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VIA ELECTRONIC SUBMISSION

May 5, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Request for Comments on Fund Names

Dear Ms. Countryman:

Invesco Ltd. ("**Invesco**") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "**SEC**" or "**Commission**") on its request for comment ("**Request for Comment**") on the framework for addressing names of registered investment companies and business development companies pursuant to section 35(d) of the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), Rule 35d-1 thereunder (the "**Names Rule**") and the antifraud provisions of the Federal securities laws.[1] Invesco is pleased that the Commission is seeking public comment on the Names Rule and framework surrounding it with the goal of providing an updated and more comprehensive approach to the regulation of fund names.

Invesco is a leading independent global investment manager with approximately $1,159.4 billion in assets under management as of February 29, 2020. Our services are provided through a wide range of strategies and vehicles for a broad client base. Invesco's indirect wholly-owned U.S. registered investment adviser subsidiaries, including Invesco Advisers, Inc. and Invesco Capital Management LLC, advise or sponsor open-end mutual funds, closed-end funds, exchange-traded funds ("**ETFs**"), collective trust funds, separately managed accounts, real estate investment trusts, unit investment trusts and other pooled vehicles.

I. <u>Executive Summary</u>

We are supportive of the Commission's efforts to modernize the regulatory approach to the regulation of fund names and its desire to improve investor understanding and experience. Given the generally positive effect we believe the Names Rule has had on investor outcomes and protections, Invesco supports maintaining the Names Rule and believes that any revisions to the Names Rule or Commission guidance on the Names Rule should seek to accomplish the goals of simplifying compliance and increasing flexibility and standardization across funds without

1 *See* Request for Comments on Fund Names, SEC Release No. IC-33809 (Mar. 2, 2020), available at https://www.sec.gov/rules/other/2020/ic-33809.pdf. Terms defined in the Request for Comment have the same meaning when used in this letter unless otherwise defined herein.

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impacting current investor options or experiences. While Invesco generally supports the positions stated in the Comment Letter submitted by the Investment Company Institute (the "ICI"), Invesco is writing separately to address important concepts relating to index funds and to provide its views on specific Names Rule challenges raised in the Request for Comment. Invesco's views and suggestions are summarized below:

- *Index Funds*
    - Index fund names often include one or more key words from the name of a fund's underlying index, which can cause index funds to be subject to the Names Rule.
    - Because underlying indexes are not subject to the Names Rule, situations may arise where an index fund is required to deviate from its investment objective to track its underlying index in order to comply with the Names Rule, which may introduce tracking error.
    - The Commission staff (the "**Staff**") has also interpreted the Names Rule to require certain index funds to observe specific tests to ensure that their holdings satisfy the Names Rule; these compliance tests are not uniformly observed across the industry and can be operationally burdensome.
    - In light of index funds' stated investment objectives to track a specified index and the variety of other information available to investors regarding the composition of an index and the holdings of an index fund, we believe that many of the concerns that underpinned the adoption of the Names Rule are not applicable to index funds.
    - Accordingly, we urge the Commission to either (i) consider a tailored exemption from the Names Rule for index funds, or (ii) specify that index funds be allowed to comply with the Names Rule by investing 80% of their assets in the securities included in their underlying index.
- *Derivatives*
    - Invesco supports changes to the Names Rule to better reflect funds' use of derivatives and the investment exposures they provide in the 80% investment policies required under the rule.
    - A fund should disclose in its prospectus that it will include derivatives in its 80% investment policy, as well as the categories of derivatives it will include.
    - For a fund electing to include certain derivatives in its 80% investment policy, the Names Rule should require the fund to generally use the notional value (as opposed to current market value) of those derivatives in measuring compliance with the investment policy.

- *80% Threshold*
  - Generally, we believe the current 80% asset-based threshold remains appropriate for purposes of assuring investors that a fund's investments will be consistent with its name.
- *Notice Requirement*
  - We believe the Names Rule's current provision permitting funds to provide investors with 60 days' written notice prior to changing their 80% investment policy continues to provide investors with meaningful information and an appropriate amount of time to determine whether to redeem their shares.
- *Industry Classifications*
  - The Commission should continue to grant funds discretion to determine whether a portfolio investment is part of a particular industry without the imposition of additional restrictions.
  - We support the use of clear disclosure in a fund's prospectus to accurately describe the process by which a fund assigns investments to the industry identified by its name.
- *ESG, Sustainable or other Qualitative Characteristics ("ESG") and "Investment Strategies" vs "Investment Types" Generally*
  - Since ESG invokes an investment strategy, rather than a type of investment, the Names Rule should not apply.
  - The distinction between investment strategy and investment types should remain in place.
  - Unless there is consensus on classifications, a naming rule around ESG may be difficult to apply, may constrain the ability of portfolio managers to manage funds in accordance with their investment objectives and may constrain investor choice.
  - We support transparent and thorough disclosure in a fund's prospectus to explain an ESG strategy.
  - We believe that Staff guidance around the disclosure of ESG strategies could be beneficial.
- *Global and International*
  - We do not believe the Names Rule should apply to the terms "global" and "international."
  - Current guidance adequately provides funds with the guidance needed to meet obligations related to using those terms in their name.
  - A three country/40% test, while perhaps a useful standard or guidepost for some funds, should not be compulsory. Rather, fund companies should expressly and clearly describe for investors how a fund that uses "global" or "international" in its name

