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VIA ELECTRONIC SUBMISSION

May 5, 2020

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Comments on Fund Names (File No. S7-04-20)

Dear Ms. Countryman:

We appreciate the opportunity to respond to the United States Securities and Exchange Commission (the "Commission") request for comments 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 "1940 Act"), Rule 35d-1 thereunder (the "Names Rule") and the antifraud provisions of the federal securities laws.[1]

The Capital Group Companies is one of the oldest asset managers in the United States. Through our investment management subsidiaries, we actively manage assets in various collective investment vehicles and institutional client separate accounts globally. The vast majority of these assets consist of the American Funds family of mutual funds, which are U.S. regulated investment companies managed by Capital Research and Management Company, distributed through financial intermediaries and held by individuals and institutions across different types of accounts.

We commend the Commission for its recent request for comments on the Names Rule and we strongly support the Commission's ongoing efforts to improve the investor experience by modernizing current regulatory approaches. We also support the intent of the Names Rule and, given our experience with the Names Rule since its adoption in 2001, we generally believe that the current framework functions well. However, certain aspects of the Names Rule are worth reconfirming or clarifying. In this regard, we largely agree with the comments submitted by the Investment Company Institute (the "ICI Letter") and the Asset Management Group of the

1 *Request for Comments on Fund Names*, Investment Company Act Release No. 33809 (March 2, 2020), available at https://www.sec.gov/rules/other/2020/ic-33809.pdf.

Securities Industry and Financial Markets Association (the "SIFMA Letter," and, together with the ICI Letter, the "Industry Letters")[2], particularly on the following key issues:

1. **Rule 35d-1 should continue to differentiate terms that describe investment strategies from those that reference specific investment types and, for fund names that describe investment strategies, the Commission should endorse a principles-based approach focused on complete and accurate disclosure as the best means of protecting investors.**

Rule 35d-1 was adopted by the Commission nearly two decades ago as an investor protection measure designed to help ensure that investors are not misled or deceived by a fund's name. When it adopted the Names Rule, the Commission expressly excluded from its reach terms that suggest an investment strategy – such as "growth" or "value" – rather than a specific type of investment. In doing so, the Commission correctly noted that a reasonable investor could conclude that names indicating an investment strategy might suggest more than one investment focus.[3] Three "income" funds, for example, may all seek yield for their respective shareholders; however, the three may do so with investments in vastly different portfolios – while one might focus on investments in dividend-paying stocks, another might instead invest primarily in various fixed-income securities and the third may seek current income through investments in a mix of asset classes.

This subjectivity, which is inherent in defining and implementing a fund's investment strategy, distinguishes an abstract strategy from an objectively definable investment type. While a strategic descriptor in a fund's name reflects a key consideration employed by the fund's investment adviser in its investment process, it does not reflect an intent or a commitment on the fund's part to focus on a particular type of investment. So, an investment adviser to a "tax-sensitive" fund considers the tax impacts of its potential investments, but does not commit to invest primarily in tax-exempt securities. Similarly, an adviser to a "value" fund considers the relative value proposition of its potential investments, but does not commit – by its name alone – to invest in any particular asset class. Such considerations of strategy may be implemented differently from one adviser to another and may be subject to varied understandings and expectations from one investor to another. On account of such variances across funds within a named strategy, it would be difficult, if not impossible, to craft an effective one-size-fits-all investment limit without jeopardizing investor choice.

That being the case, we strongly believe that the Names Rule should not be amended to apply specifically to terms that describe a fund's investment strategy. Rather, the regulatory framework should continue to distinguish strategies from specific investment types and, where a fund's name describes an investment strategy, require that the fund's disclosure adequately

[2] Comment Letter of the Investment Company Institute, File No. S7-24-15 (May 5, 2020); and Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association, File No. S7-24-15 (May 5, 2020).

