using Inline XBRL format. *See, e.g.*, Interactive Data to Improve Financial Reporting, Release No. 33-9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33-9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)] (requiring, among other things, open-end funds to provide risk/return summary information from their prospectuses in XBRL format); Inline XBRL Filing of Tagged Data, Release No. 33-10514 (June 28, 2018) [83

would be subject to this disclosure requirement would benefit investors, other market participants, and the Commission by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine-readable data language such as ASCII or HTML. This would 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 would facilitate 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. We believe requiring structured data for the new names-related disclosure for all funds that would be subject to these disclosure requirements would make this disclosure more readily available, accessible, and comparable for investors, other market participants, and the Commission.

We request comment on the proposed amendments to prospectus disclosure requirements regarding funds' definition of the terms used in their names.

52. Are the proposed new instructions in the applicable fund registration forms requiring funds to define the terms used in their names appropriate and clear? Would the proposed amendments help meet the needs of investors to better

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FR 40846 (Aug. 16, 2018)]; Securities Offering Reform for Closed-End Investment Companies, Release No. 33-10771 (Apr. 8, 2020) [85 FR 33290 (Jun. 1, 2020)]; Filing Fee Disclosure and Payment Methods Modernization, Release No. 33-10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

understand how the fund's investment strategies correspond with the investment focus that the fund's name suggests as well as provide additional information about how the fund's management seeks to achieve the fund's objective?

53. Should the proposed prospectus disclosure requirements be applicable, as proposed, to registrants on Form N-1A, Form N-2, Form N-8B-2, and Form S-6? If some types of funds should be exempt, have different disclosure requirements, or not be subject to the proposed structured data requirement, which and why?

54. Would it be helpful and appropriate to revise the proposed instruction to expressly provide that a fund must use a reasonable definition of the terms used in its name?

55. Is the definition of "terms" in the proposed instructions sufficiently clear? Should these proposed instructions use another word instead of "terms" or define the word "terms" differently? If so, what should this alternate definition be and how should we define it?

56. Should we require all funds that would be subject to the proposed new prospectus disclosure requirements to tag the newly-required information in Inline XBRL, as proposed? Why or why not?

57. Should we require funds to use a different structured data language to tag the proposed disclosure on fund names? Why or why not? If so, what structured data language should we require?

C. Plain English/Established Industry Use Requirement

For funds that are required to adopt an 80% investment policy, we are proposing to require 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 use.[116] 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.

The proposed plain English or established industry use requirement would address concerns that a fund sponsor may subvert an investor's reasonable expectations of a fund's investment focus by using terminology in the fund's name in a manner that is inconsistent with the plain English or established industry use. The proposed amendments similarly reflect our belief that a name's meaning should not be permitted to be materially altered by fund disclosure. For example a fund that calls itself a "solar energy fund" would not be able to use disclosure to qualify the name in the prospectus by stating that the fund's 80% basket includes investments in the securities of any type of alternative energy company. While we understand that certain terms may be defined in multiple reasonable ways, we believe that defining a given term in a fund's name in a way that is inconsistent with those terms' plain English meaning or established industry use is misleading for investors. The proposed amendments would define these names as materially deceptive or misleading even if the fund's prospectus disclosure defines a given term in the name to match the fund's investments.

We received comments on the 2020 Request for Comment that identified this issue and stated that funds should not be able to use disclosure to "cure" misleading names.[117] Under the

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116 *See* proposed rule 35d-1(a)(2)(iii) and 35d-1(a)(3)(ii).

117 *See, e.g.,* Consumer Federation Comment Letter; Duffy Comment Letter; McPhee, Jason K. Comment Letter.

proposed amendments, disclosure would not be permitted to "fix" or "remedy" a misleading name that uses terms in a way that is inconsistent with their plain English meaning or established industry use, and therefore contrary to reasonable expectations. This is consistent with section 35(d), which addresses fund names specifically and without regard to other disclosure. It also is consistent with the Commission's belief that a fund's name may communicate a great deal to an investor, even though investors should not rely on the name as the sole source of information about the fund's investments and risks.

We seek comment on the proposed plain English and established industry use requirement:

58. Should the names rule include the proposed requirement that terms used in a fund's name must be consistent with the terms' plain English meaning or established industry use?

59. Is the proposed requirement clear? Is Commission guidance needed to clarify the requirement? If so, what guidance would be helpful? Are there standards that should be considered with respect to what is plain English and/or established industry use?

60. Are there any terms that could be consistent with established industry use that would not be consistent with those terms' plain English meaning or the understanding of a reasonable investor? If so, what terms, and how should we address these?

61. Would current funds be required to change their names or disclosure if the plain English/established industry use requirement is adopted as proposed?

62. Would the proposed plain English requirement encourage funds to select names (or cause them to have to change their names to new names) that could be less informative to investors? For example, would the proposed requirement result in overly-broad or neutral names that may be less helpful to investors?

D. Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names

As approaches to ESG investing vary, and investment products that incorporate one or more ESG factors vary in the extent to which ESG factors are considered versus other factors, the use of ESG or similar terminology in fund names would deceive and mislead investors where the identified ESG factors do not play a central role in the fund's strategy. Accordingly, our proposed amendments would address what we refer to in this release as "integration funds," and would define the names of "integration funds" as materially deceptive and misleading if the name includes terms suggesting that the fund's investment decisions incorporate one or more ESG factors.

As used in this release, integration funds are 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.[118] Such funds may select investments because those investments met

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[118] *See* proposed rule 35d-1(d); *see also* ESG Proposing Release, *supra* footnote 24; "Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction," Investment Company Institute (July 2020) at 4 (discussing integration strategies as funds that "integrate ESG factors into their traditional investment process as a way to seek financial returns") *available at* https://www.ici.org/system/files/attachments/20_ppr_esg_integration.pdf; Morningstar Comment

other criteria applied by the fund's adviser (*e.g.*, investments selected on the basis of macroeconomic trends or company-specific factors like a price-to-earnings ratio). The proposed approach to integration funds targets misleading fund names; and relatedly it is designed to promote "truth in advertising" in fund names by making clear that we believe it would be 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, as this has the potential to overstate the importance of the ESG factors in the fund's selection of its portfolio investments.

Many commenters responding to our 2020 Request for Comment discussed the role of the names rule in addressing concerns about funds whose names include ESG terms or similar terminology.[119] A number of commenters noted the growth of funds with ESG terminology in their names and expressed concerns about "greenwashing."[120] Some commenters, in particular,

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Letter (stating that Morningstar draws a distinction between "sustainable investment" and "ESG Consideration" funds where ESG Consideration funds are "otherwise conventional, actively managed funds that have added environmental, social, and governance criteria to their prospectuses but do not make the claim that they invest only in full-fledged sustainable investments (meaning they do not meet the criteria for any of the [sustainable investment categories of focus, impact, and sustainable sector])").

[119] Over 35 comment letters addressed these issues, including: BlackRock Comment Letter; Consumer Federation of America Comment Letter; Comment Letter of Federated Hermes (May 6, 2020) ("Federated Hermes I Comment Letter"); Morningstar Comment Letter; Principles for Responsible Investing Comment Letter; SIFMA AMG Comment Letter.

[120] *See, e.g.,* Capital Group Comment Letter (noting that the 2020 Request for Comment includes an estimate that, as of December 31, 2019, nearly 300 funds included the terms "ESG," "clean," "environmental," "impact," "responsible," "social" or "sustainable" in their names); Morningstar Comment Letter (discussing the growth of ESG); Practus Comment Letter (noting that "some observers predict that the style could command half of all assets under management in 2025" and expressing concerns about "greenwashing"); Principles for Responsible Investment Comment

urged that a fund should not be permitted to use "ESG" or "sustainable" in its name if ESG inputs are merely one factor among many driving an investment decision, as this could mislead investors.[121]

We agree. Where a fund considers one or more ESG factors alongside other, non-ESG factors in its investment decisions but ESG factors are generally no more significant than other factors in the investment selection process, such that those ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio, including ESG terminology in the fund's name would mislead investors by suggesting that the ESG factors play a more prominent role.[122] For example, consider a fund with "sustainable" in its name that selects investments based on the adviser's holistic analysis of a company, including conventional financial metrics as well as the extent to which the company has good labor and environmental practices. No one factor, including sustainability considerations, is more significant than other factors in the investment selection process. As a result, the fund may invest in companies that do not meet the adviser's own criteria for labor or environmental practices, if the adviser determines to make the investment on the basis of other, non-sustainability considerations. The fund's name would be materially deceptive and misleading because the use of the term "sustainable" in its name connotes an emphasis on "sustainability" considerations that is not consistent with the fund's investment strategy.

Letter; SIFMA AMG Comment Letter; Sustainable Research and Analysis Comment Letter (discussing the growth of ESG).

121 *See* Abdullah Comment Letter.

122 *See, e.g.,* Consumer Federation of America Comment Letter (quoting George Serafeim, a Harvard Business School professor, who has stated that there are "now stronger incentives for asset managers to greenwash," and that "there is a false sense of security or satisfaction if an investor buys an ESG product that might not be what the investor thinks it is").

While the 80% investment policy requirement is an effective way of generally addressing the consistency of a fund's investment portfolio with the investment focus its name suggests, adopting an 80% investment policy would not address the specific concern that the use of ESG terms in an integration fund's name overstates the emphasis of ESG considerations in selecting that fund's portfolio investments. Adopting an 80% investment policy where the 80% investment basket investments were selected considering ESG factors as one factor among many would not address the overemphasis concern. In the "sustainable" fund example above, if the fund's investments may be selected without regard to their satisfaction of the adviser's sustainability criteria—and may score poorly on such criteria because they are only one factor—this would be misleading under section 35(d) regardless of whether the investments were consistent with any 80% investment policy under the rule. Because funds' names necessitate brevity, the inclusion of ESG terminology in their names would be materially deceptive and misleading unless a fund prioritizes those ESG considerations that their names suggest, as contrasted to funds that analyze ESG factors only as part of a broader investment selection process.[123] While we understand that many integration fund managers thoughtfully consider ESG factors as one of multiple components of their investment processes, we believe it would be materially deceptive or misleading for the names of those funds to indicate to investors that consideration of ESG factors is a central part of their investment processes, particularly in light of information suggesting that the use of ESG terminology in fund names is effective in attracting inflows.[124]

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123 *See, e.g.*, Practus Comment Letter; Principles for Responsible Investment Comment Letter.

124 *See, e.g.*, Letter from Morningstar to Chair Gary Gensler (Jun. 9, 2021) attaching "Sustainable Funds U.S. Landscape Report --- More funds, more flows, and impressive returns in 2020,"

We request comment on our proposed amendments to address integration funds with ESG terminology in their names:

63. Should we, as proposed, define a fund name as materially deceptive and misleading when the fund is an integration fund that uses ESG terms in its name? Are there circumstances in which an integration fund's use of an ESG term in its name would not be materially deceptive and misleading?

64. Should a fund be able to use an ESG term in its name as long as the fund also identifies itself in its name as an integration fund (*e.g.*, "XYZ ESG Integration Fund"), and the fund meets the definition of "integration fund" that this release describes?[125] Is the term "integration" sufficiently understood by investors such that its inclusion in a fund name would not make the name materially deceptive and misleading? Are there other, similar terms or phrasing that generally would be better understood than the term "integration?" Could there be a benefit to permitting a fund to use "ESG integration" or similar terms in its name? Would an integration fund that uses these terms in its name be able to satisfy the 80% investment policy requirement, and would adopting an 80% investment policy address the consistency of an integration fund's investment portfolio with the

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Morningstar Manager Research (Feb. 10, 2021) *available at* https://www.sec.gov/comments/climate-disclosure/cll12-8899329-241650.pdf; *see also* "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/.

[125] *See supra* footnote 118 and accompanying text.

investment focus its name suggests? If not, is there a way to adapt the 80% investment policy requirement for integration funds to address the investor protection concerns about the potential overstatement of the consideration of ESG factors that our proposed approach addresses? Alternatively, should an integration fund be exempt from the 80% investment policy requirement? Would such an exemption raise investor protection issues?

65. Should we further limit the extent to which funds may use specific ESG-related terms in their names, for example permitting the use of certain terms only if a fund has a certain investment focus? For example, notwithstanding the principle that a fund may use any reasonable definition of the terms used in its name, should we require that a fund with the terms "zero" carbon in its name to have an investment policy that requires investments in companies with no or low carbon emissions, or should we permit the fund's investment policy to include investments in companies that are transitioning away from certain practices while they are still involved in that activity? If so, what terms should we mandate for what types of investment focus?

E. Modernizing the Rule's Notice Requirement

The proposed amendments to the names rule, like the current rule, would require 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.[126] The proposed amendments would incorporate some modifications to the current notice requirement that are

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[126] Proposed rule 35d-1(e).

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. The Commission has historically acted to modernize the manner in which information is disclosed to the public and provided to investors in order to keep up with changes in the industry and technology. As an additional modification, the proposed amendments would require notices to describe not only a change in the fund's 80% investment policy, but also a change to the fund's name that accompanies the investment policy change.

As discussed above, the names rule currently requires funds that are subject to the 80% investment policy requirement, other than tax-exempt funds, either to adopt and implement a fundamental investment policy, or to adopt an 80% investment policy that is not a fundamental policy if they also provide shareholders notice of a change to the policy at least 60 days before the change occurs.[127] The notice alternative requires that the notice be separate from other fund-related communications and identified as involving a change in the fund's investment policy. These requirements are designed to focus investors' attention on the upcoming change so that they can determine whether to redeem or otherwise exit their investments before the change occurs. A number of commenters who addressed the notice alternative in response to the 2020 Request for Comment suggested allowing funds to post notification of a change to the policy on their websites.[128] Delivery of the notices directly to shareholders, rather than permitting funds to post these notices to a website or a similar alternative in which shareholders do not directly

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127 The staff has observed that most funds choose the 60-day notice requirement alternative as opposed to adopting an 80% investment policy that is a fundamental policy. *See* 2020 Request for Comment, *supra* footnote 2 at n.8.

128 *See e.g.,* Fidelity Comment Letter; Comment Letter of T. Rowe Price (May 21, 2020).

receive notices, increases the likelihood that investors would see and read it, and this goal is particularly important given the strong link between a fund's name and a shareholder's expectations about the fund's investment focus, its portfolio holdings, and its risks and returns.

We are proposing to retain the notice alternative to provide eligible funds flexibility to respond efficiently to market events or new regulatory requirements, and we believe that this flexibility is appropriate where there are not significant barriers for shareholders to exit the fund if they decide to do so upon receiving the required notice.[129] For example, if the Commission were to adopt final rule amendments defining the names of certain ESG integration funds as materially deceptive and misleading as discussed above, the proposed notice alternative would allow affected funds to respond to the requirement—by changing their name or investment policy—after sending appropriate notice to shareholders. Most commenters who addressed this aspect of the current rule in response to the 2020 Request for Comment generally supported the fact that the names rule includes a notice alternative, but many commenters requested modernization of the notice requirement, given advancements in technology and changes in shareholder preferences since the names rule was adopted.[130] In light of these comments and our experience administering the current rule, we are proposing amendments to the current notice requirement to provide greater clarity and facilitate compliance.

