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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:

The Investment Company Institute[1] is writing to supplement our prior comments on the Commission's recent request for comment on how to regulate fund names under Rule 35d-1 under the Investment Company Act ("Names Rule") and the antifraud provisions of the Federal securities laws.[2] For the reasons we explain below, we recommend that the Commission permit funds flexibility to identify portfolio investments as being investments in specified industries.

The Names Rule applies to fund names that suggest a focus in a particular industry or group of industries. In the Release, the Commission raises several questions concerning how funds attribute portfolio investments to particular industries for purposes of the Names Rule and whether the Commission should consider requiring funds to comply with specific attribution tests (such as revenue- or asset-based tests).[3]

We do not believe the Commission should prescribe specific attribution tests and instead should permit funds to classify portfolio investments in any "reasonable" manner which "should not be so

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[1] The Investment Company Institute ("ICI") is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds ("ETFs"), closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$22.1 trillion in the United States, serving more than 100 million US shareholders, and US$6.5 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] *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 ("Release"). We provided initial comments on several aspects of the Release in a letter submitted on May 5, 2020 ("Original Comments"). *See* Letter from Susan M. Olson, General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC, dated May 5, 2020, available at https://www.sec.gov/comments/s7-04-20/s70420-7152133-216418.pdf

[3] *See* Release at page 13.

broad that the primary economic characteristics of the companies in a single class are materially different."[4] Our recommended approach is consistent with analogous Commission guidance regarding how to classify industries for industry concentration policy purposes. Consistency in approach for identifying an industry is highly important to funds and their investors. Two different approaches would be confusing to investors and the market more generally.

Funds that have adopted industry concentration policies – interpreted to mean "investing more than 25% of a [f]und's net assets in a particular industry or group of industries"[5] – must disclose those policies.[6] These funds enjoy reasonable flexibility in selecting industry classifications for purposes of those policies. Indeed, prior Commission guidance indicates that a fund with an industry concentration policy

> may select its own industry classifications, but such classifications must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different.[7]

If a fund has flexibility to select its own industry classifications for purposes of an industry concentration policy, it stands to reason that a fund should have flexibility to designate investments as being attributable to a particular industry for purposes of a Names Rule policy. Doing so should be guided by reason and "should not be so broad that the primary economic characteristics of the companies in a single class are materially different." We also note that such flexibility to select industry attribution methods for Names Rule purposes operates within the ample protections afforded by Section 35(d)'s prohibition on "materially deceptive or misleading" fund names.

As part of this flexibility in determining appropriate industry attribution methods for Names Rule purposes, a fund should be permitted to utilize any of the types of tests that the Commission describes in the Release (and others not described in the Release). For instance, a fund should be able to adhere to industry classifications provided by third parties, such as the Global Industry Classification Standard ("GICS") or Standard Industrial Classification ("SIC") codes, its own industry classification method, or a combination.

As part of its own industry classification method, a fund should be permitted to utilize a revenue-based approach for industry attribution for Names Rule purposes. The Commission however should not mandate that a fund must use such an approach or to adhere to a one-size-fits-all threshold or other

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[4] *See* Registration Form Used by Open-End Management Investment Companies, SEC Release No. IC-13436 (Aug. 12, 1983) at Guide 19 ("Guide 19"). As noted in the Release, the guidelines to Form N-1A, including Guide 19, were rescinded in 1998. *See* Release at n.8. However, registrants continue to rely on Guide 19.

[5] *See* Form N-1A Item 9(b)(1) Instruction 4 ("Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (i.e., investing more than 25% of a Fund's net assets in a particular industry or group of industries).").

[6] *See* Investment Company Act Sections 8(b)(1) and 13(a)(3); Form N-1A Items 4(a), 9(b)(1) Instruction 4, and 16(c)(iv).

[7] Guide 19.

prescriptive measure for revenues attributable to the industry suggested by the fund's name. For example, the fund should be allowed to reasonably establish a revenue-based method that permits investment in early-stage startups or "pre-revenue companies" in the relevant industry.[8] In any case, reasonableness – the approach for industry concentration – and the importance of consistency in approach, underpinned by the protections of Section 35(d), should be the touchstones for a fund's Names Rule industry attribution method.

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We appreciate the opportunity to provide these additional comments on the framework for addressing names of registered investment companies and BDCs. If you have any questions, please contact me at [redacted] or Dorothy M. Donohue, Deputy General Counsel – Securities Regulation, at [redacted], or our counsel, Corey F. Rose at [redacted], or Aaron D. Withrow at [redacted], at Dechert LLP.

Sincerely,

/s/ Susan M. Olson
Susan M. Olson
General Counsel

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
The Honorable Caroline A. Crenshaw

Dalia O. Blass Director, Division of Investment Management

[8] *See, e.g.*, NYSE Listed Company Manual § 902.02 (defining "pre-revenue company" to mean "a company whose initial listing date is on or after June 1, 2019, and which has not recorded revenue in excess of $5 million in either (i) the most recent completed fiscal year prior to listing or (ii) during the year of listing through the most recently completed fiscal quarter before the listing date.").