[3] See *Investment Company Names*, Investment Company Act Release No. 22530 (Feb. 27, 1997), 62 Fed. Reg. 10955 (Mar. 10, 1997), available at https://www.sec.gov/rules/proposed/ic-22530.txt.

define the terms used in its name in the discussion of the fund's investment objectives, strategies and risks. Every such fund would continue to remain subject to the prohibition on "materially deceptive or misleading" fund names under Section 35(d), as well as the general antifraud provisions of the federal securities laws. The Commission would retain authority to determine that a fund's name is misleading if the name would lead a reasonable investor to conclude that the fund invests in a manner inconsistent with its disclosed objectives, strategies and risks.[4]

a. Because the terms "global" and "international," when used in a fund's name, connote an investment strategy, such terms should not be subject to prescriptive investment limits under Rule 35d-1. Instead, subject to adequate disclosure, "global" and "international" funds should be permitted to utilize any reasonable approach to align their investment strategies with their names.

Rule 35d-1 does not currently apply to the use of the terms "global" and "international" in fund names. In adopting the Names Rule, the Commission drew the above-described distinction between a strategy and an investment type and observed that the terms "global" and "international" in a fund's name do not reflect a stated intent on the part of the fund to invest in any particular type of investment; rather, the terms connote a strategy of diversifying the fund's portfolio among investments in a number of different countries throughout the world and such terms can reasonably mean different things to different investors.[5] As the Commission expressly acknowledged, "these terms may describe a number of investment companies that have significantly different investment portfolios," and the number of countries in which a "global" or "international" fund may invest at any one time may appropriately differ from one fund to another.[6]

Nearly two decades later, this characterization of "global" and "international" funds continues to be true, and, in an increasingly globalized world, it may be truer today than ever before that Rule 35d-1 should not apply to "global" and "international" funds. In managing the portfolio of a "global" or "international" fund today, an adviser must consider not only the number of countries in which the fund should invest and the fund's relative exposure to each of those countries, but also the nature and the sources of such exposure. As a fund's investible universe grows to include an increasingly large number of multinational corporations with operations, assets or revenues in multiple jurisdictions, a fund may obtain indirect exposure to one country through a company domiciled or listed in an entirely different country. Such considerations add further to the complex decision-making involved in managing and investing in "global" and "international" funds and the Commission should not seek to impose

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4 See *Investment Company Names*, Investment Company Act Release No. 24828 (Jan. 17, 2001), 66 Fed. Reg. 8509 (Feb. 1, 2001), available at https://www.sec.gov/rules/final/ic-24828.htm ("Adopting Release").

5 *Id*. See also Frequently Asked Questions about Rule 35d-1 (last modified Dec. 4, 2001), Question 10, available at https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm.

6 See Adopting Release, *supra* note 4.

a one-size-fits-all definition of global and international investment exposure when investors and their advisers may reasonably have a broad array of expectations as to how such exposure could and should be attained.

Given that the use of "global" and "international" in a fund's name is not (and, as discussed above, should not be) subject to the Names Rule, the Commission should reject efforts to impose any specific name-related requirements on "global" and "international" funds. Such a fund should not be required – either by formal rulemaking or through informal guidance of Commission staff – to invest a certain percentage of its assets in a minimum number of countries or to invest a minimum percentage of its assets outside the United States. Similarly, the Commission should disavow efforts, including efforts by the Commission's disclosure review staff, to impose specific requirements on the way a "global" or "international" fund determines whether a security is economically tied to a particular country.

To the contrary, the Commission should confirm that any reasonable approach to attaining global or international investment exposure is permissible so long as such approach, including the specific criteria that a fund uses to determine whether a security is economically tied to a particular country, is clearly and accurately disclosed in the fund's prospectus. Under this approach, a fund invested in a diversified set of 30 or more companies that are either incorporated or headquartered in the United States, where each company derives a certain level of revenues (e.g., 25%) from outside the United States, could theoretically hold itself out as a "global" or "international" fund without running afoul of the Names Rule. This would, of course, be predicated on the fund providing fair and balanced disclosure regarding its investment strategies and risks, including the facts that (1) it may deem any investment in a company that derives at least 25% of its revenues from outside the United States as foreign exposure regardless of where that company is incorporated or headquartered, (2) its foreign exposure may be attained exclusively through investments in companies incorporated or headquartered in the United States and (3) it may be subject to risks associated with investing in the United States.

b. Similarly, to the extent a fund name designates a strategic focus on environmental, social or governance-oriented factors, a principles-based approach with a focus on clear and accurate disclosure is the most appropriate means of protecting investors from deceptive or misleading fund names.