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129 *See* Names Rule Adopting Release, *supra* footnote 2 at II.A.(1); *see also supra* section II.A.4 (discussing shareholders of unlisted closed-end funds and BDCs having higher barriers to exit these types of funds).

130 *See e.g.,* Invesco Comment Letter; Fidelity Comment Letter.

Like the current rule, the proposed amendments would require that the notice be provided at least 60 days prior to the change the notice describes. We believe that 60 days is sufficient time for shareholders to decide whether to redeem their shares. The proposed amendments, like the current rule, also would require the notice to be provided in plain English and separately from any other documents.[131] While the proposed requirement 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.[132] This proposed 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). Further, the proposed amendments would specifically state that if the notice is delivered in paper form, it may be provided in the same envelope as other written documents. This proposed amendment is 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. We understand that staff have often received questions about the meaning of the current requirement to provide the notice "in a separate written document." We believe the clarification would help facilitate compliance with the notice requirement.

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131 Proposed rule 35d-1(e)(1).

132 *See* rule 35d-1(c)(1) ("the notice will be provided in plain English in a separate written document").

Similar in part to the current notice requirement, the proposed amendments would require that 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]."[133] The prominent statement would alert shareholders that the notice contains information about the change in the fund's investment policy. In a change from the current requirement, however, the required prominent statement would have to reference the fact of the name change, as applicable.[134] This 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.

The proposed amendments incorporate changes to provide specificity with respect to notices that may be delivered electronically. 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.[135] The Commission's current guidance regarding electronic delivery does not prohibit names rule notices from being delivered electronically.[136] Some

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133 Proposed rule 35d-1(e)(2).

134 The current prominent statement requirement does not include a reference to the fund's name. *See* rule 35d-1(c)(2). We are proposing a conforming change to the reference to the notice requirement in paragraph (a)(2)(ii) of the names rule, which as proposed would require 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*" (emphasis added).

135 Rule 35d-1(c)(3).

136 *See* 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); Use of Electronic Media,

commenters who addressed this aspect of the current rule in response to the 2020 Request for Comment questioned the relevance of the requirement that the notice appear on the envelope in light of funds' increasing use of electronic delivery methods for regulatory materials.[137] Under the proposed amendments, for *any* notice that is provided in paper form, the required statement also would appear on the envelope in which the notice is delivered.[138] This proposed expansion of the current requirement (which only requires the statement to appear on the envelope when the envelope includes other materials) is designed to help draw shareholders' attention to an important document that provides them information about the change in the fund's investment policy. This could help shareholders decide whether to redeem their shares or remain invested in the fund.

If the notice is provided electronically, the proposed amendments would require the statement to appear on the subject line of the email communication that includes the notice.[139]

Investment Company Act Release No. 24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (providing updated interpretive guidance on the use of electronic media to deliver documents on matters such as telephonic and global consent, issuer liability for website content, and legal principles that should be considered in conducting online offerings). 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.

137 *See e.g.,* ICI Comment Letter; T. Rowe Price Comment Letter.

138 Proposed rule 35d-1(e)(2)(i).

139 Proposed rule 35d-1(e)(2)(ii). The proposed amendments specifying that the statement must appear on the subject line of the email notice also would permit "an equivalent indication of the subject of the communication in other forms of electronic media." This is designed to help the proposed requirement remain evergreen in the face of evolving technology and methods of communication.

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 included paper notice. This proposed amendment is designed 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.

Finally, the proposed amendments would require additional specificity with respect to the content that the notices include. The proposed amendments would 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.[140] These proposed requirements are designed to codify certain best practices of some funds, help facilitate funds' compliance with the notice requirement, and increase consistency 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.

We request comment on the proposed amendments to the names rule's notice requirement, including the following items:

66. Are the proposed amendments to the current notice requirement appropriate? Is it appropriate to require notices to describe not only a change in the fund's 80% investment policy, but also a change to the fund's name that accompanies the investment policy change?

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[140] Proposed rule 35d-1(e)(3).

67. The proposed amendments, consistent with the current rule, would require that the notice be provided at least 60 days prior to the change the notice describes. Does 60 days remain a sufficient time period for shareholders who purchased shares in a fund to decide to redeem their shares? Should the rule allow for shorter or a longer period?

68. Should we continue to require that the notice be provided separately from other documents? Are there instances in which shareholders would benefit from the notice being built into any other shareholder communications? For example, would there be a shareholder benefit—or conversely a detriment to shareholder understanding—if the notice were built into the fund's prospectus?

69. Should we continue to require the notice to include a prominent statement regarding the purpose of the notice? Should we allow funds some flexibility to determine a similar alternate statement that would inform shareholders of a change to a fund's 80% investment policy (and related change to the fund's name), as proposed? Should there be additional content in the notice regarding instances when a fund substantially changes it strategy without a shareholder vote? Should the notice include any factors that the board considered, such as whether the change is likely to be consistent with reasonable investor expectations, whether it would result in cost savings that would benefit existing shareholders, whether it would have tax implications to the fund and shareholders, and/or whether the fund's shares are freely redeemable or have limitations attached to redemptions? Would an explanation of material factors that the board considered in approving the 80% policy be useful to shareholders? What

information would be helpful to investors to consider whether to hold or sell their shares in a fund when a fund substantially changes its investment strategy?

70. Should we require this prominent statement also to appear on the envelope in which the notice is delivered? The proposed rule would expand the current requirement for the statement to appear on the envelope, which applies only where the notice is delivered in the same envelope as other communications to investors. Is this proposed expansion appropriate? Why or why not?

71. For funds that deliver the notice electronically, the proposed rule would include a new requirement that the statement appear in the email subject line. Is this new requirement appropriate? The proposed rule would permit funds that deliver the notice electronically to include an equivalent indication of the subject of the communication in other forms of electronic media. Would this flexibility help the proposed requirement to remain evergreen in the face of evolving technology and methods of communication? Why or why not? Are there any further requirements that would be appropriate to facilitate the accessibility of electronic notices, such as stating that the required statement in the subject line must appear in all capital letters, or a required font size for electronic notices?

72. The proposed rule would allow investors who have opted into electronic delivery to receive the notices electronically. Should we also allow funds to satisfy this requirement by making the notices accessible on a website? What potential benefits for shareholders could this website-based approach to notices entail? Conversely, would shareholders not receive adequate notice of investment policy changes if the Commission were to adopt such a website-based approach?

73. Are the proposed requirements for additional specificity, with respect to the content that the notices include, appropriate? Would prescribing the minimum disclosure required in the notice help funds understand how to comply with the notice alternative? Should we require funds to include in the notice definitions of the terms used in the new name? Would prescribing the minimum disclosure required in the notice help investors receive the information that they need to make an informed decision about whether to remain invested in a fund whose investment policy is changing? Should we prescribe any additional or different content in the notices? If so, what content?

F. N-PORT Reports

1. Investment Company Act Names Rule Investment Policy

We are proposing to amend Form N-PORT to include a new reporting item for registered investment companies, other than money market funds, regarding the 80% investment policy that a fund would adopt in compliance with the names rule.[141] Such registered investment companies, other than money market funds, that are required to adopt an 80% investment policy would be

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[141] *See* proposed Item B.9 of Form N-PORT; *see also* proposed new instruction to Item B.9 of Form N-PORT clarifying that when responding to proposed Item B.9, the percentages that the fund reports in response to Item B.9.a and assesses for purposes of reporting in response to Item B.9.b must reflect the notional amounts of funds' derivatives investments with certain adjustments (because the proposed amendments to the names rule would require that, for purposes of determining compliance with the 80% investment policy, funds must value each derivatives instrument using its notional amount, with certain adjustments). All registered management investment companies, other than registered money market funds and small business investment companies, 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, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)]. As BDCs are not subject to Form N-PORT reporting requirements, they would not be subject to the proposed amendments to Form N-PORT.

required to report on Form N-PORT: (1) the value of the fund's 80% basket, as a percentage of the value of the fund's assets, and (2) if applicable, the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's assets during the reporting period.[142] Such a fund would be required to provide the names rule compliance information as of the end of the reporting period.[143] We believe it is appropriate that this information be made available publicly. This information would be publicly available for the third month of each fund's quarter. We believe that the proposed amendments to Form N-PORT would provide market-wide insight with respect to those registered investment companies, other than money market funds, that are subject to the 80% investment policy requirements for the Commission, its staff, and market participants.

This proposed reporting requirement would provide information to the Commission, as well as to market participants, about the percentage of such a fund's assets that are invested in the 80% basket.[144] We believe that the proposed reporting requirement would increase the effectiveness of the Commission's oversight of such funds' compliance with the names rule. This

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142 Tax-exempt funds would have to report the number of days that the value of the fund's investments as described in proposed rule 35d-1(a)(3)(i)(A) fell below 80% of the value of the fund's assets during the reporting period (or, if the fund has adopted a policy as described in proposed rule 35d-1(a)(3)(i)(B), the number of days that less than 80% of the income that the fund distributed was exempt, as applicable, from federal income tax or from both federal and state income tax).

143 *See* proposed Item B.9 of Form N-PORT. This timing reflects the form's requirement to report information about funds' portfolio holdings as of the last business day, or last calendar day, of each month. *See* General Instruction A to Form N-PORT.

144 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 would report a single percentage that reflects its multi-element investment focus. *See supra* paragraph following footnote 49.

information also may allow investors in such funds to make investment choices that are more consistent with their investment preferences. For example, multiple funds could have similar names indicating each fund focuses its investments in the same type of asset. One of these funds may invest 81% of the fund's assets in investments consistent with the fund's investment focus, whereas another fund may invest 95%. Both of these funds would be in compliance with the 80% investment policy requirement.[145] Some investors may prefer a fund that invests as high a percentage of the fund's assets consistent with the fund's investment focus as possible, whereas others may prefer that the fund's manager exercise more discretion in investing assets beyond the 80% investment policy. This proposed reporting requirement would allow investors to compare and consider potential distinctions among such funds with similar names.

The proposed amendments to Form N-PORT would also require that a fund indicate, if applicable, 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. As discussed above, a fund's investments may fall below this 80% threshold for a number of reasons, and permitted temporary departures under the proposal may occur under a variety of circumstances, including because of market fluctuations or other reasons beyond the fund's direct control. Information about these temporary departures is important to the Commission and its staff to assess overall compliance with the names rule. This proposed reporting requirement may also be helpful to investors. Some investors may prefer to invest in a fund that does not often invest below the 80% threshold, and this information may ultimately affect their investment choices. The proposed requirement is

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145 *See also* proposed rule 35d-1(c) (a fund's name may be materially deceptive or misleading notwithstanding the fund's technical compliance with its 80% investment policy); *supra* section II.A.5.

designed to provide the Commission and its staff, as well as investors, with important insight into the frequency and extent to which such a fund's 80% basket investments fall below 80% of the fund's total assets.

The Commission is not proposing a new reporting requirement for money market funds or BDCs, and we are requesting comment on this approach. BDCs are required to submit financial statement information using Inline XBRL data language, and money market funds report portfolio information on Form N-MFP. These respective reporting requirements provide tools to analyze these funds' portfolio holdings and could be used to assess their portfolios in light of any requirement for these funds to adopt 80% investment policies under the names rule. For example, the requirement in Form N-MFP Item C.6 to indicate the category of investment for each portfolio security that a money market fund holds would provide transparency that would permit analysis of the percentage of the money market fund's holdings that are invested in accordance with the investment focus that the fund's name suggests. In addition, our rules subject money market funds and BDCs to certain portfolio composition requirements.[146] BDCs, for example, are required to invest 70% of their assets in "eligible portfolio companies," as defined in Commission rules.[147] These portfolio composition requirements provide an additional layer of Commission regulation over the portfolios of money market funds and BDCs. We do not currently believe additional reporting requirements, similar to the proposed Form N-PORT

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146 *See* rule 2a-7 under the Act (specifying the portfolio composition requirements for money market funds).

147 *See* section 55(a) of the Act; rule 2a-46 under the Act (17 CFR 270.2a-46); rule 55a-1 under the Act (17 CFR 270.55a-1).

amendments, are necessary for money market funds and BDCs given the current reporting and portfolio composition requirements for these funds.

We seek comment on the proposed amendments to Form N-PORT requiring registered investment companies, other than money market funds, to report certain information regarding their compliance with the names rule:

74. Is the proposed requirement that funds report the value of the fund's 80% basket, as a percentage of the value of the fund's assets, appropriate? Should we modify the proposed reporting requirement in any way? If so, how?

75. Is the proposed requirement that funds report the number of days that the value of the fund's 80% basket have dropped below the 80% threshold during the reporting period reasonable? Should the look-back period for this reporting requirement be three months instead of the proposed one-month reporting period? Would this proposed requirement be appropriate for tax-exempt funds, for example those that distribute income only quarterly or annually, and if not, how should we modify the proposed requirement? Should we modify the proposed reporting requirement in any other way? If so, how?

76. Our proposal would make this new Form N-PORT item public. Is there any reason why this information should not be publicly available?

77. In addition to or as a substitute for this proposed Form N-PORT reporting requirement, should we require funds to report confidentially to the Commission, for example on Form N-RN, if the value of the fund's 80% basket falls below 80% of the fund's total assets? If so, why would that information be necessary to provide to the Commission? If not, why not?

78. Would any of the proposed Form N-PORT reporting requirements be more appropriately structured as annual Form N-CEN reporting requirements?

79. Should we require BDCs to report any or all of the information that we are proposing to require registered investment companies to report on Form N-PORT, for example in their annual reports or on Form 8-K?

80. Should we require money market funds to report the information that we are proposing to require other registered investment companies to report on Form N-PORT, for example on Form N-MFP?

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

We are proposing a new Form N-PORT reporting item requiring a registered investment company, other than a money market fund, 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.[148] A fund would be required to provide this information, along with the information it reports for each of its portfolio investments on Form N-PORT, as of the end of the reporting period. This information would be publicly available for the third month of each fund's quarter. We believe that this information would enhance the Commission's ability effectively to oversee and assess the activities of registered investment companies, other than money market funds, in order to better carry out its regulatory functions, and also to provide investors as well as

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[148] *See* proposed Item C.2 of Form N-PORT.

the Commission and its staff insight into the types of investments the fund includes in the 80% basket.

The proposed requirement for a fund to report whether each investment is included in the 80% basket would help the Commission evaluate compliance with the proposed amendments. We believe that the proposed amendments to Form N-PORT would provide information that would increase investor understanding of a particular fund's investment focus, which would assist investors in making investment choices that better match their investment preferences. We recognize that funds with similar names and investment focuses may reasonably make different determinations regarding whether an investment is appropriately within the 80% basket. To the extent that investors expect a fund to invest with a particular investment focus that is consistent with the fund's name, the proposed Form N-PORT reporting requirement would provide investors with important information regarding how the fund implements that investment focus. For example, for some investors, there may be important investment distinctions among similarly named funds, or in how a given fund implements its investment focus over time.

