

# INVESTMENT COMPANY NAMES A SMALL ENTITY COMPLIANCE GUIDE<sup>1</sup>

## INTRODUCTION

---

On September 20, 2023, the Securities and Exchange Commission (the “Commission”) adopted amendments to modernize and enhance the protections that rule 35d-1 under the Investment Company Act of 1940 (“the names rule”) provides. Rule 35d-1 addresses fund names that the Commission defines as materially misleading or deceptive. The final amendments broaden the scope of the names rule and include other updates to the rule and other names-related regulatory requirements to improve the protections the names rule provides and to address changes in the fund industry in the approximately 20 years since the rule was adopted.

The final amendments broaden the name rule’s requirement for certain funds to adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus that the fund’s name suggests (“80% investment policy”). The Commission adopted enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form N-PORT regarding compliance with the names-related regulatory requirements. The amendments also update the rule’s notice requirements and include recordkeeping requirements for funds regarding compliance with the names-related regulatory requirements.

## WHO IS AFFECTED BY THE AMENDMENTS TO THE NAMES RULE?

---

The names rule amendments address the names of registered investment companies and business development companies (“BDCs”). Final amendments to fund registration forms apply specifically to Form N-1A, Form N-2, Form N-8B-2, and Form S-6. Amendments to Form N-PORT include new reporting items for registered management investment companies and exchange-traded funds organized as unit investment trusts (“UITs”), other than money market funds or small business investment companies.

## WHAT SPECIFIC CHANGES WERE MADE?

---

- *80% Investment Policy Requirement*

---

<sup>1</sup> This guide was prepared by the staff of the Securities and Exchange Commission as a “small entity compliance guide” under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains rules and form amendments adopted by the Commission, but is not a substitute for any rule or form itself. Only the rule or form itself can provide complete and definitive information regarding its requirements.

## Names Suggesting an Investment Focus

The final amendments retain the existing 80% investment policy requirement for funds whose name suggests a focus in a particular type of investment, or investments in a particular industry or geographic focus, or those whose name suggests that a fund's distributions are exempt from federal income tax or from both federal and state income tax. The final amendments broaden the scope of this requirement, however, to apply also to fund names that include terms suggesting that the fund focuses in investments that have, or whose issuers have, particular characteristics. This includes, for example, fund names with terms such as "growth" or "value," or terms indicating that the fund's investment decisions incorporate one or more environmental, social, or governance factors.

In determining whether a particular investment was made in accordance with the fund's 80% investment policy (that is, whether it is included in the fund's "80% basket"), the Commission discussed that there must be a meaningful nexus between the given investment and the focus that the fund's name suggests. The Commission discussed that a fund may define the terms used in its name in a reasonable way, allowing for flexibility in determining whether a nexus exists between a given security and the focus the fund's name suggests. In the case of index funds, the Commission discussed that a fund that is invested 80% or more in an index included in a fund's name can have a name that is materially deceptive and misleading if a meaningful nexus does not exist between the components of the underlying index and the investment focus suggested by the index's name. As a result, in addition to adopting a policy to invest at least 80% of the fund's assets in the index's components, consistent with rule 38a-1 under the Investment Company Act of 1940, index funds should generally adopt and implement written policies and procedures reasonably designed to ensure that indexes selected by a fund do not have materially misleading or deceptive names themselves.

Names that do not connote an investment focus or that the fund is a tax-exempt fund are not required to adopt an 80% investment policy. Certain terms do not communicate particular characteristics of the investments that will make up the fund's portfolio and do not require that a fund establish an 80% investment policy. These include, for instance, names that suggest a portfolio-wide result to be achieved (such as "real return," "balanced," or "managed risk"), names that reference a particular investment technique (such as "long/short" or "hedged"), and names that reference asset allocation determinations that evolve over time (such as retirement target date or "sector rotation" funds). Each of these names communicates information to investors about the overall characteristics of the portfolio rather than particular investments in the portfolio and therefore would not require an 80% investment policy. The Commission provided other examples of names that would not require an 80% investment policy in the Adopting Release.

## Temporary Departures from the 80% Investment Requirement

The final amendments permit temporary departures from the 80% investment requirement by allowing a fund temporarily to invest less than the required 80% of the value of the fund's assets in accordance with the investment focus or tax treatment its name suggest in certain circumstances.