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intends to invest its assets in investments that are tied economically to a number of different countries throughout the world so that a reasonable investor can conclude that the Fund invests in a way consistent with, and not misleading with respect to, the Fund's name.

- The Staff should clarify that alternative approaches to the three country/40% test are sufficient if they meet the "express and clear description" standard and should ensure that the standard is applied consistently across the industry by the Staff.

II. Recommended Approach to Index Funds

The Request for Comment notes that index funds (both mutual funds and ETFs), can present unique challenges with respect to the Names Rule.[2] We agree and appreciate the Commission's focus on this topic. As described below, we believe there is benefit to investors from having key words from the name of the underlying index included in the fund name, however we also believe that a "blind" doctrinal application of the Names Rule in that situation could lead to a sub-optimal investment result for investors.

Although many index funds do not include the full name of the index in the name of the fund, it is Invesco's experience that most index fund names, including most Invesco index funds, share key terminology with the index's name, particularly with respect to words that might give rise to Names Rule applicability. In fact, we believe that this naming convention can provide important and valuable information to investors (who often select a particular index fund because of the underlying index that the fund tracks) by helping investors readily identify a fund's underlying index.

The Commission adopted the Names Rule to guard against the use of misleading investment company names and to ensure that investors would be fully informed about the type of investments made by investment companies with such names. The general test of whether a particular fund name is misleading under Section 35(d) of the Investment Company Act is "whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments."[3] However, at the same time, the Commission stated in the Adopting Release that it "believes that investors should not rely on an investment company's name as the sole source of information about a company's investments and risks."[4] Therefore, in any Names Rule analysis, the facts and circumstances surrounding the use of the name also must be examined.[5] We believe that the specific facts and circumstances and the specific investment mandates of index mutual

2 *See* Request for Comment at pgs. 8-9.

3 Investment Company Act Release No. IC-24828 (Jan. 17, 2001) (the "**Adopting Release**") at text accompanying n. 44.

4 *Id*. at text accompanying n.4.

5 *See Id.* at n.47 (noting that whether names related to maturity are misleading "depends on all of the facts and circumstances, including other disclosure to investors").

funds and ETFs (i.e., those tracking the performance of a certain underlying index) are critical factors in the proper application of the Names Rule. Mandating compliance with the Names Rule without regard for an index fund's investment objective may increase tracking error and hurt fund performance. Ironically, in certain instances, the "blind" application of the Names Rule can run contrary to the same investor protection policies that underlie the Names Rule itself: an investor buying an index fund expecting to obtain exposure to a certain index may instead experience wider tracking error and lower correlation as a result of regulatory requirements and not investment-based decisions.

As the sponsor of over 200 index-based ETFs, and a leading innovator in the industry for over 15 years, Invesco has an extensive history of engaging with the Commission on the varied nuances of the regulatory framework applicable to index funds. With respect to the Names Rule, Invesco has observed situations where, as suggested by the Request for Comment, an index's constituents would not comply with the Names Rule if it were strictly applicable to index names because of timing issues or other nuances that are unique to rules-based strategies. In such cases, assuming that the name of an applicable index fund includes a word from the index name that subjects the fund to the Names Rule, the fund can encounter conflicting and mutually-exclusive regulatory requirements: (i) its responsibility to pursue its investment objective and minimize tracking error between the fund's performance and that of its underlying index; and (ii) the 80% requirement of the Names Rule. Such potential conflict has historically been exacerbated for ETFs, because investing at least 80% (or 90%, depending upon the applicable exemptive relief) of assets in the underlying index is a specific condition of the exemptive relief upon which ETFs have relied. Although the recently adopted "ETF Rule" does not require an index fund to invest a certain percentage of assets in an underlying index, ETFs may still encounter situations where it must decide between complying with the Names Rule and discharging its duty to track its underlying index to the greatest feasible extent. In Invesco's view, such outcomes are detrimental to an ETF's governance framework and ultimately harm shareholders.