Some funds may have an investment focus where the selection of 80% basket investments involves some degree of subjectivity. The proposed reporting requirement provides transparency that would help investors and other market participants, as well as Commission staff, understand what qualities a fund's advisory personnel may consider a specific portfolio investment to demonstrate consistent with the fund's 80% investment policy. Market participants would also better be able to view, across funds with similar investment focuses, whether these funds may be characterizing particular investments similarly. For example, investors interested in funds with an ESG investment focus would better be able to compare across funds with

similar names to determine whether specific investments are characterized similarly or differently, and therefore better be able to invest according to their specific preferences.

We seek comment on the proposed amendments to Form N-PORT requiring funds to report, for each portfolio investment, whether that investment is included in the fund's 80% basket:

81. Is this proposed requirement appropriate? Should we modify the proposed reporting requirement in any way? If so, how?

82. Should we expand the proposed requirement to require a fund to indicate on Form N-PORT, for derivatives instruments that the fund includes in its 80% basket, whether these derivatives are included because they provide investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name?

83. Our proposal would make public the information that a fund would report in response to this new Form N-PORT item for the third month of each fund's quarter. Is there any reason why this information should not be publicly available?

G. Recordkeeping

The proposed amendments would require funds to maintain certain records depending on whether the fund would be required to adopt an 80% investment policy.[149] Funds subject to that requirement would be required to maintain certain records documenting their compliance with the rule. Conversely, funds that do not adopt an 80% investment policy would be required to maintain a written record of their analysis that the 80% investment policy is not required under the rule.

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[149] Proposed rule 35d-1(b)(3).

1. Funds Required to Adopt an 80% Investment Policy

The proposed recordkeeping requirements for funds that are required to adopt an 80% investment policy are designed to provide our staff, and a fund's compliance personnel, the ability to evaluate the fund's compliance with the proposed amendments.[150] These would be new requirements, as neither the current rule nor the general recordkeeping rule under the Act includes a recordkeeping provision specific to the names rule compliance-related topics the proposed amendments would address.[151]

The proposed amendments would require a fund that is required to adopt an 80% investment policy to maintain written records documenting its compliance under the 80% investment policy provisions of the rule. Specifically, the written records documenting the fund's compliance that these funds would be required to maintain would include:

- The fund's record of which investments are included in the fund's 80% basket (generally defined as investments that 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 investment in the 80% basket;
- The value of the fund's 80% basket, as a percentage of the value of the fund's assets;
- The reasons for any departures from the 80% investment policy;
- The dates of any departures from the 80% investment policy; and

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150 *See* proposed rule 35d-1(b)(3).

151 *See* rule 31a-1 under the Act (17 CFR 31a-1) ("rule 31a-1").

- Any notice sent to the fund's shareholders pursuant to the rule.[152]

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.[153] We believe that the frequency with which these records would be made would vary based on the specific activities and compliance needs of the fund. We believe that many funds would make certain of these records daily in order to reflect ongoing investment activity. We anticipate that the vast majority of records would be automated. Some records, however, would not lend themselves to automation—for example, records documenting the reasons for any departures from the 80% investment policy—and would need to be created on an as-needed basis.[154]

These records would allow our staff to understand and evaluate a fund's operation of its investment policy better and whether the fund is adhering to the proposed amendments. These records also would allow our staff to better identify and assess violations. We also believe that this recordkeeping requirement would increase the effectiveness of the Commission's oversight of the fund industry, which will, in turn, benefit investors.

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152 Proposed rule 35d-1(e); *see also* proposed rule 35d-1(g)(1) (defining "80% basket"). The proposed new Form N-PORT reporting requirements would not satisfy the record-keeping requirements of proposed rule 35d-1(b)(3). Form N-PORT would reflects a snapshot of the fund's investments at the end of the reporting period. The proposed recordkeeping requirement, however, reflects the fund's ongoing names rule compliance activity.

153 *See supra* paragraph accompanying footnote 66 discussing the time period in which the 80% policy must be assessed.

154 Records of the fund's analysis that such a policy is not required under the names rule, as described in section II.G.2 *infra*, similarly would need to be created on an as-needed basis.

The proposed amendment would not prescribe the particular form of documentation required to be maintained but would instead provide flexibility in how a fund documents the information delineated in the recordkeeping requirement. The fund should, however, generally maintain appropriate documentation that would be sufficient for a third party to verify the matter covered by each record.

The proposed six-year retention period is designed to be generally consistent with other recordkeeping retention periods provided in rules under the Act.[155] We believe general consistency with other retention periods would lessen the compliance burden of the proposed new requirement for funds required to maintain these records. However, we believe the compliance burden of the new recordkeeping requirements would be incremental for a fund that is currently required to adopt an 80% investment policy. Funds that are subject to the current names rule likely keep such records, even absent the proposed requirement to do so, in order to support their ongoing compliance with the rule's requirements.

We request comment on the proposed recordkeeping provision for funds that are required to adopt an 80% investment policy.

84. Is the proposed recordkeeping requirement appropriate? Why or why not? Is the accompanying Commission guidance regarding the required written records appropriate and understandable? If not, what additional guidance should we give?

85. Are there additional types of records that we should require for funds that are required to adopt an 80% investment policy? If so, which records and why?

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155 *See* rule 31a-1; *see also e.g.,* rule 38a-1(d) and rule 22e-4 (both rules incorporating retention periods of five years).

86. Should the proposed rule prescribe the particular form of documentation required to be maintained under this new requirement? Why or why not?

87. Are the proposed retention periods sufficient to evidence compliance? Why or why not? Should we require a longer (*e.g.*, eight years) or shorter (*e.g.*, four years) retention period?

88. Should the proposed recordkeeping requirement also include a requirement that the fund document an assessment(s) of any continued or ongoing departures from the 80% policy, beyond the proposed requirement (for example, if the departure were to persist beyond a particular time period, a requirement to document the continued need for the departure)? Would requiring such assessment(s) of a fund's departure from the 80% policy help ensure that the fund comes back into compliance quickly, consistent with the proposed "as soon as reasonably practicable" standard?

89. For those funds that are currently subject to the names rule's 80% investment policy requirement, what records do those funds generally keep regarding their compliance with the rule and the 80% investment policy they adopted under the rule? Who at the fund currently creates and/or maintains these records? How do these records differ from those being proposed? When creating and maintaining the records that would be required by the proposed amendments, what personnel do funds believe would be necessary?

2. Funds That Do Not Adopt an 80% Investment Policy

The proposed amendments would require a fund that does not adopt an 80% investment policy to maintain a written record of the fund's analysis that such a policy is not required under

the names rule. Such funds must maintain this record, in an easily accessible place, for a period of not less than six years following the fund's last use of its name. The investor protection that the rule's investment policy requirement provides is critical to help ensure that funds' investments correspond with the investment focus that their names suggest to investors.[156] As we stated above, however, we recognize that certain names do not suggest an investment focus and therefore would not require the fund to adopt an 80% investment policy under the proposed amendments. At the same time, there can be incentives for asset managers to determine that certain funds are not subject to the names rule's 80% investment policy requirement in order to preserve management flexibility, even where the fund's name may suggest a particular investment focus.

Accordingly, we are proposing to require funds that do not adopt an 80% investment policy under the rule to maintain a written record of the fund's analysis that an 80% investment policy is not required.[157] This proposed provision is designed to prevent materially misleading or deceptive names by assisting our staff and fund compliance personnel in their oversight of the application of the names rule by providing our staff, and a fund's compliance personnel, the ability to evaluate the fund's analysis. This provision also would assist in funds' compliance practices, as fund boards generally should consider names rule compliance, including the requirement for certain funds to adopt an 80% investment policy, in approving their funds' policies and procedures under rule 38a-1(a)(2).[158]

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156 *See generally, e.g.,* PIABA Comment Letter; CFA Comment Letter; Crowley Comment Letter.

157 Proposed rule 35d-1(b)(3).

158 *See also supra* footnotes 16 and 50 and accompanying text.

We request comment on the proposed recordkeeping requirement for funds that do not adopt an 80% investment policy.

90. Is the proposed recordkeeping requirement for funds that do not adopt an 80% investment policy likely to provide meaningful protection to investors? Are there any other records we should require of these funds?

91. What information do commenters anticipate would be included in the proposed written record? Is there any specific information that we should require in the written record, or is the proposed general written record requirement appropriate in light of the breadth of fund strategies and names?

92. Is six years from the fund's last use of its name the appropriate period to retain this record? Should we instead require that this record be kept for six years from the first use of the name, or for some other period? Should we require such records be kept in an easily accessible place indefinitely or for a limited time and, if the latter, for how long?

93. Should we require that funds not required to adopt an 80% investment policy make a finding or determination to that effect prior to first use of the fund's name and require a designated party, such as the fund's board or chief compliance officer, to make this finding or determination? Should we require the fund's board to approve that finding or determination if the board is not making it in the first instance? If we were to take this approach, should we require funds with names currently in use to engage in this activity as well?

H. Unit Investment Trusts

The proposed rule amendments would include certain exceptions for unit investment trusts ("UITs") that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts. Specifically, these UITs would be excepted from the requirements to adopt an 80% investment policy and the recordkeeping requirements, including recordkeeping for funds which do not adopt an 80% investment policy, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule.[159]

The proposed approach is generally consistent with the treatment of UITs under the current rule. UITs are passively managed vehicles that operate pursuant to a trust indenture or a similar document and have fixed portfolios that would make it difficult to adjust their portfolios to comply with the rule's portfolio composition requirements.[160] Changes to an UIT's operational documents can be expensive and time-consuming.[161] The proposed amendment is designed to retain the existing exception from the 80% investment policy requirements for UITs that pre-date the original rule. Any such UIT would be included in the set of UITs that the proposed exception would include—those that have not adopted, and not been required to adopt, an 80% investment policy prior to the effective date of the proposed amendments. We believe the same reasoning also supports excepting UITs that pre-date the effective date of the proposed rule amendments, to the extent that they would be required to adopt an 80% investment policy

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159 Proposed rule 35d-1(f).

160 Names Rule Adopting Release, *supra* footnote 2, at n.33 and accompanying text.

161 *See, e.g.*, Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 6, 2021)] at nn.170-180 and accompanying text.

for the first time or make a written record of their analysis that such a policy is not required under the rule as a result of the proposed amendments. Further, the lack of active management for UITs would make these proposed requirements operationally difficult.[162]

In addition, all UITs would be subject to the rule's other requirements under the proposed amendments, as well as those of the federal securities laws generally, including section 35(d) of the Act. For example, we are not proposing to except UITs from the prohibition on names that suggest a guarantee by the U.S. government regardless of the date of initial deposit.[163] Further, the ability to provide prospectus disclosure is not precluded by the fixed nature of a UIT's portfolio. As a result, UITs would be subject to the proposed plain English requirements, and as discussed above we would also require all UITs to make the prospectus disclosures that would be mandated under the proposed rule and to tag newly-required information in the prospectus using Inline XBRL.

We request comment on the proposed exception for certain UITs from the requirements to adopt an 80% investment policy and make certain records.

94. Is it necessary to except the UITs that the proposed rule amendments describe from these provisions? Would UITs that have made an initial deposit of securities prior to the adoption of any rule amendments be able to make the appropriate name or portfolio adjustments necessary to conform to the 80% investment policy and related requirements? In general, what would be the impact on UITs currently

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[162] As these UITs would not be subject to the requirement to adopt an 80% investment policy, they would not be subject to the rule's other requirements that only apply when a fund is required to adopt an 80% investment policy, such as the proposed temporary departure and notice requirements. *See, e.g.*, proposed rule 35d-1(b)(1) and (e).

[163] *See* proposed rule 35d-1(f) (not excepting applicable UITs from paragraph (a)(1) of the rule).

in existence of the proposed changes to the scope of the 80% investment policy requirement?

95. What would be the extent of the impact on UITs if we were not to include either of the sets of UITs in the proposed rule amendments' exceptions for UITs—that is, either UITs that have made an initial deposit of securities prior to July 31, 2002, or UITs that have made an initial deposit of securities prior to the effective date of any final rules the Commission adopts?

96. Should these or other UITs be excepted from any other provisions? How would we ensure that investors are protected in those cases?

I. Transition Period and Compliance Date

Staff in the Division of Investment Management is 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 any adoption of this proposal. Upon the adoption of any final rule amendments, some of these letters and other staff statements, or portions thereof, would be moot, superseded, or otherwise inconsistent with the final rule amendments and, therefore, would be withdrawn. If interested parties believe that additional staff letters or other staff statements should be withdrawn, they should identify the letter or other statement, state why it is relevant in light of the proposed rule amendments, how it or any specific portion thereof should be treated, and the reason therefor. The staff review would include, but would not necessarily be limited to, all of 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).

Following a one-year transition period to provide time for funds to prepare to come into compliance with the proposed rule amendments, if adopted, funds would be required to comply with the requirements of the proposed names rule amendments, the proposed new prospectus disclosure requirements, and the proposed new Form N-PORT reporting requirements. At that time, as determined appropriate in connection with the staff's review of no-action letters and staff statements described in this release, staff no-action letters and other staff statements, or portions thereof, may be withdrawn.

We propose to provide a one-year compliance period for the proposed names rule amendments, if adopted, to provide time for funds to bring their fund names and disclosures into conformity with the amendments. We propose that the transition period discussed in this section would run from the date of the publication of any final rule amendments in the Federal Register.

We request comment on the proposed transition period.

97. Do commenters agree that a one-year transition period provides time for funds to come into compliance with the proposed names rule? Should the period be shorter or longer?

98. Should the transition period be the same for all funds that rely on the proposed names rule?

99. Would our proposal to rescind the current staff statements discussed above provide sufficient time for funds to comply with the proposed names rule?

100. Is it clear what statements would be withdrawn or rescinded? Are there additional letters or other statements, or portions thereof, that should be withdrawn or

rescinded? If so, commenters should identify the letter or statements, state why it is relevant to the proposed rule, how it or any specific portion thereof should be treated, and the reason therefor.

III. 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 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 proposed rule amendments, including the benefits and costs to investors and other market participants as well as the broader implications of the proposed 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 the proposed 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, monitoring and search costs may 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. The Commission seeks comment on all aspects of the economic

analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Broad Economic Considerations

As discussed in section I.B above, we believe that a fund's name is an 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 in light of their goals in communicating to investors. To the extent that holding investments inconsistent with the investment focus that a fund's name suggests could lead to increased assets under management and increased fees, however, the adviser may have an incentive for the fund to hold investments different from those suggested by the fund's name. For example, a fund may deviate from the investment focus suggested by its name in an attempt to outperform its peers and attract greater inflows. The potential for funds to hold investments that are not consistent with the investment focus that a fund's name suggests exists to the extent that there are costs for investors to monitor fund investments, either directly by reviewing fund disclosures or indirectly through third parties. Because there are costs for investors to monitor fund investments, fund advisers may be able to engage in activities that benefit themselves, rather than investors, through increased assets under management and fees without those activities invariably being detected by investors. Holding investments not

consistent with the investment focus that a fund's name suggests could, in turn, lead to investors holding investments that are inconsistent with their goals and risk tolerances.