A fund must determine, at the time of investment, whether the investment is appropriately included in the fund's 80% basket. A fund must comply with the 80% investment requirement "under normal circumstances," allowing funds flexibility to determine what constitutes an other-than-normal circumstance. In other-than-normal circumstances, funds are permitted to invest in a manner that is not consistent with the fund's 80% investment policy for a limited period of time.

At least quarterly, funds that are subject to the 80% investment requirement must review the fund's portfolio investments to determine whether the fund's investments continue to be consistent with the fund's 80% investment policy. The quarterly review requirement helps ensure that any drift from compliance with the fund's 80% investment policy is identified and corrected within a set period of time.

The final amendments establish limits on the amount of time a fund may depart from compliance with the 80% investment requirement:

- **Other-Than-Normal Circumstances:** When a fund departs from its 80% investment policy in other-than-normal circumstances, the fund must come back into compliance within 90 consecutive days after the initial departure.
- **Portfolio Drift:** When a fund, as part of its quarterly review or otherwise, identifies a departure from the 80% investment policy, the fund's future investments must be made in a manner that will bring the fund into compliance with the 80% investment policy. A fund must come back into compliance as soon as reasonably practicable and no longer than 90 consecutive days after the portfolio drift is identified.
- **Fund Launches:** A fund may depart from its 80% investment policy for 180 consecutive days starting from the day the fund commences operations in the case of a fund launch.
- **Reorganizations:** There is no express time limit on how long a fund may depart from its 80% investment policy in the case of repositions or liquidations of fund assets in connection with fund reorganizations.
- **Notice of a Change in Policy:** Once a notice of a change in a fund's policy has been provided to shareholders, the final amendments effectively toll the time for a fund to get back into compliance with the fund's 80% investment policy.

## Considerations Regarding Derivatives in Assessing Names Rule Compliance

The final amendments generally require a fund to use notional amounts (with certain adjustments) to value derivatives in assessing whether the fund has invested

80% of the value of its assets in accordance with the investment focus that the fund's name suggests.

A fund must exclude from the names rule compliance calculation certain derivatives that hedge the currency risk associated with a fund's foreign-currency denominated investments. A fund must exclude a currency derivative if it: (1) is entered into and maintained by the fund for hedging purposes, and (2) the notional amounts of the derivatives do not exceed the value of the hedged investments (or par value thereof, in the case of fixed-income investments) by more than 10%.

The final amendments will permit a fund, in determining compliance with its 80% investment policy, to deduct cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less from assets (*i.e.*, the denominator in the 80% calculation), up to the notional amounts of the fund's derivatives instruments.

Finally, the amendments address the derivatives instruments that a fund may include in its "80% basket," specifically permitting a fund to include a derivatives instrument that provides investment exposure to one or more of the market risk factors associated with the investment focus suggested by the fund's name.

#### Unlisted Registered Closed-End Funds and BDCs

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, may not change that policy unless authorized by a vote of the majority of the outstanding voting securities of the fund. These funds may, however, make changes to their 80% investment policies without this vote if:

- the fund conducts a tender or repurchase offer in advance of the change;
- the fund provides at least 60 days' prior notice of any change in the policy in advance of that offer;
- that offer is not oversubscribed; and
- the fund purchases shares at their net asset value.

#### Effect of Compliance with an 80% Investment Policy

A fund's name may be materially deceptive or misleading even if the fund adopts and implements an 80% investment policy and otherwise complies with the rule's requirement to adopt and implement the policy. For example, a fund's name could be materially deceptive or misleading for purposes of section 35(d) if the fund invests in a way such that the source of a substantial portion of the fund's risks or returns is materially different from that which an investor reasonably would expect based on the fund's name, regardless of the fund's compliance with the requirements of the names rule.

- *Prospectus Disclosure Defining Terms Used in Fund Names*

Certain fund registration forms, Form N-1A, Form N-2, Form N-8B-2, and Form S-6, were amended to require each fund that is required to adopt and implement an 80% investment policy to disclose in its prospectus the definitions of the terms used in the fund's name. The disclosure must specify the criteria the fund uses to select the investments that the term describes, if any. Most of the information disclosed must also be tagged in Inline eXtensible Business Reporting Language (Inline XBRL).