In practical terms, it does not take a particularly unusual set of circumstances for the above situation to occur. If, for example, an index ETF tracks the "XYZ Investment Grade Bond Index" and includes "investment grade" in its name, the Names Rule would apply to the fund. However, if a combination of market movement and bond rating downgrades causes the index to be comprised of more than 20% below-investment grade bonds prior to the rebalance of the index, a spike in creation activity would force the ETF to deviate from its investment objective (*i.e.*, intentionally increase tracking error by overweighting investment grade bonds) to comply with the Names Rule until the index rebalances or reconstitutes. It is Invesco's view that such outcome runs contrary to the purpose of the Names Rule and the expectations of investors selecting index funds (*i.e.*, to obtain returns consistent with a specific named index).

Furthermore, in connection with the disclosure review process, we understand that the Staff has interpreted the Names Rule to require additional compliance tests for certain index funds on a case-by-case basis. These tests can be operationally burdensome for funds and have the potential to introduce the same type of undesirable tracking error noted above. Furthermore, because these tests are not the result of a formal Commission rule or guidance, they may not be consistently applied across the industry or among similarly situated funds. For example, where an index fund tracks an index focused on a particular industry or sector (which is often not defined by a clear set of objective criteria), we have encountered circumstances in which the Staff has required a fund to separately evaluate the index constituents in the fund's portfolio to determine whether such constituents derive a substantial percentage of their revenues (*i.e.*, 50%) from the applicable industry/sector, in order to ensure that the fund satisfies its own 80% Names Rule test. However, indexes may utilize a variety of different methodologies to identify and weight their constituents, and these methodologies may not always align with a specific revenue-based or other compliance test imposed at the fund level. As a result, a fund may face situations in which it must intentionally introduce tracking error in order to comply with the Names Rule, notwithstanding its objective to track a particular index. Again, it is Invesco's view that such outcome runs contrary to the purpose of the Names Rule and the expectations of investors when selecting index funds.

As stated above, the Names Rule primarily promotes effective disclosures that provide clarity as to portfolio holdings. With respect to index funds, a stated investment objective to track an index provides extensive transparency as to portfolio holdings such that likelihood of investor confusion is greatly diminished. Moreover, as almost all index ETFs are required to disclose portfolio holdings on a daily basis, investors in such funds have even more clarity as to portfolio composition. As such, Invesco believes that the combination of: (i) a stated investment objective to track an index, (ii) identification of the index, (iii) a description of the index, and (iv) other publicly available information regarding the index, provide as effective, if not more effective, investor protections than applying a blanket 80% investment requirement.

In light of the risks and concerns described above, Invesco urges the Commission to consider a tailored exemption from the Names Rule for index funds. By carving out index funds from the scope of the Names Rule, Invesco believes the Commission could effectively remove the possibility of competing regulatory requirements, and the negative impacts thereof, without diminishing any of the protections that the Names Rule is intended to provide. Alternatively, Invesco requests that Commission specify that index funds be allowed to comply with the Names Rule by investing 80% of their assets in the securities included in their underlying index. This change would ensure that all index funds are subject to a consistent and homogenously applied rule framework, while eliminating burdensome and inconsistent tests that have the potential to conflict with an index fund's stated investment objective and the expectations of index fund investors.

III. Recommended Approach to Derivatives

We agree with the Commission that the Names Rule raises unique challenges for funds that use derivatives. While the Commission notes these challenges in the context of funds whose names suggest investments in a particular type of investment, we think Names Rule challenges can similarly arise for a fund using derivatives whose name suggests investments in certain industries, countries or geographic regions. These challenges arise because the Names Rule imposes an accounting-based asset test that is poorly suited for a fund that uses derivatives to implement its investment strategy and program. The investment exposure provided to a fund by derivative instruments can exceed, often substantially, the market value of those instruments reflected in the asset-based test. Consequently, as the Commission notes, the Names Rule's asset test does not provide an appropriate framework when the market values of a fund's derivatives are relatively small (such that their contribution to the 80% investment policy is relatively inconsequential) but the investment exposure they provide is significant. For the reasons outlined below, we believe that funds should disclose in its prospectus that it will include derivatives in its 80% investment policy (including the categories of derivatives), and the Names Rule should require a fund to generally use the notional value (as opposed to current market value) of derivatives in measuring compliance with the investment policy.

For example, a fund whose name suggests investments in equity securities of Chinese technology companies that implements its investment strategy primarily through total return swaps on shares of those companies having an aggregate notional value equal to 100% of the fund's assets, and that otherwise holds only cash and cash equivalents, might need to realize mark-to-market appreciation of 400% on those swaps to satisfy its 80% investment policy. Yet the swaps at inception provide the fund with investment exposure equivalent to investing 100% of its assets directly in shares of Chinese technology companies. Although this example is an edge case, it demonstrates that a derivative's notional value can be more appropriate than its market value for measuring compliance with an 80% investment policy under the Names Rule, as well as the pervasive compliance challenge the Names Rule's asset-based test creates for funds implementing their investment strategies through use of derivatives.

