

*What's in a Name (and What Does it Say About Your Fund)?*  
**SEC's Amended Names Rule**

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# Agenda

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## Background on the Names Rule

- Section 35(d) of the 1940 Act prohibits a fund's name from being misleading and authorizes the SEC to define names that are materially deceptive or misleading.
  - Rule 35d-1 exercises this authority, currently requiring funds that include certain terms in their names to invest at least 80% of their assets in investments suggested by their names.
- In 2020, the SEC asked for public comment on the Names Rule, and whether it is still relevant or in need of updating.
- SEC Chairman Gensler requested that his staff revisit the Names Rule.
- On September 20, 2023, the SEC voted to adopt amendments to the Names Rule, significantly expanding the scope of the Rule.

# Expanded Scope of the Amended Names Rule

- The Names Rule amendments expand the scope of fund names required to have an 80% investment policy to include names with terms suggesting that a fund focuses in investments that have, or whose issuers have, particular characteristics.
- **Growth or Value**
  - Funds have different approaches to selecting investments that have growth or value characteristics.
  - Funds will need to describe to investors their definition of “growth” or “value.”
- **One or More ESG Factors**
  - Considerations for ESG “integration” and “uplift” funds.
- **Thematic Investment Focus**
  - Considerations for whether a thematic term supports an investment focus.
  - Certain terms may be viewed as clearly suggesting a focus in a type of industry or group of industries (for example, terms suggesting a focus in cybersecurity, health and wellness, or travel and tourism).

# Expanded Scope of the Names Rule

(continued)

- **Funds with Multiple Terms**
  - 80% investment policy must address all of the elements of the name, individually or in the aggregate.
  
- **Terms that *Do Not* Require an 80% Investment Policy**
  - Names communicating information about the overall characteristics of the fund's portfolio, such as:
    - names that suggest a portfolio-wide result to be achieved
    - names that suggest a particular investment technique
    - names that reference asset allocation determinations that evolve over time
    - names with terms like “intermediate term” in describing a bond fund
  - Names including “global” and “international”
  - Names indicating a negative or exclusionary screening processes for an investment
  - Names referencing a specific population of investors, well-known organizations or affinity groups

# Temporary Departures from 80% Investment Policy

- **Time of Investments**
  - A fund must determine at the time that it invests whether the investment is included in the 80% basket.
- **Quarterly Compliance Testing**
  - At least quarterly, a fund with an 80% investment policy must review its portfolio investments for compliance with its 80% investment policy.
- **90 Days to Return to Compliance**
  - A fund has 90 days to return to compliance if it departs from its 80% investment policy.
  - If a fund is unable to return to compliance within 90 days, the fund would need to change its name and provide shareholders notice of the change.
- **“Under Normal Circumstances”**
  - Funds must comply with the 80% investment policy “under normal circumstances”.
- **Other Temporary Departures**
  - Examples include reorganizations and liquidations.

# Considerations Regarding Derivatives

- **Inclusion of Derivatives within 80% Investment Policy**

- A fund may include derivatives instruments that provide investment exposure to one or more of the market risk factors associated with the investment focus suggested by the fund's name.
- For example, a fund whose name indicates a focus in mortgage securities can include derivatives that manage the prepayment risk of these securities in its 80% basket.

- **Notional Amount**

- Funds must use the notional amount of a derivatives instrument, rather than market value, for purposes of determining compliance with the 80% investment policy.

- **Exclusions**

- Funds generally *must* exclude derivatives that hedge the currency risk.
- Funds *may* exclude cash and cash equivalents and certain closed-out derivatives.

# Unlisted Closed-End Funds and BDCs

- **Restrictions on Changes to 80% Investment Policy**
  - Unlisted closed-end funds and BDCs are limited in their ability to change their 80% investment policy without approval of a majority of the outstanding voting securities of the fund.
  
- These funds may change their 80% investment policies *without* shareholder approval if:
  1. the fund conducts a tender or repurchase offer with at least 60 days' prior notice of the policy change;
  2. that offer is not oversubscribed; and
  3. the fund repurchases shares at their net asset value.



# Index Fund Considerations

- Market index referenced in an index fund's name is not subject to an 80% investment policy
- **Meaningful Nexus Requirement**
  - A fund that is invested 80% or more in an index included in the fund's name can be 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.
- **Rule 38a-1**
  - Index funds should generally adopt and implement written policies and procedures reasonably designed to ensure that the index selected by a fund does not have a materially misleading or deceptive name itself.



*"I just don't see how an index fund tied to batting averages in the national league actually works."*

## Compliance with the Names Rule is *Not* a Safe Harbor from Section 35(d)

- Section 35(d): Prohibition from adopting as part of a fund name or title any word or words that the SEC finds are materially deceptive or misleading.
- The amended Names Rule codifies existing SEC guidance by providing that a fund's name may be materially deceptive or misleading under Section 35(d) even if the fund complies with the amended Names Rule's requirement to adopt and implement an 80% investment policy.

# Board Perspective – What to Expect

# Inventory and Requisite Filings and Approvals

## ▪ Inventory

- Fund management will need to conduct an inventory of fund names to determine the impact of the amended Names Rule on each fund.
  - **Funds with an 80% investment policy** – review current names and 80% investment policies (and identify whether any of those policies are fundamental and require shareholder approval to change).
  - **Funds without an 80% investment policy** – review current names to determine whether they will be required to adopt an 80% investment policy or if a change to the fund’s name is necessary.
- Funds ultimately covered by the amended Names Rule will then need to determine “reasonable” definitions for terms included in their 80% investment policies and ascertain which investments (including derivatives) will be included for purposes of the 80% basket and which will be excluded.

## ▪ Requisite Filings and Approvals

- Consider whether a 485(a) filing is required for open-end funds.

# Disclosure, Reporting and Policy Updates

- **Disclosure and Reporting Updates**
  - Rule 35d-1 Notice to Shareholders
  - Summary and Statutory Prospectus Disclosure
  - Form N-PORT Reporting Items
- **Revisions to Current Practices and Policies and Procedures**
  - Assess compliance, reporting and recordkeeping policies and procedures.
    - Written records

# Effective and Compliance Dates

- **Effective Date:** December 11, 2023
- **Compliance Dates:**
  - December 2025: 24 months following the effective date for larger entities.
  - May 2025: 30 months following the effective date for smaller entities.