Research on fund names focuses on the relation between investment styles identified by fund names and the risks and returns generated by fund holdings.[164] Academic research has found that funds may not follow an investment style that aligns with the investment style identified in a fund's name.[165] Researchers have also found that certain funds have changed names in such a way as to suggest changes in style, but the funds do not subsequently change styles.[166]

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164 Academic research generally distinguishes between the asset classes identified in fund names (*e.g.*, "equity" or "debt") versus "investment style" descriptions in fund names (*e.g.*, value/growth, or small/mid/large-cap), and generally does not examine the relation between asset classes identified in fund names (*e.g.*, "equity" or "debt") and portfolio holdings for funds currently subject to the 80% requirement.

165 For example, *See* Anne-Florence Allard, Jonathan Krakow, and Kristien Smedts, "When Mutual Fund Names Misinform," 2020, working paper, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628293 ("Allard et al"). The authors examine 2,126 US equity funds, 1,339 of which have "small," "large," "growth," or "value" in their names. The authors conclude that "that a significant fraction of US equity mutual funds provides inaccurate naming information: 33% of US equity mutual funds have, at least once in their life-cycle, an inaccurate name." *See* also *E.* Ghoul, and A. Karoui, What's in a (Green) Name? The Consequences Of Greening Fund Names On Fund Flows, Turnover, And Performance, 39 *Finance Research Letters* 101620 (2021). The authors find a statistically insignificant change in fund exposure to socially responsible investment following a fund name change suggesting socially responsible investment. 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 themselves as socially responsible yet do not make tangible investment decisions consistent with that portrayal.

166 *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 (2005, vol. 60, pp. 2825-2858) ("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 they are not accompanied by corresponding changes in investment style to reflect the investment style suggested by the new name. *See also* Susanne

That same research suggests that gaps 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 funds' investment styles may be altered 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.[167] Research findings also suggest that funds' name changes that do not also involve a style change may be intentional, in order to attract fund flows.[168] 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 (so-called "hot" fund styles).[169] Also, the "hotter" the style implied by a name change, the more flows funds attract from investors.[170]

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 (2017, vol. 84, pp. 123-134) ("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.

167 *See* Allard et al. 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.

168 *See* Cooper Paper. 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. *See also* Espenlaub Paper. The researchers do not find a relation between prior fund flows and prior performance, but they do find a negative relation between management fees and the likelihood of a misleading name change. The researchers argue that because management fees are tied to assets under management, fund managers feel greater pressure to increase fund size in order to maintain personal incentives.

169 *See* Cooper Paper.

170 *Id*.

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 regulatory framework.

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 July 2021, there were 10,223 mutual funds (excluding money market funds) with approximately $18,588 billion in total net assets, 2,320 ETFs organized as an open-end fund or as a share-class of an open-end fund with approximately $6,447 billion in total net assets, 736 registered closed-end funds with approximately $314 billion in total net assets, and 49 UITs with approximately $598 billion in total net assets.[171] There also were 432 money market funds with approximately

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[171] Estimates of the number of registered investment companies and their total net assets are based on a staff analysis of Form N-CEN filings as of July 31, 2021. 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 in Form N-CEN). For UITs, we only count 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 in 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 in Form N-CEN).

$5,534 billion in total net assets.[172] Finally, as of July 2021, there were 99 BDCs with approximately $79 billion in total net assets.[173]

The proposed rule amendments would also affect current and prospective individual investors who invest in funds. According to an association representing regulated funds, as of December 2020, 60.9 million (47.4%) U.S. households and 106.3 million individuals owned U.S. registered investment companies.[174] Median mutual fund assets of mutual fund-owning households were $126,700 with the median number of mutual funds held being four.[175] Moreover, registered funds play an important role in individuals' retirement savings. 64% of households had tax-advantaged retirement savings with $11.1 trillion invested in mutual funds either through defined contribution plans or IRAs.[176]

a) 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. Fund names commonly include words that describe the fund's investment focus—for example,

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172 Estimates of the number of money market mutual funds and their total net assets are based on a staff analysis of Form N-MFP filings as of July 31, 2021.

173 Estimates of the number of BDCs and their net assets are based on a staff analysis of Form 10-K and Form 10-Q filings as of June 30, 2021. Our estimate includes BDCs that may be delinquent or have filed extensions for their filings, and it excludes 4 wholly-owned subsidiaries of other BDCs.

174 *See* 2021 ICI Fact Book.

175 *Id*.

176 *Id*.

the asset class(es) in which the fund invests, as well as the fund's investment strategy. For example, the words "equity" or "stock" appear in 9.6% of fund names. The words "growth" and "income" appear in 8.2% and 10.4% of fund names, respectively.[177]

Preliminary review of fund filings suggests that approximately 84% of funds have investment policies specifying a minimum percentage of investments consistent with a certain fund focus.[178] Of those funds, approximately 82% have an investment policy requiring at least 80% of fund investments be consistent with a certain fund focus.[179] Certain funds also specify investment maximums as a percentage of fund assets.[180]

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177 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" (2.1% of funds), "high yield" (1.7% of funds), and "emerging markets" (3.4% of funds). We are not aware of any funds with the word pairs "ESG Integration" or "ESG Integrated" in their names.

178 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 December 31, 2020. Specifically, 497 and 485BPOS fund prospectuses filed in 2019 or 2020 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 six funds could not be identified in the 497 and 485BPOS fund prospectuses filed in 2019 or 2020. Therefore, these six 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 III.C.3

179 18% of funds that have investment policies specifying a minimum percentage of investments consistent with a certain fund focus specify a percentage less than 80%. We note that while 69% of funds have an investment policy requiring at least 80% of fund investments be consistent with a certain investment strategy, we estimate that 62% 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.

180 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.

b) Current Regulatory Framework

As discussed above, section 35(d) the Act authorizes the Commission to define such fund names or titles as are materially deceptive or misleading.[181] The names rule generally requires that if a fund's name suggests a particular type of investment, industry, or geographic 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. The names rule also provides that a fund's 80% investment policy applies "under normal circumstances" – 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.[182] 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.[183] A preliminary review of fund names suggests that approximately 62% of funds have names that implicate the 80% investment policy requirement.[184]

Staff generally reviews initial fund registration statements, certain post-effective amendments, and proxy statements. Staff may provide comments, and these comments may address the fund's name in light of the names rule's requirements.[185] Registration statements for

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181 *See supra* section I.A.

182 *See supra* footnote 10.

183 *See supra* footnote 11

184 This estimate is based on a random stratified sample of 100 fund names. *See supra* footnote 178.

185 *See* discussion at *supra* footnote 35. Staff do not approve any fund or its disclosure.

most new mutual funds and ETFs organized as corporations, as well as material changes to these funds, automatically go effective after a period of time, typically 75 days for new funds and 60 days for funds with material changes. For new mutual funds and ETFs organized as trusts and many closed-end funds, filings typically become effective pursuant to Commission action that has been delegated to the staff.[186]

In addition, no less frequently than once every three years, staff reviews the annual report of all management investment companies, including their financial statements ("SOX Reviews"). As part of that review, staff may provide comments to funds to the extent staff observes fund holdings that are inconsistent with its disclosure. All registered management investment companies (other than money market funds and small business investment companies), as well as UITs operating as ETFs, 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.

D. Benefits, Costs, and Effects on Efficiency, Competition and Capital Formation

The proposed amendments are designed to modernize and enhance the investor protections that the names rule currently provides. The proposed amendments would improve and clarify 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 are designed to ensure that fund names that communicate to investors that the fund focuses its investments in a particular way are addressed by the rule, and to address investors' reasonable expectations regarding the focus that the fund's name communicates. The proposed amendments

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[186] *See, e.g.,* 17 CFR 200.30-5(b).

also would 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.[187] For example, the current scope of the rule has created interpretive issues, including about whether certain fund names are subject to the names rule, which in turn has raised questions about the rule's application with respect to particular fund names that could mislead investors about the fund's investment focus. 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. Additionally, the investor protections provided by the names rule are not designed to address funds' increasing use of derivatives.

The benefits associated with the proposed amendments may vary based on funds' current practices. Our understanding is that certain 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. Depending on the extent to which those practices differ across funds or differ from the proposed rule's requirements, the benefits realized by fund investors, as detailed below, may vary across fund investors.

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

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187 *See supra* footnote 5.

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 fund investments, or they may choose to reduce or eliminate their investments in funds. Similarly, uncertainty about fund holdings 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 proposed amendments would extend the provisions of the names rule to a broader set of fund names. We believe that investors would benefit to the extent that the scope expansion helps ensure that a fund's investment activity supports the investment focus its name communicates and, thus, the investor expectations the name creates.

Temporary Departures. The proposed amendments would 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 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; (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 pursuant to the rule.[188] Unlike the more principles-based approach of the current rule, the proposed rule would specify the circumstances where a fund's temporary

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[188] *See supra* footnote 54.

departure from the 80% investment requirement would be permitted. We believe that funds and their shareholders would benefit from the degree of flexibility that the proposed approach would provide, as it would allow fund managers 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, while providing additional parameters designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time.

Considerations Regarding Derivatives in Assessing Names Rule Compliance. The proposed amendments would also address the valuation of derivatives instruments for purposes of determining a fund's compliance with its 80% investment policy, as well as the derivatives that a fund may include in its 80% basket. The proposed amendments would 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, and reduce the value of its assets by excluding cash and cash equivalents up to the notional amount of the derivatives instrument(s).[189] The proposed amendments also would 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 or more of the market risk factors associated with investments suggested by a fund's name. As discussed above, a derivatives instrument's "value," as defined in the Act, may bear no relation to the investment exposure created by the derivatives instrument.[190] We believe the notional

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189 *See* proposed rule 35d-1(g)(2).

190 *See* discussion in section II.A.3.

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.[191] Our proposed amendments would 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.

Unlisted Closed-End Funds and BDCs. Under the proposed rule amendments, unlisted closed-end funds and BDCs would not be permitted to change their 80% investment policies without shareholder approval. Unlisted closed-end funds and BDCs do not issue redeemable shares or list their shares on a national securities exchange. Shareholders in an unlisted 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 and the investment focus that the fund's name indicates. The absence of recourse would tend to reduce investor protections with respect to fund investments. The proposed amendments would increase investor protections by requiring that a fund's 80% investment policy be a fundamental investment policy, and this would, in turn, require unlisted closed-end funds and BDCs to secure investor approval before changing their 80% investment policies.

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[191] We request comment above on funds' current practices regarding including or excluding short positions in their 80% basket and whether any changes in this area would be appropriate.

Effect of Compliance with an 80% Investment Policy. We are proposing 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.[192] 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.[193] We believe that investors will benefit from the enhanced protections created by the codification of the view that a fund name may be materially deceptive or misleading even where the fund complies with its 80% investment policy.

Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names. The proposed amendments would define the names of "integration funds" as materially deceptive and misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors. We believe that the proposed amendments would benefit those investors who prefer to invest in funds for which ESG factors are determinative in deciding whether to include or exclude any portfolio investment, because the proposed amendments would make it easier for these investors to select funds that meet these criteria and distinguish them from integration funds. For those investors, we anticipate that this benefit would result from the way that the proposed amendments address names that have the potential to overstate the importance of ESG factors in a fund's selection of its portfolio investments, in that the proposed amendments effectively define this practice to be materially deceptive and misleading.

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192 Proposed rule 35d-1(c).

193 *See supra* footnote 101.

Prospectus Disclosure. We are also proposing amendments to funds' registration forms that would 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.[194] We believe that these provision would help the investor understand whether the investment focus the name suggests is consistent with the investor's investment goals and risk tolerance. The proposed amendments would also reduce costs for investors to search for funds that match their investment preferences and facilitate monitoring by investors or third parties as well as facilitate oversight by the Commission.[195]

The proposed amendments would require funds to tag the new prospectus disclosure in Inline XBRL, a structured, machine-readable data language.[196] This requirement is designed to make the proposed 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.[197] While those observations are specific to operating company financial

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194 *See supra* footnote 104.

195 *See* section II.B, section II.C, section II.F and section II.G 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.

196 *See* section II.B.

197 *See, e.g.,* Birt, J., Muthusamy, K. & P. Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information*, 30 ACCOUNT. RES. J. 107 (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*, J. BUS. FIN. ACCOUNT. (2021) (finding 10-K file

statement disclosures (including footnotes), and not to disclosures from funds outside the financial statements, they indicate that the proposed Inline XBRL requirements could provide fund investors with increased insight into term definitions and investment selection criteria at specific funds and across funds, asset managers, and time periods.[198] Additionally, while Forms N-8B-2 and S-6 would be structured only for this proposed disclosure requirement, we do not expect this to negatively impact investors' ability to understand the disclosures on these Forms. An Inline XBRL requirement would ensure that all disclosures on these forms—including both structured and unstructured disclosures—would be human-readable, because Inline XBRL enables a single document to include both human-readable and machine-readable disclosure.

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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*, 52 ABACUS 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings).

198 Investors could benefit from their direct use of the Inline XBRL data, or through indirect use of the indirect data (*i.e.*, through 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*, XBRL.org (2018); Hoitash, R & U. Hoitash, *Measuring accounting reporting complexity with XBRL*. 93 ACCOUNT. REV. 259–287 (2018). Also, in contrast to XBRL financial statements (including footnotes), which consist of tagged quantitative and narrative disclosures, the proposed 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 a specific upper limit of greenhouse gas emissions as a selection criterion, those values would 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.

We are also proposing to 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. 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.

New Form N-PORT Reporting Requirements. We are also proposing to amend Form N-PORT to include a new reporting requirement regarding a registered investment companies' names rule compliance.[199] 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) the value of the fund's 80% basket, as a percentage of the value of the fund's assets, and (2) if applicable, the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's assets during the reporting period. There would also be a proposed new Form N-PORT reporting item requiring a fund that is a Form N-PORT filer and that is 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. We believe that the new information that funds would be required to report on Form N-PORT filings would facilitate the Commission's oversight of funds' names rule compliance and assist Commission staff in examination, enforcement, and monitoring with respect to the consistency between funds'

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[199] As discussed above, the proposed 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 proposed amendments to Form N-PORT. *See supra* footnote 141.

portfolio investments and the investment focus that the fund's name suggests. In addition to assisting the Commission in its regulatory functions, we believe that investors and other potential users would 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 believe that entities providing services to investors, such as investment advisers, broker-dealers, and entities that provide information and analysis for fund investors, would also utilize and analyze the new information that will be required by the proposed amendments to Form N-PORT to monitor fund investments for consistency with investment focuses suggested by fund names. Accordingly, whether directly or through third parties, we believe that the proposed new disclosure on Form N-PORT will benefit all fund investors.