Invesco supports changes to the Names Rule to better reflect funds' use of derivatives and the investment exposures they provide in the 80% investment policies required under the rule. We note that the Commission is currently in the process of developing an updated and more comprehensive approach to the regulation of funds' use of derivatives,[6] and we believe that revising the Names Rule can complement proposed Rule 18f-4 and help achieve the Commission's overall goal of modernizing the regulatory framework applicable to funds' use of derivatives.

As an initial matter, we think any revisions to the Names Rule to reflect funds' use of derivatives should require a fund to disclose in its prospectus that it will include derivatives in its 80% investment policy. If a fund elects to include derivatives and discloses accordingly, it should also identify in its prospectus the categories of derivatives it will include. For example, a fixed-income fund might reasonably determine that derivatives constituting bond and interest rate futures, interest rate swaps and credit default swaps are includable when measuring compliance with its 80% investment policy, but that other derivatives, such as foreign currency forwards and equity index options, are not. Likewise, an industry focused equity fund might reasonably determine that total return swaps and long call options on shares of companies operating in the relevant industry are includable when measuring compliance with its 80% investment policy, but

6 *See* 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, 85 Fed. Reg. 4446 (January 24, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-01-24/pdf/2020-00040.pdf.

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that financial futures on broadly based indices of equity securities are not. We think a fund should have flexibility to reasonably determine the categories of derivatives that it includes in its 80% investment policy based upon its investment strategy and particular use of derivatives. However, we also believe a fund should disclose those categories of includable derivatives so that investors understand the fund's general approach to treatment of derivatives for Names Rule purposes.[7]

Additionally, because a fund can use derivatives to obtain either long or short investment exposure to a reference asset, we think the Names Rule should require a fund electing to include derivatives in its 80% investment policy to consider whether only derivatives in the relevant categories that provide long exposure are includable in its policy, or whether derivatives that provide both long and short exposure are includable, and disclose this determination in its prospectus. For example, an industry focused equity fund might conclude that only derivatives providing long investment exposure to shares of companies in the relevant industry are includable in its 80% investment policy given the fund's objective to invest in shares of companies operating in the industry. Conversely, a U.S. investment grade fixed-income fund might conclude that both long and short positions in interest rate and credit derivatives are includable in its 80% investment policy because long and short investment exposures to the U.S. credit and interest rate markets are consistent with its objective to maximize total return by investing in these markets.[8]

For funds electing to include certain derivatives in their 80% investment policies, we think the Names Rule should be revised to require these funds to ascribe "equivalent values" to these derivatives that more accurately reflect (as compared to current market value) the investment exposures they provide. For many derivatives, including total return swaps, credit default swaps and forwards, the equivalent value should generally equal the instrument's notional value, reflecting that the instrument provides an amount of investment exposure to the underlying reference asset that is commensurate with its notional value. However, to ensure that shorter-tenured interest rate derivatives are not over-weighted or longer-tenured interest rate derivatives under-weighted in the fund's 80% investment policy, the Names Rule should require a fund to convert the notional values of these instruments to an appropriate bond equivalent to arrive at their equivalent values. Similarly, the Names Rule should require a fund to "delta adjust" the notional value of its options positions to arrive at equivalent values that better reflect the investment exposure to the underlying reference asset. We note that the Commission has proposed in Rule 18f-4 that in scope funds be permitted to similarly adjust the notional values of interest rate

7 We do not believe that a change in the categories of derivatives that a fund will include in its 80% investment policy should require the fund to provide shareholders with 60 days' prior written notice. Such a requirement could impede a fund's use of a new type of derivative to take advantage of a market opportunity if that derivative would be includable for purposes of the fund's 80% investment policy. A fund would nonetheless need to evaluate whether any such change is sufficiently material to necessitate a prospectus supplement.

8 Regardless of whether a fund elects to include derivatives in the relevant categories that provide long investment exposure, or both long and short investment exposure, in its 80% investment policy, we think the Names Rule should require the fund to net the notional values of two or more directly offsetting derivatives that are the same type of instrument and have the same underlying reference asset, maturity and other material terms. Not requiring such netting of directly offsetting derivatives could cause a fund to overstate, potentially dramatically, the contribution of derivatives when measuring compliance with its 80% investment policy.

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derivatives and options positions when determining their "derivatives exposure," and such adjustments are also recognized in Forms PF and ADV.[9] Accordingly, we expect that funds and their advisers should have experience making such notional value adjustments for these types of derivatives. After calculating the equivalent values of derivatives in the categories that a fund includes in its 80% investment policy, the fund should add those equivalent values to the value of its other investments in the relevant category, industry, country or geographic region (as applicable) to determine an aggregate value that will serve as the numerator in its 80% test. This aggregate value would represent the total amount of investment exposure that the fund has incurred to the relevant category of investment, industry, country or geographic region, accounting for both cash instruments and derivatives that have a nexus to the fund's name.