The Commission notes that a growing number of funds are disclosing investment mandates that require some degree of qualitative assessment or judgment of environmental, social or governance (ESG) criteria, and such funds – collectively referred to as ESG funds – often reference these criteria in their names. As of December 31, 2019, for example, nearly 300 funds included the terms "ESG," "clean," "environmental," "impact," "responsible," "social" or "sustainable" in their names. According to the Commission's staff, some funds treat such terms in their names as indicative of an investment strategy to which the Names Rule does not apply, while others treat such terms as indicating a type of investment to which Rule 35d-1 and its 80% investment requirement apply.

In light of this inconsistency in practice, the Commission asks whether the Names Rule should apply to terms such as "ESG" or "sustainable" when used in a fund's name to indicate an adviser's consideration of ESG factors in its investment process. We agree with the positions in this regard laid out in the Industry Letters. In particular, we believe that, in most cases, such terms are indicative of a fund's investment strategy and, accordingly, should not be subject to the Names Rule. We acknowledge that certain ESG fund names may connote an intent to invest in a particular type of investment; however, in those cases, we believe that the Names Rule, in its present form, is sufficiently robust to apply to such names.

Generally, ESG fund names do not suggest an intent or commitment on the part of the fund to invest in a particular type of investment. Rather, ESG fund names – much like fund names that include the terms "tax-sensitive," "value" and other similar indicia of a fund's investment strategy – normally describe a fund's general investment approach: in short, specified ESG considerations (such as sustainability, social responsibility or environmental impact) will inform the investment adviser's decision to invest in a particular issuer or not. These specified considerations – and, importantly, the determinations they yield – may vary significantly from adviser to adviser and from fund to fund.

Given the broad range of ESG factors that an adviser to an ESG fund might consider and the subjective nature of any ESG-focused assessments the adviser must make, a reasonable investor could conclude that a fund name indicating an ESG strategy might suggest more than one investment focus. For example, one ESG fund might apply more weight to environmental factors, such as a company's carbon intensity, water use or waste reduction efforts, in its investment decisions, while another might apply greater weight to governance factors, including board independence and alignment of management incentives with the company's sustainability objectives. Such varied applications of ESG factors may result in differing investment decisions and, more broadly, in differing investment portfolios. Investors, too, may have varied understandings and expectations as to the nature of an ESG fund.

That being the case, Rule 35d-1 should normally not be deemed to apply to ESG fund names. Instead, the Commission should confirm that any reasonable methodology for applying ESG considerations to a fund's investment portfolio is permissible so long as such methodology, including the specific ESG factors that the fund assesses, is clearly and accurately disclosed. However, where an ESG fund name is intended to reflect an investment focus on a particular industry or group of industries, such fund should be subject to the Names Rule. For example, under Rule 35d-1(a)(2), an "alternative energy" fund would presumably be required to invest at least 80% of its assets in securities of companies in or related to alternative energy industries.

2. **When derivatives offer exposure to a particular type of investment, funds should be permitted to employ an exposure-based approach in applying such derivative investments towards the 80% investment requirement of Rule 35d-1.**

The Commission observes that, in the decades following the adoption of the Names Rule, "funds are increasingly using derivatives and other financial instruments that provide leverage." As funds increasingly use derivatives and employ a greater variety of derivative types, "complying with the Names Rule (and its asset-based test) may raise particular challenges for funds that gain exposure to a 'type of investment' (as specified in the Names Rule) through the use of derivatives." The Commission seeks comment on whether it should address this type of Names Rule-related challenge for funds that invest in derivatives.