Recordkeeping. The proposed amendments would require funds to maintain certain records depending on whether the fund would be required to adopt an 80% investment policy.[200] While the amendments would 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. These proposed requirements would provide our staff, and a fund's compliance personnel, the ability to evaluate the fund's compliance with the proposed amendments and thereby would benefit investors.

Notice Requirement. The proposed amendments would also protect investors by modifying the current notice requirements when a fund chooses to change its investment policy. The proposed amendments are designed to draw investor attention to the upcoming change that the notice documents describe, clarify the requirements for the notice, and provide investors with

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[200] *See* proposed rule 35d-1(b)(3).

more consistent information. The proposed amendments also incorporate changes to the notice requirement to provide specificity with respect to notices that may be delivered electronically. These changes would help ensure that investors who have opted into electronic delivery will receive the notices the names rule requires in the format that they prefer.

Unit Investment Trusts. The proposed rule amendments would except UITs that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts from the requirements to adopt an 80% investment policy and the recordkeeping requirements, including recordkeeping for funds which do not adopt an 80% investment policy, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule.[201] UITs are passively managed vehicles that operate pursuant to a trust indenture or a similar document and have fixed portfolios that would make it difficult to adjust their portfolios to comply with the rule's portfolio composition requirements.[202] The proposed exception would benefit investors in UITs that meet the requirements of the exception by allowing those UITs to avoid changes to an UIT's operational documents that are potentially expensive and time-consuming, and could result in inconvenience to extant investors.

Effects on Efficiency, Competition and Capital Formation. To the extent the proposed amendments would 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

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201 Proposed rule 35d-1(f).

202 *See supra* footnote 160.

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 proposed amendments and to the extent those more appropriately representative fund names would allow investors to more easily select funds that better matched their preferences, however, we would expect the efficiency of investment to increase.

To the extent the proposed amendments increase efficiency of investment in the funds 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 it is too costly to search for funds that match their investment preferences, or if investors lack confidence that funds' names accurately convey funds' investment focuses, then to the extent the proposed amendments lower those costs and enhance investor protections, we would expect to observe more investors entering the funds market.[203] To the extent that competition in a market is related to the size of the market, the effect of this potential increase in investor demand for funds could increase competition in the funds market.

The proposed amendments could affect competition through an additional channel. Certain funds may have established reputations for making investments consistent with the fund's investment focus. Investors wishing to invest in funds with specific investment focuses may have greater confidence investing in funds with established reputations for investing in a

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[203] For example, by decreasing potential greenwashing concerns, the proposed amendments, in turn, may increase investor confidence in selecting funds with names implying an ESG strategy and increase capital formation among ESG issuers.

way consistent with the fund's investment focus.[204] There may be investors who do not invest in funds lacking established reputations for making investments consistent with fund focuses (or invest less than they would have) because those investors are less confident that such funds will make investments consistent with funds' investment focuses. We would expect the investor protections offered by the proposed amendments to lead to greater investor confidence that funds' names accurately convey funds' investment focuses which could, in turn, enhance the ability of funds without established reputations to compete with those funds with established reputations which could, in turn, lead to increased investment for funds without established reputations.[205]

If the proposed amendments increase the efficiency of investment in the funds market, then we may observe an increase in investment in funds. Greater investment in funds could lead to increased demand for securities held by funds. 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.

2. Costs

We believe that compliance costs associated with the proposed amendments, particularly those that expand the current scope of the names rule, would vary based on a fund's current

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204 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").

205 This argument assumes that fund reputation and investor protections provided by regulatory requirements are substitute mechanisms for providing assurances to investors.

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 also believe that certain funds' current investment policies may already be in line with many of the proposed rule's requirements or could be readily conformed without material change. For example, as discussed in section III.C.1 above, preliminary review of fund filings suggests that more funds have minimum investment policies than are required to do so under the current names rule.[206]

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. 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 certain data used in selecting investments consistent with the fund's investment focus. Costs associated with either creating or purchasing certain data used in selecting investments may not vary much across funds. For example, growth funds may rely on financial data when selecting fund portfolio investments. Generally Accepted Accounting Principles promote consistency and comparability in reported financial information. The consistency and comparability of reported financial

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206 *See supra* footnote 179.

information leads to similar costs across funds, regardless of investment focus. On the other hand, the cost of certain data may vary across funds based on investment focus. For example, funds with an ESG focus may face a lack of consistent and comparable ESG information. The lack of consistent and comparable information could increase the cost, relative to funds with other investment focuses, of determining whether an investment is consistent with a fund's investment focus.

Also, larger funds or funds that are part of a large fund complex may incur higher costs in absolute terms but find it less costly, per dollar managed, to meet the requirements of the proposed 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 proposed amendment's requirements for several funds.

Names Suggesting an Investment Focus. The proposed amendments would 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.[207] We estimate that approximately 8,250 (62%) funds are currently subject to this names rule requirement and that our proposed rule amendments would increase this estimate to approximately 10,000 (75%) funds.[208] 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

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207 *See* section II.A.1 and *supra* footnote 31.

208 *See* note 3 of Table 6.

principally).[209] We believe funds with names that would be newly scoped into the names rule's 80% investment policy requirement under the proposed amendments already have systems in place for monitoring compliance with existing principal investment strategy disclosure requirements. As a result, we believe funds with names that would be newly scoped in already have internal systems that could be used to assess compliance with the proposed rule. Funds would need to develop new, or revise existing, recordkeeping processes as discussed below. Funds with names that are newly scoped into the 80% investment policy requirement may also face an indirect cost in the need to calculate whether a specific asset would qualify as part of a fund's 80% basket.

Temporary Departures. The proposed amendments would retain a fund's ability to depart temporarily from the 80% investment requirement, but eliminate advisers' ability to define the circumstances. The proposed amendments would also require that a fund departing from the 80% investment requirement must bring its investments back into compliance as soon as reasonably practicable, and that the maximum amount of time for the departure would be 30 consecutive days, other than in the case of a fund launch (which would be limited to 180 consecutive days starting from the day the fund commences operations), a reorganization, or when notice of a

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209 *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.

change in a fund's policy has been provided to fund shareholders under the rule. This change could create a cost for investors if there exist circumstances where departing from the 80% investment requirement would be beneficial to the fund and its shareholders, the proposed amendments would not allow a departure, and absent the proposed amendments, an adviser would have characterized the circumstance as allowing a departure. 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 the price 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. Conversely, a departure for longer than 30 days to address a market disruption might 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. To the extent that they do not already have systems in place for doing so, funds would have to set up systems to monitor departures from the 80% investment requirement, the reasons for departures, and the time limits for returning to the 80% investment requirement.

Considerations Regarding Derivatives in Assessing Names Rule Compliance. The proposed rule would address the valuation of derivatives instruments for purposes of determining the fund's compliance with its 80% investment policy requirement. The proposed amendments would require that, in calculating its assets for purposes of names rule compliance, a fund must use the notional amount of each derivatives instrument, with certain adjustments as discussed above, and reduce the value of its assets by excluding cash and cash equivalents up to the

notional amounts of the derivatives instrument(s).[210] The proposed amendments also would specify 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.[211] Our understanding is that funds that use derivatives typically calculate notional amounts for purposes other than names rule compliance.[212] As such, we do not believe there would be additional costs associated with calculating notional values. We understand, however, that meeting the requirements of the proposed 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.

Commenters suggest that certain investors care about more than the expected returns and exposures their investments create.[213] For example, certain investors may care about the environmental or social impact of their investments (*e.g.*, investors in ESG funds, or funds whose strategies involve the application of moral parameters).[214] Those investors may value funds

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210 *See* proposed rule 35d-1(g)(2).

211 *See* proposed rule 35d-1(b)(2).

212 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, we believe that funds that use derivatives typically consider notional amounts when entering into derivatives contracts or when considering the economic effects of a derivatives contract within an existing portfolio.

213 *See* AllianzGI Comment Letter, Cantrell and Estevez Comment Letter, IRC Comment Letter, Federated Hermes Comment Letter, Hull Comment Letter, PRI Comment Letter, and Schanzenbach Comment Letter.

214 *See*, *e.g.*, Nia Impact Capital Comment Letter (stating "... our core objective is to generate a competitive rate of return for our clients, while creating a positive impact for investors, for society and for our planet"); Allianz Letter (stating "ESG strategies seek to meet a common non-investment objective without detracting from return relative to capweighted benchmarks").

investing directly in the securities of certain issuers, rather than simply having an indirect exposer to those securities through fund derivatives positions – *e.g.*, direct equity investments typically include voting rights and an ability, under certain conditions, to make shareholder proposals, whereas equity derivatives do not. To the extent investors value direct investment in issuer securities rather than simply having an indirect exposure to them through derivatives, investors may expend greater resources to monitor whether funds are making direct investments rather than using derivatives to meet the proposed amendments' 80% investment requirement.[215]

Unlisted Closed-End Funds and BDCs. Under the proposed rule amendments, unlisted closed-end funds and BDCs would not be permitted to change their 80% investment policies without shareholder approval. Rather than adopting a policy to notify investors 60 days prior to any change in its 80% investment policy, unlisted closed-end funds and BDCs would be required to obtain shareholder approval. The costs of obtaining shareholder approval would include legal

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[215] As discussed in section II.A.3 above, costs such as transaction and custody costs can be lower for indirect investments via derivatives than they are for direct investments. *See also*, *e.g.*, Daniel N. Deli and Raj Varma, "Contracting in the investment management industry: Evidence from mutual funds," Journal of Financial Economics (2002, vol. 63, pp. 79-98) ("Deli and Varma Paper"). The authors argue that derivatives can provide transaction-cost benefits relative to direct investment. Also as discussed in section II.A.3 above, a derivatives instrument's "value," as defined in the Act, may bear no relation to the financial exposure created by the derivatives instrument. For example, a fund entering into a swap or other derivative referencing a market index with a notional amount of $1 million would achieve the same investment exposure as investing $1 million in the underlying securities directly, but the swap's market value therefore generally would be far smaller than $1 million and would not reflect the swap's market exposure. The swap's market value may be a small percentage of the fund's net assets. Under the current rule, then, fund advisers may forgo the potential transaction-cost benefits associated with the use of derivatives, or use them to a lesser degree, because using derivatives may not allow a fund to meet the rule's 80% requirements. Under the proposed amendments, however, using derivatives may allow a fund to both realize the transaction-costs benefits associated with derivatives and meet the 80% requirements of the names rule.

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.[216]

Effect of Compliance with an 80% Investment Policy. The proposed amendments would state 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.[217] 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 proposed amendments would codify this view to make it clear.[218] Because the proposed provision would codify an existing Commission position that that 80% investment policy is not

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216 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 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) (December 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 received 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 $118,000 as of the end of 2021. *See* Bureau of Labor Statistics CPI Inflation Calculator *available at* https://www.bls.gov/data/inflation_calculator.htm.

217 Proposed rule 35d-1(c).

218 *See supra* footnote 101.

intended to create a safe harbor for fund names and restate the existing scope and effect of section 35(d), we do not believe the proposed provision creates new costs.

Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names. The proposed rule amendments would define the names of what this release refers to as "integration funds" as materially deceptive or misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors. To the extent ESG integration fund sponsors use fund names to facilitate investors' search for funds that use ESG factors as one of multiple components of their investment process, the loss of the ability to facilitate investors' search would represent a cost for integration funds and their investors.[219] We are unable to quantify this cost as we do not have data indicating the extent to which ESG integration funds use their names to facilitate investors' search for funds that consider ESG factors as one of multiple components of their investment process, or the value ESG integration funds place on the ability to use their fund names in such a way. We are also unable to quantify this cost from an investor's perspective. We do not observe the extent to which investors in integration funds rely on fund names in the management of their investment portfolio. Additionally, integration funds that change their names in order to comply with the rule may incur costs of revising various fund communications and documents (*e.g.*, organizational documents, registration statements, shareholder reports, etc.).[220] A fund may also face costs to

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219 Integration funds and their investors could also bear costs of revising various fund communications to reflect the name change, as well as costs for revising marketing materials to describe the integration approach, to the extent that those materials do not already do so.

220 When adopting the current names rule, the Commission estimated the funds would bear a cost of $7,000 to change a fund's name. We did not received any comments on that estimate. Adjusting

determine whether it qualifies as an integration fund under the proposed rule, particularly whether ESG factors are generally no more significant than other factors in the fund's investment selection process, and thus whether including ESG terminology in the fund's name would be materially deceptive and misleading under the proposal.[221]

Prospectus Disclosure. The proposed amendments to funds' registration forms—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—would also 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.[222] The proposed amendments would require funds to tag this disclosure in Inline XBRL.[223]

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for inflation, $7,000 at the beginning of 2009 would imply a cost of approximately $9,243 as of the end of 2021. *See* Bureau of Labor Statistics CPI Inflation Calculator *available at* https://www.bls.gov/data/inflation_calculator.htm.

221 *See supra* discussion in section II.D; *see also supra* section II.A.1 (discussing fund names suggesting an investment focus with multiple elements, where a fund would have to adopt an 80% investment policy addressing each of the elements that the investment focus in its name suggests).

222 *See* proposed instruction to Item 4(a)(1) of Form N-1A; proposed instruction to Item 8(2) of Form N-2; and proposed instruction to Item 11 of Form N-8B-2. Based on the results of the PRA analysis provided in Tables 2, 3, and 4 *infra* it is estimated that the annual costs attributable to information collection requirements associated with this aspect of the proposed amendments would be $3,560 per fund. However, as we understand that including the prospectus disclosure that the proposed amendments would require is currently a common practice, the PRA estimates likely overestimate the costs associated with the proposed amendments for those funds whose disclosure is currently in line with the disclosure the amendments would require. *See infra* section IV.C.

223 *See supra* footnote 105. Based on the results of the PRA analysis provided in Table 7 *infra* it is estimated that the costs attributable to Inline XBRL tagging requirements would be $2,324 per fund for Form N-8B-2 filers, who are not subject to any current Inline XBRL requirements (or Inline XBRL requirements with compliance dates in the future) and would 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

For funds that are required to adopt an 80% investment policy, the proposed 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.[224]

New Form N-PORT Reporting Requirements. The proposed amendments include a new Form N-PORT reporting item regarding the 80% investment policy that a fund would adopt in compliance with the names rule.[225] There would also be a proposed new Form N-PORT reporting item requiring a fund that is a Form N-PORT filer and that is 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.[226] Although the proposed amendments would not increase the frequency of public disclosure, it would increase the amount of information available about certain funds' portfolio investments. The increased information could lead, indirectly, to increased costs for investors. For example, one commenter argued that funds might have innovative ways in which they apply factors, such as those indicating growth or value, to categorizing issuers or securities and that disclosing which securities are included in a fund's

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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.