Because the Names Rule imposes an asset-based test that requires a fund to invest, under normal circumstances, at least 80% of the value of its "Assets"[10] in investments in the relevant category, industry, country or geographic region (as applicable), the rule should require a fund electing to include derivatives in its 80% investment policy to "gross up" the denominator of its 80% test to include the equivalent value of the derivatives it has determined to include in its 80% investment policy. Since the equivalent value of these derivatives would be included in the numerator of a fund's 80% test, the denominator must be equivalently increased to prevent the derivatives from disproportionately contributing to the fund's 80% investment policy compliance. Additionally, because the Names Rule requires a fund to satisfy the 80% test with respect to the value of its entire investment portfolio (including investments purchased with borrowed money), a fund that includes derivatives in its 80% investment policy should include the equivalent value of those derivatives in the denominator of its test, reflecting that the instruments provide investment exposure that is similar to the use of borrowings for investment purposes.

Finally, some funds that use derivatives substantially to obtain investment exposure to the markets in which they invest maintain large portions of their assets in cash and cash equivalents. For these funds, derivatives represent a substitute for cash instruments and do not function similarly to borrowings for investment purposes. Accordingly, we recommend 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. The hypothetical fund investing in Chinese technology companies through total return swaps can be instructive on this point. If the fund is not permitted to reduce the denominator for its 80% test by the value of its cash and cash equivalents, the fund would be non-compliant with its 80% investment policy, even after including the equivalent value of its total return swaps as we propose above. Although the

9 *See*, e.g., General Instruction 15 to Form PF; Item B.30 of Section 2b of Form PF; Glossary of Terms, Gross Notional Value of Form ADV; Schedule D of Part 1A of Form ADV.

10 The Names Rule defines the "Assets" of a fund as the sum of its net assets and the amount of borrowings for investment purposes. See Investment Company Act Rule 35d-1(d)(2). Accordingly, the rule requires a fund to "gross up" its net assets by the amount of borrowings employed for investment purposes. For a fund using borrowed money as part of its investment strategy, the Names Rule can be regarded as using a denominator value that approximates a fund's total assets, requiring the fund to invest 80% of the value of its entire investment portfolio (and not 80% of its net asset value) in investments in the relevant category, industry, country or geographic region (as applicable).

swaps provide the fund with investment exposure equal to 100% of its assets, Names Rule testing would suggest the fund is invested only 50% in shares of Chinese technology companies.[11] Reducing the denominator by the fund's cash and cash equivalents corrects this anomaly, resulting in a Names Rule test that appropriately concludes that the fund is 100% invested in Chinese technology companies and compliant with its 80% investment policy.

IV. Recommended Approach to 80% Threshold

Generally, we believe the current 80% asset-based threshold remains appropriate for purposes of assuring investors that a fund's investments will be consistent with its name. A lower threshold, such as the earlier 65% test espoused by former Staff guidance, could lead to shareholder confusion regarding funds with potentially misleading names, while a higher threshold would be unnecessarily restrictive with respect to fund managers' ability to achieve their funds' investment objectives. In addition, we believe the 80% test should continue to apply only at the time of investment. Requiring the test to be applied on an ongoing basis, such that a fund would be required to maintain an 80% level of investment, would, we believe, lead to the untimely disposition of portfolio holdings to the detriment of shareholders. As noted in the Names Rule's adopting release, applying the test at the time of investment is consistent with other investment requirements under the Investment Company Act.[12]

We acknowledge there are certain challenges with respect to the current asset-based test, particularly with respect to its application to investments in derivatives, addressed above. However, aside from these proposed changes with respect to the Names Rule's application to derivatives, we do not believe the asset-based test should be dramatically revised, for instance, to a performance-based test. We believe the current asset-based test is easy for shareholders to understand and establishes a clear connection between a fund's name and its investment policy, as compared with a performance-based test, which poses challenges with respect to compliance monitoring, performance attribution, and other issues.

In summary, we believe the current 80% test strikes the right balance between providing investors relying on descriptive fund names with accurate information, and allowing fund managers the flexibility necessary to achieve the best possible outcomes for shareholders, including the ability to take advantage of changing market conditions and to manage flows.

11 If the fund has total assets of $100, its Names Rule test (without the denominator adjustment we propose for cash and cash equivalents) would be computed as: [$100 notional value of swaps/($100 notional value of swaps+$100 cash and cash equivalents)]*100=50%.

12 *See* Adopting Release at n. 27.