- *Plain English/Established Industry Use Requirement*

For funds that are required to adopt an 80% investment policy, the final amendments 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. The Commission recognized in the Adopting Release that terms may be defined in multiple reasonable ways.

- *Modernizing the Rule's Notice Requirement*

The final amendments retain the current requirement that, unless a fund's 80% investment policy is a fundamental policy (*i.e.*, a policy that may not be changed without shareholder approval), notice must be provided to shareholders of any change in the fund's 80% policy. The final amendments also require notices to describe not only a change to the fund's 80% investment policy, but also an accompanying change in the fund's name. The notice requirement also:

- (1) Clarifies the current requirement that the notice must be provided separately from any other documents;
- (2) Updates the legend requirements alerting the investor to a change in investment policy and/or name;
- (3) Specifies the content that the notices include; and
- (4) Specifies notices that may be delivered electronically.

- *Form N-PORT Reporting*

The final amendments add new reporting items to Form N-PORT. Funds that report on Form N-PORT and that are required to adopt an 80% investment policy must report the following information for the third month of each quarter:

- (1) Whether each investment in the fund's portfolio is in the fund's 80% basket;
- (2) The value of the fund's 80% basket, as a percentage of the value of the fund's assets; and

(3) The definitions of the terms used in the fund's name.

- *Recordkeeping*

The final amendments require funds that are subject to the 80% investment policy requirement to maintain certain records documenting their compliance with the rule. Funds must maintain:

- (1) Written records, at the time the fund invests its assets, documenting:
  - a. Whether the investment is included in the fund's 80% basket and, if so, the basis for including that investment in the 80% basket; and
  - b. The value of the fund's 80% basket, as a percentage of the value of the fund's assets;
- (2) Written records documenting the fund's review of its portfolio investments' inclusion in the fund's 80% basket, to be conducted at least quarterly, including whether each investment is included in the fund's 80% basket and the basis for including each investment in the 80% basket;
- (3) If during the fund's quarterly review or otherwise the fund identifies that the 80% requirement is no longer met due to drift, written records documenting the date this was identified and the reason for any departures from the 80% investment policy;
- (4) If there was a departure from the 80% requirement in other-than-normal circumstances, written records documenting the date of any such departure and reason why the fund departed (including why the fund determined that circumstances are other-than-normal); and
- (5) Any notice sent to the fund's shareholders pursuant to the rule.

All of these records must be maintained for at least six years following the creation of each required record (or, in the case of notices, following the date the notice was sent), the first two years in an easily accessible place.

#### Unit Investment Trusts

The final amendments provide that, for UITs, the 80% investment policy and recordkeeping requirements will apply only at the time of initial deposit. Therefore, UITs with a name subject to the final amendments and whose initial deposit occurs after the compliance date of the final amendments will be required to adopt an appropriate 80% investment policy, including making such a policy fundamental or providing notice to investors in the event of a change to the policy, if appropriate. However, such UITs will not be required to engage in monitoring and other requirements associated with the final amendments' temporary departure

requirements nor will they be required to keep records under the final amendments beyond the initial deposit.

## COMPLIANCE DATES

---

Larger entities, which are defined as those funds that, together with other investment companies in the same “group of related investment companies,” have net assets of \$1 billion or more as of the end of the most recent fiscal year, must comply with the final amendments by December 11, 2025.

Smaller entities, which are defined as those funds that, together with other investment companies in the same “group of related investment companies,” have net assets of less than \$1 billion as of the end of the most recent fiscal year, must comply with the final amendments by June 11, 2026.

## OTHER RESOURCES

---

The Adopting Release can be found on the Commission’s website at [SEC.gov | Investment Company Names](#).

The Proposing Release can be found on the Commission’s website at [SEC.gov | Investment Company Names](#).

## CONTACTING THE COMMISSION

---

The Commission’s Division of Investment Management is happy to assist small entities with questions regarding the new rules and amendments to the names rule. You may submit a question by email to [IMOCC@sec.gov](mailto:IMOCC@sec.gov). Additionally, you may contact the Division of Investment Management’s Office of Chief Counsel at (202) 551-6825.