224 *See supra* footnote 116.

225 Based on the results of the PRA analysis provided in Table 5, it is estimated that the costs attributable to information collection requirements would be $3,204 per fund.

226 Based on the results of the PRA analysis provided in Table 5, it is estimated that the annual costs attributable to information collection requirements for investments to be included in a fund's 80% basket would be $3,560 per fund

calculation of assets that are included in the fund's 80% basket could reduce the value of the fund's proprietary security selection process.[227] We note, however, that Form N-PORT data is only made public for the third month of each quarter, and on a 60-day delayed basis. We do not believe that quarterly public disclosure with a 60-day lag will have a significant, additional competitive impact.

Recordkeeping. The proposed amendments would require funds to maintain certain records depending on whether the fund would be required to adopt an 80% investment policy. The proposed amendments would not prescribe the particular 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 would be 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.[228]

Notice Requirement. The proposed amendments would require 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.[229] The proposed 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

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227 *See* Allianz Letter.

228 Based on the results of the PRA analysis provided in Table 1, it is estimated that the annual costs attributable to recordkeeping requirements would be $17,800 per fund.

229 Proposed rule 35d-1(e).

additional specificity about the content and delivery of the notice. We do not believe that these proposed alterations would increase the cost to prepare the notice.[230]

Unit Investment Trusts. The proposed rule amendments except UITs that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts from the requirements to adopt an 80% investment policy and the recordkeeping requirements, including recordkeeping for funds which do not adopt an 80% investment policy, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule.[231] The proposed amendment largely retains the existing exception from the 80% investment policy requirements for UITs that pre-date the original rule.

Overall Costs. We estimate that the costs to establish and implement practices designed to meet the requirements of the proposed amendments as described above will range from $50,000 to $500,000 per fund, depending on the particular facts and circumstances of the fund.[232] These estimated costs are broadly attributable to the following activities: (1) reviewing the proposed rule's requirements; (2) developing new (or modifying existing) practices, reporting, and recordkeeping requirements to align with the requirements of the proposed rule;

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230 Like the current rule, based on the results of the PRA analysis provided in Table 1, it is estimated that the costs attributable to notice requirements would be $8,500 per fund, for those funds providing notices.

231 *See supra* footnote 159.

232 We believe that the low end of this range is reflective of a fund that already has practices in place that could be readily adapted to meet the proposed rule's requirements. Such a fund would nevertheless incur costs associated with analyzing its current practices relative to the final rule's requirements.

(3) integrating and implementing those practices, reporting, and recordkeeping requirements to the rest of the funds' activities; and (4) preparing new training materials and administering training sessions for staff in affected areas. 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 proposed amendments.[233] In addition, under certain specified circumstances funds, and thus shareholders, may incur costs related to the proposed amendment's limits on temporary departures from the 80% requirement. Further, integration funds could incur costs associated with changing fund names.

The proposed rule amendments would result in new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[234] There will be costs associated with the new collection of information requirements related to: (1) the notice provision and the new recordkeeping requirements under the proposed amendments to the names rule, (2) prospectus disclosure, and (3) Form N-PORT disclosure.[235] Those costs are discussed in section IV below.

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233 We believe the costs would be closer to the lower end of the range for funds that belong to fund families because certain aspects of the costs are fixed costs that could be spread across multiple funds.

234 44 U.S.C. 3501-3520.

235 For items (2) and (3), the costs will include the cost of adding new data tags for the new disclosures on Form N-1A, Form N-2, and Form N-PORT, but will not include any initial implementation costs associated with structuring data, because those forms are already subject to structuring requirements. By contrast, 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 for UITs and their sponsors, because UITs are not currently subject to Inline XBRL requirements. *See infra* footnote 241.

E. Reasonable Alternatives Considered

1. Returns-Based Requirement

The proposed rule amendments, like the current rule, rely on a percentage-of-assets-based test to determine if fund names are misleading. Alternatively, we could require that funds' historical returns exhibit minimum exposures to certain risk factors. For example, we could require funds that use the term "small cap" in their name to have to have a certain minimum exposure to a historical firm-size risk factor. Such a returns-based standard would eliminate the need to specify how funds must value their derivatives holdings. Further, a returns-based standard could result in more risk information being available for investors concerned with risk-adjusted fund performance. For example, a returns-based standard would allow investors to evaluate exposure to certain risk factors over the entire measurement period rather than as of the end of the reporting period.

One commenter suggested several disadvantages associated with a returns-based standard.[236] First, a returns-based standard would require the specification of some arbitrary time over which fund returns are compared to a risk factor. Second, a returns-based standard would be inherently backward looking, detracting from a manager's ability and purpose to focus on future performance. Finally, a returns-based standard would require the identification of appropriate benchmarks against which to evaluate funds' exposures. The same commenter also argued that an asset-based standard offers certain advantages. For example, assessing compliance with an asset-based standard is facilitated by the calculation of funds' daily net asset values. Also,

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236 *See* Fidelity Comment Letter.

compliance with an asset-based standard is easily measured, easily understood, and easily corrected should a fund drop below its asset-based threshold.[237] Taking these considerations into account, we are proposing to continue requiring compliance with an asset-based standard, rather than a returns-based standard. We believe an asset-based standard is more easily understood and can be assessed contemporaneously with investment decisions. A returns-based standard can be assessed only after the fact and over time and is not necessarily more consistent or easily measured.

2. Permit 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 (or a subset of derivatives, such as derivatives that provide synthetic exposure to the investment focus that the fund's name suggests) using notional values for purposes of assessing names rule compliance. As discussed in section II.A.3 above, allowing a fund to use 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 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. 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, we are proposing to require, rather than permit, the use of notional values.

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[237] *See* Fidelity Comment Letter.

3. Modify Requirements for Tagging Prospectus Disclosure

Under the proposed amendments, the new prospectus disclosure of term definitions and investment selection criteria submitted on Form N-1A, Form N-2, Form N-8B-2, and Form S-6 would be tagged in Inline XBRL. Alternatively, we could have changed the scope of the proposed tagging requirement for the proposed new prospectus disclosures, such as by limiting this requirement to a subset of funds.

For example, the tagging requirements could have excluded UITs, which are not currently required to tag any filings in Inline XBRL. Under such an 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 proposed tagging requirement.[238] However, narrowing the scope of tagging requirements, whether based on fund structure, fund size, or other criteria, would diminish the extent of informational benefits that would accrue as a result of the proposed disclosure requirements by making the excluded funds' disclosures comparatively costlier to process and analyze. As such, we are not proposing to exclude any funds or otherwise narrow the scope of Inline XBRL tagging requirements.

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238 *See* section IV.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 60 (December 2021), at 5-1; *see* 17 CFR 232.301 (incorporating EDGAR Filer Manual into Regulation S-T). To the extent unit investment trusts 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 unit investment trusts would incur under the proposal.

4. Board Approval or Notification of Temporary Departures

The proposed amendments would permit a fund to depart temporarily from the 80% investment requirement only under certain specified circumstances and, in most such circumstances, for a limited 30-day time period. 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. 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 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. Had we proposed either such alternative, these alternatives could have accompanied the retention of the current rule's "under normal circumstances" standard with either of these additional alternative requirements as a supplementary element designed to prevent a fund from investing inconsistently with its 80% investment policy for an extended period of time.

Collectively, these alternatives may provide more flexibility for funds to address the conditions that necessitate temporary departures than the proposed amendments in that they would not limit the types of circumstances in which a fund could engage in a temporary departure, and allow longer departures, provided that the board either approves or is notified of the departure. This approach could also 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 proposed amendments at addressing the concerns highlighted above regarding portfolio "drift" and could be more likely to frustrate

investors' expectations for the fund's portfolio investments in light of the investment focus the fund's name suggests to the extent that investors might expect a fund manager to be fully invested in designated investments rather than expect the manager to use its judgment to mitigate losses. For example, a fund board could determine to engage in a departure for longer than 30 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 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. We also believe that this alternative would increase burdens on fund boards, particularly if we were to require the approval or notification be immediate. Alternatively, if we were to require the approval or notification be made at the next regularly scheduled board meeting, the conditions that gave rise to the need for the departure may have resolved without the input of the board, given that most fund boards meet on a quarterly basis. Lastly, this approach would not be suitable for UITs, which have neither active management nor boards.

5. Require a Higher Percentage of Assets Invested in Accordance with the Investment Focus

The 80% investment policy requirement under the proposed amendments would not change the percentage of assets in which a policy adopted under the names rule would require funds to invest in accordance with the investment focus that the fund's name suggests, in relation to the current rule's requirements. However, we considered whether to proposed requiring a higher percentage than 80% for certain fund names—for example, index funds and funds whose names suggest an investment focus involving consideration of ESG factors—to the extent that reasonable investor expectations could make a higher percentage appropriate. For example,

investors in an index fund may expect the fund to be invested at or near 100% in the named index given that these investors would likely be purchasing the fund to obtain exposure to that index.

We ultimately determined not to propose this alternative, given the ways in which the other aspects of the proposed amendments address reasonable investor expectations and materially deceptive and misleading fund names. These include, for example, the provision that a fund's name may be materially deceptive or misleading even if the fund adopts an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy, the proposed new prospectus disclosure requirements, and the proposed Form N-PORT reporting requirements. As discussed above, the Commission has previously stated that index funds generally would be expected to invest more than 80% of their assets in investments connoted by the applicable index. To the extent that investors expect and prefer index funds that invest a significantly higher percentage of their assets in their 80% baskets, information would be available to help them make investment decisions that reflect this preference. Additionally, we believe that proposing to raise the threshold in the required investment policy is less necessary to address investors' expectations, in light of the proposal to narrow the circumstances and limit the time period during which a fund may engage in temporary departures from the 80% investment requirement, which similarly addresses investors' expectations that a fund's investments reflect the investment focus that the fund's name suggests.

6. Unlisted Closed-End Funds and BDCs

We are proposing to require that a fund's 80% investment policy must always be a fundamental investment policy if the fund is an unlisted closed-end fund or a BDC. As an alternative, we considered requiring instead that such funds either adopt the 80% investment

policy as a fundamental policy or both provide shareholders 60 days' prior notice of a change *and* conduct an issuer tender offer or a repurchase offer to provide shareholders the opportunity to redeem their shares. This alternative would provide affected funds the opportunity to avoid the costs of a shareholder vote while also providing investors with some recourse if the fund were to change its investment policy and the investment focus that the fund's name indicates.

However, this alternative approach raised concerns regarding the percentage of fund shares we should require these funds to offer to repurchase, and therefore the proposal incorporates a shareholder vote requirement for unlisted closed-end funds and BDCs that seek to change their 80% investment policy, instead of this alternative. As noted above, while unlisted 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.[239] This amount could be too low to address the investor protection concerns that the proposed approach for unlisted closed-end funds and BDCs is designed to address. As a result, we considered some larger percentage. However, 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.

F. General Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including whether the analysis has: (1) identified all benefits and costs, including all effects on

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[239] *See* 17 CFR 270.23c-3(a)(3), (b)(5), and (c).

efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed regulations. We request and encourage any interested person to submit comments regarding the proposed regulations, our analysis of the potential effects of the proposed regulations, and other matters that may have an effect on the proposed regulations. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed regulations. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may not have discussed.

In addition to our general request for comment on the economic analysis associated with the proposed amendments, we request specific comment on certain aspects of the proposal:

1. Have we correctly identified the benefits and costs of the proposed rule amendments? Are there additional benefits and costs that we should include in our analysis?
2. We encourage commenters to identify, discuss, analyze, and supply relevant data, information, or statistics related to the benefits and costs associated the proposed rule amendments.
3. Are there costs to, or effect on, parties other than those we have identified? What are the costs and/or effects?
4. The proposed amendments would permit some 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. Are there circumstances where the proposed amendments would not allow a fund to

temporarily depart from the 80% requirement, that would be allowed under the current rule? Please provide specific examples, if possible.

5. How costly would the proposed provision regarding the use of ESG terminology in their names be for ESG integration funds?

6. Do investors in certain types of funds (*e.g.*, ESG funds, or funds whose strategies involve the application of moral parameters) care if a fund's 80% investment policy includes derivatives that provide synthetic exposure to the investment focus that the name suggests, rather than cash market holdings in that investment focus? Would the use of notional values cause investors to be less likely to invest in those types of funds, or if they continue to invest in those funds, cause investors to expend greater resources to monitor how a fund complies with the 80% investment requirement?

IV. PAPERWORK REDUCTION ACT ANALYSIS

A. Introduction

Certain provisions of the proposed rules and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[240] We are submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[241] The title for the collection of information is: (1) "Rule 35d-1 under the Investment Company Act of 1940, Investment Company Names" (OMB Control No. 3235-0548); (2) "Form N-1A under the

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240 44 U.S.C. 3501 *et seq.*

241 44 U.S.C. 3507(d); 5 CFR 1320.11.

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 Unite 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.

We discuss below the collection of information burdens associated with proposed amendments to rule 35d-1, Form N-1A, Form N-2, Form N-8B-2, Form S-6, Form N-PORT; and the proposed interactive data requirements.

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. Under our proposal, the scope of funds covered by the 80% investment policy requirement of rule 35d-1 would be expanded. In addition to those fund names currently subject to the rule, the proposal would specify that any fund with a name suggesting that the fund focuses its investments in investments that have, or whose issuers have, characteristics suggested by the fund's name would have to adopt an 80% investment policy.

We are further proposing to update the names rule's notice requirement expressly to address funds that use electronic delivery methods to provide information to their shareholders. The proposed amendments also would 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 proposed amendments would also include certain new recordkeeping requirements. The amendments would 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 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, as well as the operation of its 80% investment policy. Funds that do not adopt an 80% policy must would be required to maintain a written record of the fund's analysis that an 80% policy is not required under the names rule. A fund also would be required to keep records of any notice sent to the fund's shareholders pursuant to the rule.

Rule 35d-1, including the proposed amendments, contains collection of information requirements. These collection of information requirements include, as detailed in the chart below, the proposed notice requirement and recordkeeping requirements (those for funds that are required to adopt an 80% investment policy, and those for funds that do not adopt an 80% investment policy). Compliance with these requirements of the proposed rule would be mandatory. Responses to these requirements would not be kept confidential.