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V. Recommended Approach to Notice Requirement

We believe the Names Rule's current provision permitting funds to provide investors with 60 days' written notice prior to changing their 80% investment policy continues to provide investors with meaningful information and an appropriate amount of time to determine whether to redeem their shares. To the extent the Staff is considering shortening the 60 day notice period, in recognition of the dramatic increase in the use of electronic forms of shareholder communication since the adoption of the Names Rule in 2001, we would support such a change. Similarly, we believe the Staff should revisit the necessity of requiring the statement regarding a policy change to appear on the envelope in which the notice is delivered. We believe a requirement that the statement appear in the notice itself is sufficient and would be appropriate for every medium of shareholder communication. With respect to the content of the required notice, we believe the current requirement to state, in bold-face type, "Important Notice Regarding Change in Investment Policy" continues to provide shareholders with the necessary information in a clear manner; moreover, such a statement is appropriate for any changes to a fund's 80% policy. Changing this provision to require different statements for different types of changes we believe would lead to a lack of standardization and shareholder confusion regarding such changes. For example, different asset managers may categorize similar types of changes differently and provide different statements, or levels of detail, in their shareholder notices. We also believe the current Names Rule's provision permitting funds to provide shareholders with 60 days' notice, in lieu of obtaining shareholder approval, continues to be beneficial to shareholders. As discussed in the Names Rule's adopting release, we believe requiring shareholder approval prior to changing a fund's 80% policy "would be too burdensome for investment companies, constraining their ability to respond efficiently to market events or to new regulatory requirements, and discouraging them from using descriptive names."[13]

VI. Recommended Approach to Industry Classification

Investment strategies designed to provide exposure to individual economic sectors/industries offer important diversification benefits for many investors seeking to take advantage of specific segments of the economy. These types of funds become subject to the Names Rule when their name indicates an emphasis in a particular industry. The Request for Comment seeks input on how funds determine whether a portfolio investment is part of a particular industry and whether additional restrictions should be imposed on funds that focus investments within a particular industry. We believe that the Commission should continue to grant funds discretion to determine whether a portfolio investment is part of a particular industry within the meaning of Section 35(d) of the Investment Company Act and the Names Rule without the imposition of additional restrictions, and we support the use of clear disclosure in a fund's

13 *See* Adopting Release at II.A(1).

prospectus to accurately describe the process by which a fund assigns investments to the industry identified by its name.

As previously discussed, the Adopting Release recognized the limitations of the Names Rule by noting that "investors should not rely on an investment company's name as the sole source of information about a company's investments and risks" and that "[a]n investment company's name, like any other single piece of information about an investment, cannot tell the whole story about the investment company."[14] Since the adoption of the Names Rule, funds have had flexibility to disclose the methodology by which investments are assigned to an industry and included within the fund's 80% policy in order to provide additional information to shareholders in order to clarify the relationship between the fund's name and its investment thesis. The disclosure varies among funds, but, generally, a portfolio investment is considered to be part of a particular industry if (i) it is classified as such by a third-party industry classification system; or (ii) the fund's advisor determines, based on available information, that the issuer is principally engaged in the industry in accordance with clearly disclosed criteria. That criteria is typically outlined in the fund's prospectus and, in many circumstances, includes a simple revenue/profit or asset-based test to determine whether the issuer may be assigned to the relevant industry where the adviser has deemed that to be meaningful disclosure.

We do not believe that investors would benefit from the imposition by the Commission of a prescriptive rule to determine how an investment should be allocated to a particular industry given the various methodologies and classifications systems that attempt to aggregate businesses into similar groupings. This is especially true for nascent industries or industries that rely on emerging technologies. Reasonably crafted disclosure does today and will continue to provide an investor with enough clarity to reduce confusion when a fund is selected for a specific investment need and asset allocation goal. This also allows the fund enough flexibility to design its portfolio using a classification method of its choosing.

VII. Recommended Approach to ESG and "Investment Strategies" vs "Investment Types" Generally

We believe the Names Rule should not apply to the term "ESG" because we believe this term invokes an investment strategy rather than a specific type of investment. Consistent with the Adopting Release and the "Staff's Frequently Asked Questions about Rule 35d-1," the Names Rule would not apply to terms that suggest an investment objective or strategy rather than a type of investment.[15] We think this distinction remains true and relevant today, and should remain in place. The Adopting Release states that the Names Rule does not apply to fund names that

14 *See* Adopting Release at I.

15 *See* Frequently Asked Questions about Rule 35d-1, https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm ("FAQ")

incorporate terms such as "growth" and "value" that connote types of investment strategies as opposed to types of investments. Additionally, the Commission's "Frequently Asked Questions about Rule 35d-1" states the rule would not apply to the use of the term "income" where that term suggests an investment objective rather than a type of investment.[16] Similarly to "growth," "value," and "income," the term ESG indicates a strategy of offering a particular focus, in this case an ESG focus, to investing. An ESG strategy can apply to various types of investments and can be contrasted with the type of securities (*e.g.*, equity, fixed income or small-cap) in which a fund invests. In addition, ESG can apply to the investment process in various ways, such as exclusionary or "negative" screens, "positive screens" in the form of a scoring system based on a set of ESG favorable factors, a holistic ESG assessment as part of fundamental analysis of individual companies, or an ESG risk-based assessment.