The universe of derivative types is broad, and funds employ different derivatives in a variety of ways to achieve their investment objectives. For example, funds may use derivatives to hedge exposures or to manage portfolio risks. Funds may also utilize derivatives to obtain indirect economic exposure to issuers, markets or asset classes where direct exposure is either impractical or impossible to obtain. The Commission has acknowledged that, in appropriate circumstances, such synthetic exposure to an issuer, market or asset class may be applied towards the 80% investment requirement of Rule 35d-1.

In 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. This inconsistency stems, in large part, from the differing characteristics of the various derivative instruments in which funds invest. For certain derivatives, such as credit default swap indices, the notional amount may represent an appropriate measure of economic exposure. For others, including certain futures contracts and interest rate swaps, the notional amount does not reflect the economic exposure of an investing fund.

We agree with the position espoused in the Industry Letters that the asset-based approach under Rule 35d-1 is not well calibrated to the varied tactical ways in which funds use derivatives. Instead, the Commission should endorse a flexible exposure-based approach for valuing derivatives in measuring compliance with the Names Rule. Pursuant to such an approach, funds could test derivatives for Names Rule purposes consistent with a reasonable exposure metric and a disclosed methodology that, in the adviser's discretion, best measures the exposure to the type of investment that the derivative obtains.

3. **To best serve shareholder interests, the requirement that a fund invest at least 80% of its assets in the type of investment suggested by its name must continue to apply only at the time of purchase.**

In adopting Rule 35d-1, the Commission expressly acknowledged the need for funds to retain flexibility to deviate temporarily from the 80% investment minimum for the benefit of fund shareholders.[7] Because the 80% investment requirement applies only at the time of purchase, the Names Rule effectively permits a fund to passively breach the 80% threshold in certain circumstances beyond the fund's control, such as in the case of large cash inflows or redemptions or as a result of changes in the value of the fund's portfolio holdings. A fund that passively breaches the 80% investment threshold would be required to make future investments in a manner that would bring the fund's portfolio back towards compliance with the 80% requirement; however, the fund would not be required to sell portfolio holdings in furtherance of the 80% threshold.

The Commission asks whether the Names Rule requirement that a fund invest at least 80% of its assets in the type of investment suggested by its name should continue to apply only at the time of investment or whether a fund should instead be required to maintain that level of investment on an ongoing basis. In accord with the views expressed in the Industry Letters, we firmly believe that shareholder interests are best served by continuing to apply the 80% investment requirement only at the time of purchase, and an ongoing maintenance test is neither advisable nor necessary to protect investors.

Constraining a fund's investment flexibility by requiring it to comply with the 80% investment limit at all times could potentially prove harmful to fund shareholders. A continuous requirement to maintain compliance with the 80% investment limit could result in a fund being forced to sell positions at inopportune times to the detriment of fund shareholders or to make investments solely for purposes of Names Rule compliance rather than consistent with what the fund's adviser subjectively believes to be in the best interests of fund shareholders.

Further, requiring a fund to comply with the 80% investment limit on an ongoing basis would be unnecessarily duplicative and would add little incremental value. All funds, including those that are subject to the more specific requirements of the Names Rule, are at all times subject to Section 35(d)'s prohibition on "materially deceptive or misleading" fund names. All funds are likewise subject on a continuous basis to the general antifraud provisions of the federal securities laws. This framework provides fund shareholders with ample ongoing protection from deceptive or misleading names.

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7 See Adopting Release, *supra* note 4.

We appreciate the opportunity to comment on the Names Rule framework and are grateful for your consideration of our recommendations. If you have any questions regarding our comments, please feel free to contact Erik A. Vayntrub at [redacted]

Sincerely,

Walter R. Burkley
Senior Vice President & Senior Counsel
Capital Research and Management Company

Erik A. Vayntrub
Vice President & Associate Counsel
Capital Research and Management Company

cc: The Hon. Jay Clayton, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
Dalia O. Blass, Director, Division of Investment Management