TABLE 1: PRA ESTIMATES FOR PROPOSED 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	$8,500	

			supporting statement)		
Number of Funds		X 38 funds[4]		X 38 funds	
Current Burden Estimates		**760 hours**		**$323,000**	**$0**
PROPOSED 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	**$496**[9]
Total New Burden for Notice Requirement (I)		**680 hours**		**$289,000**	**$16,864**
Recordkeeping for Funds with an 80% Policy[7] **Number of Funds**	9 hours[8]	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 (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 Finding (III)		**3,465 hours**		**$1,472,625**	**$1,718,640**
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II + III)		**523,845 hours**		**$186,774,825**	**$6,890,910**

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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 Commission estimates that these notices are typically short, one-page documents that are sent to shareholders with other written materials. The Commission anticipates each respondent would only incur these burden hours once.
4. The currently-approved burden takes into account previous Commission 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. Funds are currently required to provide notice to fund shareholders when a fund makes any change to its 80% investment policy. The proposed amendments would make some changes to the current notice requirement, but we do not believe that these proposed alterations would increase the burden hours needed to prepare the notice.
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. We now estimate that 75% of funds will have names subject to the 80% investment policy. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing, based on our most up to date economic analysis. Based on our current analysis, we estimate 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 estimates, across approximately 14,532 open-end and closed-end funds registered with the Commission, that there are 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 + 432 money market funds = 12,975 open end funds + 736 registered closed-end funds + 99 BDCs + 49 UITs = 13,859 funds x 75% = 10,394 funds). The estimate of 49 UITs covered by the rule amendments may be an overestimation, as UITs that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts would be excepted from the requirements to adopt an 80% investment policy and to provide notices consistent with the rule, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule. The Commission estimates 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 estimates that, on average approximately 34

funds per year would provide a notice to shareholders under the proposed rule amendments.
7. 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; 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). We estimate that these records would generally need to be made daily, but that the vast majority of records would be automated. We understand, 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. Our PRA estimates take these considerations into account.
8. The initial burden for the proposed recordkeeping requirement accounts for the time we estimate that fund will need to establish recordkeeping procedures for the records that must be kept. Once these processes are established, we believe that much of the required recordkeeping, as discussed above, would be largely automated.
9. This estimated burden is 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, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
10. The Commission estimates across approximately 14,532 open-end and closed-end funds registered with the Commission, that there are 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 (10,223 mutual funds (other than money market funds) + 2,320 non-UIT ETFs + 432 money market funds = 12,975 open end funds + 736 registered closed-end funds + 99 BDCs + 49 UITs = 13,859 funds x 25% = 3,465 funds).

C. Prospectus Disclosure

We are proposing amendments to funds' registration forms'—specifically, Form N-1A, Form N-2, Form N-8B-2, and Form S-6—that would 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 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. While the proposed new disclosure is not currently required in a fund's prospectus, we understand that including similar disclosure is currently common practice and that this proposal would codify this practice. Based on our understanding of current disclosure practices, we believe that any changes to current practices that the proposed amendments would create would generally be minor. Therefore, the PRA estimates associated with the proposed amendments likely overestimate the costs associated with the proposed

amendments for those funds whose disclosure is currently in line with the disclosure the amendments would require.

The proposed 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.

1. Form N-1A

TABLE 2: ESTIMATES FOR PROPOSED AMENDMENTS TO FORM N-1A

	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	x	$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**[5]
Number of funds		× 9,731 funds[4]			× 9,731 funds	× 9,731 funds
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Total New Annual Burden		**97,310 hours**			**$34,643,250**	**$9,653,152**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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. 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. Based on our current analysis, we estimate 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 estimates, 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 be 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 burden is based on the estimated wage rate of $496/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.

2. Form N-2

TABLE 3: ESTIMATES FOR PROPOSED AMENDMENTS TO FORM N-2

	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	x	$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**[4]
Number of Funds		× 626 funds[3]			× 626 funds	x 626
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Total New Annual Burden		**6,260 hours**			**$2,228,560**	**$620,992**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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. Based on our current analysis, we estimate 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 estimates, across approximately 835 closed-end funds registered with the Commission, that there are approximately 626 closed-end funds that have 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 burden is based on the estimated wage rate of $496/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.

3. Form N-8B-2

TABLE 4: ESTIMATES FOR PROPOSED AMENDMENTS TO FORM N-8B-2

		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	x	$351 (estimate of wage rate in most recently approved supporting statement)	$3,510	**$10,000**
	UIT ETFs	18 hours	x	$351 (estimate of wage rate in most recently approved supporting	$6,318	**$0**

				statement)		
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**
Number of Responses		× 1 UIT[4]			× 1 UIT	X1 UIT[5]
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Total New Annual Burden		**10 hours**			**$3,560**	**$992**

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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. For purposes of this PRA we continue to assume 1 filing annually.
5. The estimated burden is based on the estimated wage rate of $496/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: ESTIMATES FOR PROPOSED AMENDMENTS TO FORM S-6

	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	x	$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**
Number of Responses		× 785 filings[4]			× 785 filings	785 filings[5]
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS						
Total New Annual Burden		**7,850 hours**			**$2,794,600**	**$778,720**

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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. We are not proposing amendments to Form S-6. However, 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. We now estimate 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. Based on our current analysis, we estimate 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 estimates 49 non-separate account and non-ETF UITs registered with the Commission. However, we believe using the number of filings instead of registrants would form a more accurate estimate of annual disclosure burdens. We estimate 1,047 filings based on the average number of filings made on Form S-6 from 2018 to 2020. We therefore estimate that there are 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 burden is based on the estimated wage rate of $496/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.

D. N-PORT Reporting Requirements

We are proposing to amend Form N-PORT to include a new reporting item regarding the 80% investment policy that a fund would adopt in compliance with the names rule. There would also be a proposed new Form N-PORT reporting item requiring a fund subject to the 80% investment policy requirement 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.

Form N-PORT, including the proposed 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.

TABLE 6: PRA ESTIMATES FOR PROPOSED AMENDMENTS TO FORM N-PORT

	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	x	$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		**108,457,536 hours**		**$41,293,162,680**	**$12,628,862,016**
PROPOSED BURDENS					
New Reporting About 80% Investment Policy	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 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 ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden (I + II)		**189,924 hours**		**$67,612,944**	**$19,832,064**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is 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 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. Based on our current analysis, we estimate 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 estimates, across approximately 14,001 open-end and closed-end funds registered with the Commission, not including money market funds, that there are 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 burden is based on the estimated wage rate of $496/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. *Id.*

E. Investment Company Interactive Data

We are proposing to amend 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.[242] Specifically, the proposed amendments would include new structured data requirements that would require funds to tag the information that the proposal would require funds to include in their registration statements about their fund name using Inline XBRL.[243] 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 30, 2020, we estimate that 626 funds filing registration statements on these forms would be subject to the proposed interactive 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

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242 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 proposing to rule 485 and 497 are conforming amendments that have no associated PRA burden. While the new names-related information that open-end funds would be required to disclose under our proposed amendments to Form N-1A also would be required to be tagged using Inline XBRL, the proposed amendments to Form N-1A would create no additional PRA burden. Our proposal would amend 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.

243 *See supra* section II.B; *see also* proposed instruction to Item 4(a)(1) of Form N-1A; proposed instruction to Item 8(2) of Form N-2; proposed and proposed instruction to Item 11 of Form N-8B-2.

requirements, we assume that these funds would experience additional burdens related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs would 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 785 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 252,602 hours, and a total aggregate annual external cost burden of $15,350,750.[244] Compliance with the interactive data requirements is mandatory, and the responses will not be kept confidential.

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

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
Names rule information for current XBRL filers[3]	1 hour	1 hour[4]	$356 (blended rate for compliance attorney and senior programmer)	$356	**$50[5]**
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]

244 On November 9, 2020, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Registered Investment Company Interactive Data.

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
TOTAL 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

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. Includes initial burden estimates annualized over a three-year period, plus 0.67 hour of ongoing annual burden hours. The estimate of 1 hour is based on the following calculation: ((1 initial hour /3) + 0.67 hour of additional ongoing burden hours) = 1 hour.
5. We estimate 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, we estimate 626 funds, including BDCs, filing on Form N-2.
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. We estimate 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, we estimate 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, or the training of staff.
10. The Commission estimates 49 non-separate account and non-ETF UITs registered with the Commission. However, we believe using the number of filings instead of registrants would form a more accurate estimate of annual burdens. We estimate 1,047 filings based on the average number of filings made on Form S-6 from 2018 to 2020. We therefore estimate that there are 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).
11. 3,766 hours = (626 funds x 1 hour = $626) + (785 filings x 4 hours = $3,140).
12. $1,340,696 internal time cost = (626 funds x $356 = $222,856) + (785 filings x $1,424 = $1,117,840).
13. $737,800 annual external cost = (626 funds x $50 = $31,300) + (785 filings x $900 = $706,500).

F. Request for Comments

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of

the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-16-22. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-16-22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") in accordance with section 3(a) of the Regulatory Flexibility Act ("RFA").[245] It relates to proposed amendments to rule 35d-1 and Forms N-1A, N-2, N-8B-2, S-6, and N-PORT, as well as proposed conforming amendments to rules 11 and 405 of Regulation S-T and rules 485 and 497 under the Securities Act (collectively, "proposed amendments").

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245 5 U.S.C. 603(a).

A. Reasons for and Objectives of the Proposed Actions

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 proposing amendments designed to increase investor protection by improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission also is proposing enhanced prospectus disclosure requirements for terminology used in fund names and additional requirements for funds to report information regarding their compliance with rule 35d-1 on Form N-PORT.

B. Legal Basis

The Commission is proposing 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 proposing 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(a), 8, 10, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77e, 77f, 77g(a), 77h, 77j, 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 proposing 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 proposing 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].

C. Small Entities Subject to Proposed 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 (a "small fund").[246] Commission staff estimates that, as of June 2021, approximately 27 registered open-end mutual funds (including one money market fund), 6 registered ETFs, 23 registered closed-end funds, 5 UITs, and 9 BDCs (collectively, 70 funds) are small entities.[247]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments contain compliance requirements regarding reporting, recordkeeping, and other compliance requirements. First, the proposed amendments would 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 would need to adopt an 80% investment policy.[248] The proposed amendments would also include other changes to the current names rule, such as only permitting a fund to engage in temporary departures from an 80% investment

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246 *See* rule 0-10(a) under the Act [17 CFR 270.0-10(a)].

247 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 2021.

248 While the proposed rule amendments would 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 7.

requirement under particular circumstances, which would also necessitate an update to funds' existing practices regarding names rule compliance. The proposed amendments would further 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 proposed amendments would further require a fund that is required to adopt an 80% investment policy to maintain certain records documenting its compliance with the rule, including, among other things, the fund's record of which assets are invested in accordance with the investment focus that the fund's name suggests (or consistent with the tax-exempt treatment its name suggests). Conversely, funds that do not adopt an 80% investment policy would be required to maintain a record documenting their analysis that the 80% investment policy is not required under the rule.

The proposed amendments would 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 would be included using Inline XBRL. Under the proposal, funds (other than money market funds and BDCs) that would be required to adopt an 80% investment policy also would newly have to report certain information on Form N-PORT regarding names rule matters. The proposed amendments would define the names of "integration funds" as materially deceptive and misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors, which would necessitate that such funds either change their names or adjust their investment strategies, and thus potentially their portfolio investments, to ensure compliance. Lastly, the proposed amendments would include exceptions for certain UITs.

1. 80% Investment Policy Requirements – Proposed Scope Expansion and Other Proposed Amendments

Funds, including small funds, which have names that include terms suggesting that the fund focuses its investments in investments that have, or whose issuers have, particular characteristics would be required to adopt an 80% investment policy under the proposed amendments. Further, in order to comply with this element of the proposed 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 would need to change their practices to comply with the names rule to address other aspects of the proposal: (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 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.

These requirements are designed to help ensure that a fund's investment activity supports 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. 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 proposed amendments would require.

While we would 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 would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirements because it would not be able to benefit from a larger fund complex's economies of scale. In particular, a larger fund complex may be able to develop a process with 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. Notwithstanding the economies of scale experienced by larger versus smaller funds, we would not expect the costs of compliance associated with the new requirements to be meaningfully different for smaller versus larger funds. The costs of compliance would 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, would be as a consequence of that fund having a name that suggests an investment focus under the proposed amendments, not based upon the size of the fund.

2. Effect of Compliance with an 80% Investment Policy

We are proposing 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 proposed provision would make clear that a fund name may be materially deceptive or misleading even where the fund complies with its 80% investment policy, for

example, potentially where a fund complies with its 80% investment policy but makes a substantial investment that is the antithesis of the fund's investment focus. This proposed new provision is consistent with prior Commission statements noting that the 80% investment requirement under the names rule is not intended to create a safe harbor for investment company names.

This provision would apply to funds, including those that are small entities. However, because this provision restates section 35(d), we believe that it would not result in any additional costs beyond those already attendant on compliance with the Act itself.

3. Recordkeeping Requirements

The proposed recordkeeping requirements are designed to help ensure compliance with the rule's requirements and aid in oversight. A fund that would be required to adopt an 80% investment policy under the proposed amendments would 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 would be required to maintain would include: (1) the fund's record of which assets are invested in accordance with the fund's investment focus (or, as applicable, consistent with the tax treatment suggested by a tax-exempt fund's name) and any basis for determining that each such asset is invested in accordance with the investment focus that the name suggests (or the tax treatment the name suggests); (2) 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); (3) the reasons for any departures from the 80% investment policy; (4) the dates of any departures from the 80% investment policy; and (5) any notice sent to the fund's shareholders pursuant to the rule. If a fund does not adopt an 80%

investment policy, it must maintain a written record of the fund's analysis that such a policy is not required under the names rule. Funds must maintain records relating to the fund's compliance with its 80% investment policy for at least six years following the creation of each record (or, in the case of notices, following the date the notice was sent), the first two years in an easily accessible place. A fund that does not adopt a policy under the rule must maintain written records of its analysis for a period of not less than six years following the fund's last use of its name in an easily accessible place.

These proposed requirements would impose burdens on all funds, including those that are small entities. 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 this aspect of the proposal would require. We would expect that smaller funds – and more specifically, smaller funds that are not part of a fund complex – may not have recordkeeping systems that would meet all the elements that would be required under the proposed amendments. Also, while we would 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 would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirements because it would not be able to benefit from a larger fund complex's economies of scale.

4. Disclosure and Reporting Requirements

The proposed 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 proposed amendments would require funds to tag this disclosure in Inline XBRL.

The proposed amendments would also require funds (other than money market funds and BDCs) that would 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) if applicable, the number of days that the value of the fund's investments that are invested in accordance with its investment focus fell below 80% of the value of the fund's assets during the reporting period; and (3) with respect to each portfolio investment, whether the investment is included in the fund's calculation of assets in the fund's 80% basket. 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 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. The specifics of these burdens are discussed in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. While we would 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 would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed 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 would 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 would vary only based on fund characteristics tied to their name. For example, a fund that frequently departs from the 80% investment requirement would need to provide more information than those that do not, regardless of size. Furthermore, based on our experience implementing tagging requirements that use the XBRL, we recognize that some funds that would be affected by the proposed requirement, particularly filers with no Inline XBRL tagging experience, likely would 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 proposed 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 proposed requirements. If reporting the disclosures in a structured format 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. Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names

We are proposing to define the names of what this release refers to as "integration funds" as materially deceptive and misleading if the name includes terms indicating that the fund's investment decisions incorporate one or more ESG factors. This provision addresses funds that consider one or more ESG factors alongside other, non-ESG factors in the fund's investment

decisions, but 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. This proposed approach to integration funds targets misleading fund names, and relatedly it is designed to promote "truth in advertising" in fund names by making clear that we believe it would be 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, as this has the potential to overstate the importance of the ESG factors in the fund's selection of its portfolio investments. This proposed new provision could result in an integration fund needing to change its name or change its investment strategies, policies, or investments themselves in order to comply with it.