Furthermore, even if funds were to attempt to treat ESG as an investment type, this classification would be subject to a qualitative assessment as to what constitutes an ESG investment. There are various metrics that can be used to measure ESG, and there is no consistent set of standards as to what criteria must be met to consider a particular investment an ESG investment. The inconsistencies among ESG rating providers demonstrate the inconsistent nature of ESG criteria currently. A research team associated with MIT Sloan School of Management's Sustainability Initiative found that the correlation in ESG ratings among the top five ESG rating agencies was on average 0.61. Given that a correlation of 1 would demonstrate 100% correlation and credit ratings from Moody's and Standard & Poor's are correlated at 0.99%, a level of correlation of 0.61% shows a strong divergence on ESG scoring. The top reasons for this divergence were found to be the definitions of ESG performance, measurement indicators and weights assigned to ESG attributes.[17] Regardless of if a third party ratings organization or proprietary rating system is used, it is difficult to determine what constitutes an "ESG" company, and consequently would be challenging to categorize a security as an ESG security. This demonstrates the difficulty of a framework that would categorize ESG as a type of investment. Therefore, unless there is consensus on classification at the company level, a naming rule around ESG and similar terms may be difficult to apply, may constrain the ability of portfolio managers to manage funds in accordance with their investment objectives and may constrain investor choice.

While outside of the scope of the Names Rule, ESG fund names would continue to remain subject to Section 35(d)'s prohibition on misleading names[18] and applicable Commission guidance.[19] Therefore, to ensure that fund names are appropriate with respect to ESG, we support transparent and thorough disclosure in a fund's prospectus to explain to investors the ESG strategy of a fund and the way in which that strategy impacts the investment process.

We believe that Staff guidance around the disclosure of ESG strategies could be beneficial. This could provide consistent principles around sufficient disclosure to provide investors with the

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16 *See* id. at Question 9.

17 *See* Tracy Mayor, "Why ESG ratings vary so widely (and what you can do about it)", MIT Sloan School of Management, August 26, 2019, https://mitsloan.mit.edu/ideas-made-to-matter/why-esg-ratings-vary-so-widely-and-what-you-can-do-about-it

18 *See* Investment Company Act of 1940, 15 U.S.C. § 80a-34(d).

19 *See* Adopting Release at text accompanying n.44 and n.4.

necessary and important information to make fully informed decisions about whether a fund's investment approach, risks and opportunities align with an investor's goals. For example, we believe that the term "ESG" should relate solely to a strategy that incorporates all three of the environmental, social and governance pillars. We also believe that disclosure regarding an ESG strategy should be specific, and the factors utilized and method of implementation should be clearly explained. Other similar guidance around the use of the term ESG and related terms can be helpful to further the goal of transparency and investor protection.

VIII. Recommended Approach to Global and International

The Names Rule does not apply to the terms "global" or "international." However, the Staff has asked if it should. We believe it should not. The Adopting Release for Rule 35d-1 indicates that the terms "international" and "global" connote "diversification among investments in a number of different countries throughout the world."[20] When the Commission published the Proposing Release for the Names Rule in 1997, the Staff stated "these terms may describe a number of investment companies that have significantly different investment portfolios. Among other things, the number of countries in which an 'international' or 'global' investment company may invest at any one time may appropriately differ from company to company." Furthermore, the Staff also indicated in the Proposing Release their "belie[f] that a reasonable investor could conclude that these names [that include the words "international" and "global"] suggest more than one investment focus."[21] We agree. We also think that the beliefs and conclusions of the Staff ring just as true today as they did in 1997. Therefore, we think that the application of the Names Rule, with its 80% investment requirement, to names that include "global" and "international" would not only be inconsistent with almost a quarter century of Commission guidance, but would also be inappropriate and place too restrictive a box around the wide array of different investment strategies that fund companies using "global" and "international" in their names deploy across the industry.

In the Proposing Release, the Commission staff indicated that it would "continue [] to give interpretive advice with respect to investment company names not covered by the proposed rule."[22] We believe the guidance provided by the Staff since the Proposing Release was published is generally reasonable and adequately provides fund companies with the guidance needed to be able to adequately explain to investors how the fund intends to invest in global/international markets in a non-misleading way that is appropriate and consistent with the fund's name. The caveat to our view, discussed below, is the approach the Staff takes when providing comments to fund registrants regarding this guidance.

20 *See* Adopting Release at n. 42. *See also* FAQ at n. 11 and related text.
21 *See* Investment Company Names, Release No. IC-22530 (Feb. 27, 1997) ("Proposing Release") at II.C.1.
22 *Id*.