This requirement would impose burdens on all funds, including those that are small entities. The specifics of these burdens are discussed in the Economic Analysis section above. There are different factors that would affect whether and to what extent a smaller fund incurs costs related to this requirement. For example while we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale to absorb these costs. In particular, a large fund complex that includes an integration fund could more easily bear the costs—if necessary under the proposed provision addressing integration funds—of changing that fund's name, its investment strategies and portfolio, or even a liquidation of that fund more readily than a small fund where the integration fund may be a larger portion of the assets under management. We also believe that small funds may need to use

professional skills, particularly retaining counsel to assist in understanding and assisting in compliance with this requirement, should we adopt this provision.

6. Exceptions for Certain UITs

The proposed rule amendments would include certain exceptions for UITs that have made their initial deposit of securities prior to the effective date of any final rule amendments the Commission adopts. Specifically, these UITs would be excepted from the requirements to adopt an 80% investment policy and the recordkeeping requirements, including that for funds which do not adopt an 80% investment policy, unless the UIT has already adopted—or was required to adopt at the time of the initial deposit—an 80% investment policy under the current rule. These exceptions are generally consistent with the treatment of UITs under the current rule, and are designed to address the issues that a UIT's fixed portfolio and lack of active management cause in making portfolio changes to address the proposed amendments. However, UITs, regardless of the date of their initial deposit, would be subject to the rule's other requirements under the proposed amendments, such as the amended notice and recordkeeping requirements discussed above, as well as those of the federal securities laws generally. This exception would be available to UITs of all sizes that meet the criteria that the proposed amendments specify, including the five smaller UITs as applicable.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe that the proposed amendments would duplicate, overlap, or conflict with other existing federal rules. Additionally, we do not believe that the proposed recordkeeping requirements are duplicative with the proposed requirement to make reports on Form N-PORT. The purpose of the recordkeeping requirements is to provide our staff, and a fund's compliance personnel, the ability to evaluate the fund's compliance with the proposed amendments, whereas

the Form N-PORT reporting requirement would provide information to investors and other market participants. Further, while rule 2a-7 contains a provision applying to money market fund names, it only addresses the use of the term "money market" and related terms, not the names and terminology that the proposed amendments would.[249] For example, a fund with the name "Treasury money market fund" would suggest a money market fund that has an investment focus in Treasury securities or a fund with the name "Tax-free money market fund" would suggest a money market fund that is also a tax-exempt fund. In both of these cases, such fund names can be misleading if they do not invest consistent with the investment focus or tax-exempt status suggested by the name even if they follow the requirements of rule 2a-7.

F. Significant Alternatives

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 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 proposed amendments would permit us to achieve our stated objectives. Only those investment companies

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[249] *See* 17 CFR 270.2a-7(b)(2).

that have certain names, such as those suggesting an investment focus or particular tax treatment, would be required to comply with much of the proposal. Further, consistent with the current rule, the 80% investment requirement of the proposed amendments would allow a fund to maintain up to 20% of its assets in other investments. A fund seeking maximum flexibility with respect to its investments would continue be free to use a name that does not require the fund to adopt an 80% investment policy. While such funds would still be subject to a requirement to make a particular record, we believe that such a record creates a minimal burden on funds and helps ensure that investors are receiving the benefits of the names rule where appropriate.

We estimate that 84% of funds have investment policies specifying a minimum percentage of investments consistent with a certain investment focus and, of these, approximately 82% have an investment policy requiring at least 80% of fund investments be consistent with a certain investment focus.[250] This estimate indicates that some funds, including some small funds, would not bear the costs of adopting a new 80% investment policy, though such funds would likely need to update existing policies to account for elements of the proposed amendments. However, for small funds that would be more significantly affected by the proposed amendments, providing an exemption for them could subject investors in small funds to a higher degree of risk than investors to large funds that would be required to comply with the proposed elements of the rule.

We also do not believe that it would be appropriate to subject small funds to different reporting, recordkeeping, and other compliance requirements or frequency. Similar to the concerns discussed above, if the proposal included different requirements for small funds, it

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[250] *See supra* footnotes 178 and 179 and accompanying text.

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, the Commission and other market participants would have less transparency and insight with respect to those smaller funds' 80% investment policies and related investments.

We do not believe that clarifying, consolidating, or simplifying the compliance requirements under the proposal for small funds, beyond that already proposed 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 proposed amendments would only apply most of the rule's requirements - and corresponding compliance burdens - to certain fund names which are required to adopt an 80% investment policy.

The costs associated with the proposed amendments would vary depending on the fund's particular circumstances, and thus the amendments could result in different burdens on funds' resources. In particular, we expect that a fund that has a name that would be required to adopt an 80% investment policy under the proposed amendments would have higher costs than those that do not even though those funds that do not adopt an 80% investment policy would be required to keep records of their analysis. Thus, to the extent a fund that is a small entity has a name that would not require the fund to adopt an 80% investment policy under the proposed amendments, we believe it would incur relatively low costs to comply with it. Further, some funds with names that would 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 would 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 proposed 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 proposed amendments are designed to further our investor protection objectives.

Finally, with respect to the use of performance rather than design standards, the proposed 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 proposal with respect to designing 80% investment policies is appropriate because of the fact-specific nature of the investment focus of funds.

G. Request for Comment

The Commission requests comments regarding this analysis. We request comment on the number of small entities that would be subject to our proposal and whether our proposal would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to our proposal and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of our proposal and how they would affect small entities.

VI. CONSIDERATION OF IMPACT ON THE ECONOMY

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), the Commission must advise OMB whether a proposed regulation constitutes a

"major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. STATUTORY AUTHORITY

The Commission is proposing 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 proposing 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(a), 8, 10, and 19(a) 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 proposing 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 proposing 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 Proposed Rules and Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(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 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 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 Form.

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3. Amend § 230.497 by revising paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses - number of copies.

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(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. Investment companies filing on Forms N-1A, N-3, N-4, or N-6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which the registrant files its registration statement.

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(e) 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), 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. Investment companies filing on Forms N-1A, N-3, N-4, or N-6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which the registrant files its registration statement.

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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, 78o(d), 78w(a), 78*ll*, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 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.

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6. Amend § 232.405 by revising:

a. The introductory text, paragraphs (a)(2), (a)(3) introductory text, (a)(3)(i) introductory text, (a)(3)(ii), and (a)(4);

b. Paragraphs (b)(1) introductory text, (b)(2), and (b)(3)(iii); and

c. Note 1 to § 232.405.

The revisions 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), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), 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) 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 (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), 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), or General Instruction C.4 of Form N-CSR (§§249.331 and 274.128 of this chapter), as applicable;

(3) Be submitted using Inline XBRL:

(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)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), 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)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4) 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, either Item 601(b)(101) of Regulation S-K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), 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); 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); or General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter).

(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)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), 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.*), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), 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:

(i) Items 2, 3, 4, and 10(a)(4) of §§ 239.15A and 274.11A of this chapter (Form N-1A);

(ii) Items 2, 4, 5, 11, 18 and 19 of §§ 239.17a and 274.11b of this chapter (Form N-3);

(iii) Items 2, 4, 5, 10, and 17 of §§ 239.17b and 274.11c of this chapter (Form N-4); or

(iv) Items 2, 4, 5, 10, 11, and 18 of §§ 239.17c and 274.11d of this chapter (Form N-6); or

(v) Item 11 of § 274.12 of this chapter (Form N-8B-2), including to the extent required by § 239.16 of this chapter (Form S-6); as applicable.

* * * * *

(3) * * *

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a-d, 10.2.a-c, 10.2.e, 10.3, and 10.5 of Form N-2 in any registration statement or post-effective amendment thereto filed on Form N-2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N-2, any filing on Form N-CSR, Form 10-K, Form 10-Q, or Form 8-K to the extent such information appears therein.

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S-1), § 239.13 of this chapter (Form S-3), § 239.25 of this chapter (Form S-4), § 239.18 of this chapter (Form S-11), § 239.31 of this chapter (Form F-1), § 239.33 of this chapter (Form F-3), § 239.34 of this chapter (Form F-4), § 249.310 of this chapter (Form 10-K), § 249.308a of this chapter (Form 10-Q), and § 249.308 of this chapter (Form 8-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) specifies the circumstances under which an Interactive

Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F-10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20-F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40-F) and § 249.306 of this chapter (Form 6-K). Section 229.601(b)(101) (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II - Information not Required to be Delivered to Offerees or Purchasers of Form F-10, paragraph 101 of the Instructions as to Exhibits of Form 20-F, paragraph B.(15) of the General Instructions to Form 40-F, and paragraph C.(6) of the General Instructions to Form 6-K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6-01 through 210.6-10 (Article 6 of Regulation S-X). 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, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

* * * * *

8. Amend Form S-6 (referenced in §§ 239.16) by adding General Instruction 5 as follows:

Note: The text of Form S-6 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

Form S-6

* * * * *

Instruction 5. Interactive Data

(a) 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 or post-effective amendment thereto on Form S-6 that includes or amends information provided in response to Item 11 of Form N-8B-2 (as provided 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 rule 485 under the Securities Act [17 CFR 230.485(b)], 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) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

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 ESG factors), unless:

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

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

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

(3) *Tax-exempt funds.* A name suggesting that the fund's distributions are exempt from federal income tax or from both federal and state income tax, unless:

(i) The fund has adopted a fundamental policy:

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

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

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

(b) *Operation of policies and related recordkeeping.* (1) 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 in the circumstances described in paragraphs (b)(1)(i) through (iv) of this section, provided the fund brings its investments into compliance with paragraph (a)(2)(i) or (a)(3)(i) as soon as reasonably practicable:

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

(ii) To address unusually large cash inflows or unusually large redemptions, for no more than 30 consecutive days;

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

(iv) To reposition or liquidate the fund's assets in connection with a reorganization, to launch the fund, or when notice of a change in a fund's policy as described in paragraph (a)(2)(ii) of this section has been provided to fund shareholders.

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

(3) A fund must maintain written records documenting either its compliance under paragraphs (a) and (b) of this section or, if the fund does not adopt a policy under paragraphs (a)(2)(i) and (a)(3)(i) of this section, a written record of the fund's analysis that such a policy is not required under these paragraphs. Written records documenting the fund's compliance under paragraphs (a) and (b) of this section include: the fund's record of which investments are included in the fund's 80% basket and the basis for including each such investment in the fund's

80% basket; the value of the fund's 80% basket, as a percentage of the value of the fund's assets; the reasons, pursuant to paragraphs (b)(1) and (2) of this section, for any departures from the policies described in paragraphs (a)(2)(i) and (a)(3)(i); the dates of any departures from the policies described in paragraphs (a)(2)(i) and (a)(3)(i); and any notice sent to the fund's shareholders pursuant to paragraph (e) of this section. Written records documenting the fund's compliance under paragraphs (a) and (b) must be maintained for a period of not less than six years following the creation of each required record (or, in the case of notices, following the date the notice was sent), the first two years in an easily accessible place. The written record made by a fund that does not adopt a policy under paragraphs (a)(2)(i) and (a)(3)(i) must be maintained in an easily accessible place for a period of not less than six years following the fund's last use of its name.

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

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

(e) *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), 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.

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

(g) *Definitions*. For purposes of this section:

(1) *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).

(2) *Assets* means net assets, plus the amount of any borrowings for investment purposes. In determining the value of a fund's assets for purposes of this section, a fund must value each derivatives instrument using the instrument's notional amount (which must be converted to 10-year bond equivalents for interest rate derivatives and delta adjusted for options contracts) and reduce the value of its assets by excluding any cash and cash equivalents up to the notional amount of the derivatives instrument(s).

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

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

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

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

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

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The general 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, 78o(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 Item 4 to read as follows:

Note: The text of Form N-1A does not, and these amendments will not, appear in the *Code of Federal Regulations*.

* * * * *

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 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.

* * * * *

13. Amend Form N-2 (referenced in §§ 239.14 and 274.11a-1) by revising Item 8 to read as follows:

Note: The text of Form N-2 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

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.

* * * * *

14. Amend Form N-8B-2 (referenced in § 274.12) by adding new General Instruction 2.(*l*) and by revising Item 11 to read as follows:

Note: The text of Form N-8B-2 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

Form N-8B-2

* * * * *

GENERAL INSTRUCTIONS FOR FORM N-8B-2

* * * * *

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. 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

11. Describe briefly the kind or type of securities comprising the unit of specified securities in which security holders have an interest. (If the unit consists of a single security issued by an investment company, name such investment company and furnish a description of the type of securities comprising the portfolio of such investment company.) (Note: Do not furnish a list of portfolio securities in answer to this item. Describe portfolio securities as "bonds of railroad companies," "preferred stock of public utility holding companies," "common stock of industrial companies," etc., indicating the approximate proportion of each group in terms of value as of a recent date.) If the trust owns or will own any securities of its regular brokers or dealers as defined in rule 10b-l under the Act [17 CFR 270. 10b-1], or their parents, identify those brokers or dealers and state the value of the registrant's aggregate holdings of the securities of each subject issuer as of the close of the registrant's most recent fiscal year.

Instruction:

(1). The registrant need only disclose information 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.

* * * * *

15. Amend Form N-PORT (referenced in § 274.150) by revising parts B and C to read as follows:

Note: The text of Form N-PORT does not, and these amendments will not, appear in the *Code of Federal Regulations*.

* * * * *

Part B: Information About the Fund

* * * * *

Item B.9 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)-(3)], provide the following:

a. 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; and

b. If applicable, the number of days that the value of the Fund's 80% basket, as defined in rule 35d-1(g)(1), fell below 80% of the value of the Fund's assets during the reporting period (or, if the Fund has adopted a policy as described in rule 35d-1(a)(3)(i)(B), the number of days that less than 80% of the income that the Fund distributed was exempt, as applicable, from federal income tax or from both federal and state income tax).

Instruction: Because in accordance with rule 35d-1(b)(3) the Fund must use 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) for purposes of determining the fund's compliance with an investment policy adopted under rule 35d-1(a)(2)(i), the percentages that the Fund reports in response to Item B.9.a and assesses for purposes of reporting in response to Item B.9.b similarly must reflect the use of notional amounts with certain adjustments as set forth above.

* * * * *

Part C: Schedule of Portfolio Investments

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Item C.2. Amount of each investment

* * * * *

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), (3)(i)], is the investment included in the Fund's 80% basket, as defined in rule 35d-1(g), as applicable? [Y/N]

* * * * *

By the Commission.

Dated: May 25, 2022.

Vanessa A. Countryman,

Secretary.