In the Adopting Release, the Staff made clear that it would "expect . . . that investment companies using these terms ["global" and "international"] in their names will invest their assets in investments that are tied economically to a number of countries throughout the world.[23] In 2012, in response to inquiries from ICI fund industry members about Staff comments on fund names that included the two terms, the ICI engaged in conversations with senior members of the Staff responsible for disclosure review and it subsequently summarized the Staff's views and position in a memorandum to its members (the "ICI Memo").[24] In the ICI Memo, the Staff indicated that there is no one way for funds that use "global" or "international" in their name to explain how they intend to invest in a number of different countries throughout the world.

The ICI Memo does indicate one clear way the Staff believes a fund can satisfy its obligation to describe for investors how it intends to invest globally/internationally; by way of adopting and disclosing a policy to invest under normal market conditions in at least three different countries and at least 40% of its assets outside the U.S. or, if conditions are not favorable, invest at least 30% of its assets outside the U.S. (the "three country/40% test"). While the ICI Memo indicates that the Staff "may suggest the [three country/40% test] as an example," it is not a compulsory approach. The ICI Memo further indicates the Staff's position that alternative approaches could also be used as long as funds "expressly describe how the fund will invest its assets in investments that are tied economically to a number of countries throughout the world."[25] We agree that the three country/40% test, while perhaps an appropriate standard for some fund companies and a helpful guidepost for others, should not be compulsory and we think that some funds' investment objectives and strategies may require an alternative approach to efficiently implement.

We believe the collective guidance provided in the Proposing Release, Adopting Release, FAQ and ICI Memo, including the Staff's offering of the three country/40% test as one example, is reasonable and useful guidance that drafters of fund registration statements can use to assist them in describing for investors the way funds will invest globally/internationally in a way that aligns its disclosure with a fund's name. We therefore believe that the guidance already provides an appropriate standard that fund companies can adequately adhere to: fund companies should expressly and clearly describe for investors how a fund that uses "global" or "international" in the name intends to invest its assets in investments that are tied economically to a number of different countries throughout the world, and describe the associated risks, in such a way that a reasonable investor would conclude that the Fund invests in a manner that is consistent with, and not misleading with regard to, the use of the term in the Fund's name.[26]

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23 *See* Adopting Release at n.42. *See also* FAQ at n. 11.

24 Memo dated June 4, 2012 from Mara Schrek, Associate Counsel, ICI, to Members Re: SEC Staff Comments on Fund Names Rule (35d-1) ("ICI Memo").

25 *See* ICI Memo.

26 In practice, we believe this standard is met when disclosure in the principal investment strategies and principal risks sections of a fund's prospectus expressly and clearly provides to an investor the information needed to

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Notwithstanding the exclusion of "global" and "international" from coverage under the Names Rule, we are concerned that the Staff has frequently treated the three country/40% test as more than a suggestion of one example of a standard that funds can use. The Staff frequently, by way of comments given to fund registrants during the registration statement review and comment process, seeks to affirmatively impose upon fund registrants the adoption of the three country/40% test. We believe that such approach by the Staff is inconsistent with its guidance and could ultimately homogenize the global/international funds category and thereby stifle fund companies' investment ideas deemed efficient by portfolio managers and could more generally adversely impact overall competition in the category. To avoid such a result, we believe that the Staff should, at first opportunity (i) make clear its position that the three country/40% test is not the only standard that funds can use and that funds may use an alternative approach as long as it meets the "express and clear description" standard described above, and (ii) ensure that the standard is applied consistently by the Staff.[27]

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Invesco appreciates the opportunity to comment on this important request for comment, as well as the Commission's consideration of our comments shared in this letter. We are available to discuss our comments or provide any additional information or assistance that the SEC might find useful.

Sincerely,

Invesco Ltd.

Jeffrey H. Kupor

Jeffrey Kupor
Head of Legal, Americas
[redacted]

reasonably determine, directly via the prospectus and Statement of Additional Information and/or by way of the fund's shareholder reports, other public filings, or marketing materials or other readily accessible information available to the investor (including third-party information), the number of countries a fund invests in, the percentage of assets committed to global/international investment, and the securities in which the fund invests to gain global/international exposure.

27 The Staff's approach, often referred to as "regulation by comment process," is even more problematic for funds that file an initial registration statement that requires the Staff to grant it effectiveness. In a number of those instances, the Staff has withheld effectiveness until the registrant gives in to the Staff's requirement that it adopt the three country/40% test. In some cases such a concession forces an investment advisers' portfolio management team to operationally adjust an already-reasonably designed and disclosed efficient strategy for investing globally. It has also resulted in many fund shops filing a new series under an already existing series trust where it would otherwise be more efficient for operational or other reasons to file an entirely new trust that would require the Staff to grant it effectiveness.

CC: Honorable Jay Clayton, Chair, U.S. Securities and Exchange Commission
Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission
Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission
Ms. Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission