European Securities and Markets Authority

Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names

18 November 2022

European Securities and Markets Authority

Date: 18 November 2022

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered);
- do not remove the tags of type <ESMA_QUESTION_FUNA_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA_CP_FUNA_NAMEOFCOMPANY_REPLYFORM.

e.g. if the respondent were ABCD, the name of the reply form would be:

ESMA_CP_FUNA_ABCD_REPLYFORM

Deadline

Responses must reach us by 20 February 2022.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

Deutsche Börse Group (DBG) appreciates the opportunity to provide a response to ESMA's consultation paper on guidelines on funds' names using ESG or sustainability-related terms.

As an international exchange organization and innovative market infrastructure provider, DBG ensures capital markets that are transparent, reliable and stable. With its wide range of products, services and technologies, the Group organises safe and efficient markets for sustainable economies. Its business areas cover the entire financial market transaction process chain. This includes the provision of indices, data and analytical solutions as well as admission, trading and clearing. Additionally, it comprises services for funds, the settlement and custody of financial instruments as well as the management of collateral and liquidity. As a technology company, the Group develops state-of-the-art IT solutions and offers IT systems all over the world. With more than 10,000 employees, the Group has its headquarters in the financial centre of Frankfurt/Rhine-Main, as well as a strong global presence in locations such as Luxembourg, Prague, Cork, London, New York, Chicago, Hong Kong, Singapore, Beijing, Tokyo and Sydney. DBG's response reflects our general market observations and incorporates the diversity of the Group's practitioner views.

DBG supports ESMA's objective to ensure that ESG funds' investment activities are consistent with their marketed names and claims as well as that the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund. We also recognise the importance of fund name rules, especially as an index provider, as they can have a significant impact on investment decisions, particularly by retail investors.

Concerns around intended and unintended greenwashing are fast climbing the policy and regulatory agenda. Apart from the consumer protection implications that greenwashing may entail, the issue also casts doubt on whether financial markets are genuinely responding to the changing profile of client preferences for sustainable investment. Greenwashing can erode consumer trust and create the conditions for unfair competition and free-riding behaviours. This distortion of market integrity may even undermine broader sustainable finance policy objectives and public policy goals such as the European Green Deal.

Therefore, DBG welcomes that regulators not only in the EU but globally, are paying attention and focusing on retail investor protection as well as mis-selling of ESG products. We believe that misconduct, manipulation or deception – whether in connection with sustainability claims or securities frauds generally – should be matched by robust enforcement of laws.

<ESMA_QUESTION_FUNA_0>

Q1 : Do you agree with the need to introduce quantitative thresholds to assess funds' names?

<ESMA_QUESTION_FUNA_1>

So far, the legislator has chosen an approach based on disclosure (SFDR) and the suitability assessment (MiFID II) which aims to protect investors from being misled in the context of investing in ESG funds. Indeed, greenwashing needs to be addressed without delay, even if all the legislative steps are not fully in force yet. In this regard, the ESAs and NCAs can already make full use of their existing legal mandates and powers to ensure that investors and consumers are protected against fraudulent sustainability claims. But before introducing new rules or guidelines, we would encourage the existing regulatory framework to be completed and demonstrate its effectiveness. This must be an evolving process, in parallel with the market developments since the perception of sustainable investment is also still evolving.

Requiring quantitative thresholds is premature and potentially counterproductive to EU policy objectives

Generally speaking, we have concerns about the calibration of the thresholds and would caution against overly selective criteria. A reduced investment universe can imply increase investment concentration in a few assets and reduced diversification benefits, which can amplify the volatility of a portfolio, affect returns and lead to asset overvaluation.

Consequently, we question whether the proposed guidelines are the appropriate way to meet the regulatory objectives of preventing greenwashing or improving clarity for investors. Although the alignment of funds' names with their strategies is important, this issue cannot be viewed or solved in isolation. SFDR contains many open issues and points of improvement which are still being evaluated. In particular, there is a lack of clarity in the market with regard to what exactly qualifies as a sustainable investment under SFDR and it is clear that approaches currently used vary significantly.

Given that we are still waiting for the Commission to respond to the ESAs regarding the operationalisation of the definition of sustainable investments under SFDR, we do not believe now is the right time to introduce new guidelines that are rooted on the mentioned definition. Setting a quantitative threshold where the underlying definition is unclear will neither lead to a level playing field across products nor enhance the quality or the utility of the information mix available for retail investors. Furthermore, the current definition and how it is used does not reflect enough on the differences of certain asset classes. Detailed guidance on ESG fund names should be aligned and introduced with future changes to SFDR or at least when further regulatory guidance and interpretation issues are being solved, such as interpretations on the concept of sustainable investments. Introducing temporary solutions might only make the situation even worse.

In the mid- to long-term, the introduction of thresholds could even undermine the use of the EU Taxonomy as the common objective benchmark to demonstrate the environmental sustainability of investments. Given the current low levels of Taxonomy alignment of financial products, this may create a disincentive for advisors or distributors to use the Taxonomy, in favour of the less robust and comparable thresholds.

As regards the proposed thresholds themselves, there is no clear distinction between ESG- and sustainability-related terms, particularly from the perspective of the average retail investor. Hence, introducing two thresholds that differentiate along these terms does not seem to be effective to us.

The first threshold of at least 80% of investments used to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy appears to be so broad that with some degree of measurability, almost anything can fit into it. The term "use of environmental or social characteristics" could refer to the product's investment approach (e.g. best-in-class, proxy voting), the underlying ESG characteristics of the investee companies (e.g. higher than average ESG rating, net-zero target) or simply exposure to certain sectors (e.g. renewable energy, net-zero mobility).

The second threshold of at least 50% of minimum proportion of sustainable investments as defined by Article 2(17) under SFDR requires a clear and common definition of sustainable investments, as already mentioned before. Otherwise, the definition and therefore also the threshold may be interpreted and applied in different ways, with limited comparability. In addition, both thresholds require additional clarity on the threshold calculation methodology (numerator, denominator).

Regulatory continuity and coherence among EU sustainable finance initiatives would deliver much-needed market clarity

Significant areas of regulation and supervision of financial institutions already address aspects of potential greenwashing. The fund name is a marketing tool, and we believe that the regulations on unfair competition are clear and sufficient to combat greenwashing. Unfair or misleading ESG information is a violation of the existing regulations. A financial advisor giving intentionally misleading ESG advice may similarly be in breach of contractual and regulatory obligations in place already today. MiFID II moreover provides that investor information should be "presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received" and therefore also definitions, classifications and names of funds should be understandable by the average investor to whom they are addressed.

MiFID II introduced the requirement to ask retail investors about their sustainability preferences before being advised on financial products. We believe that this is a good way to give clients a say on what they want to invest in. However, in practice, they should be asked information on their preferences on three difficult to understand metrics and their proportions. Financial advisors have to apply these rules in a realistic way, as most retail investors are not investment or ESG specialists. Moreover, if the proposed guidelines will be introduced, products adhering to these new guidelines are not aligned with the MiFID requirements of "sustainability preferences", hence, adding complexity and increasing the challenges to take clients preferences properly into account.

We are concerned that this lack of interoperability will be misleading for retail and institutional investors and creates implementation and operational challenges for asset managers, index and ESG service providers, distributors, and advisors. Therefore, we urge ESMA to delay the guidelines and prioritise engaging with and providing the market with clarity on how the interoperability issues between MiFID II, SFDR and the guidelines will be addressed.

The "sustainability preferences" under MiFID II also include the option to select a financial product with a certain percentage of alignment with the EU Taxonomy. The CP stresses that ESMA is concerned that increasing demand for investment funds that incorporate ESG factors takes place without the effective application of existing criteria for sustainability such as the EU Taxonomy and thus greenwashing risks may rise. Although DBG supports the application of the EU Taxonomy as well as its further development, we would like to note that it is currently far from being a primary tool for sustainable investing and asset managers are hesitant to provide figures on the Taxonomy alignment of their financial products.

The prevention of greenwashing risks is among the most important reasons, given that the Taxonomy currently only covers part of the sustainable investment universe and has a focus on certain activities and asset classes. Available data, in turn, is difficult to interpret and compare, e.g. because the Taxonomy and related guidance leave room for interpretation. Some of these issues can be expected to be solved over time due to upcoming regulations such as the extension of the Taxonomy, to include the missing environmental objectives, or the CSRD gradually coming into force. However, the Taxonomy was not meant as a tool to design fund classification. Even the adopted criteria are far from clear in that they often refer to "national law" and use open-ended concepts such as "business as-usual practices", "robustness", "best practice", and "available guidance".

Therefore, there is still a need to define what constitutes a sustainable investment. Thus, more clarity on the definition of sustainable investment under SFDR and the SFDR product categories is important. ESG analytics or ESG indices are important tools for sustainable investing and are already considering the EU Taxonomy and related data, however, the Taxonomy will not provide a comprehensive solution in the near-term.

The application of proposed thresholds to ESG benchmarks is problematic and potentially conflicts with the EU BMR

The lack of interoperability between MiFID II, SFDR and the guidelines is further complicated when, besides the Taxonomy Regulation, CSRD etc., the EU Benchmark Regulation (BMR) is considered. From the perspective of a benchmark administrator, quantitative thresholds would lead to regulatory divergence. Under the EU BMR, benchmark administrators have two labels for climate benchmarks at their disposal, the EU Climate Transition (CTB) and the EU Paris-aligned (PAB) benchmarks. Both are subject to certain minimum criteria. In addition, benchmark administrators can also design their own ESG-oriented methodologies. Benchmark administrators are not bound to meet specific ESG thresholds but are subject to strict disclosure requirements under BMR. If such an ESG benchmark is then used by an asset manager as underlying for an ESG fund, that fund will additionally be subject to SFDR disclosure requirements and will ultimately also be assessed against the MiFID II definition of 'sustainability preferences' if offered to an end investor.

The predominant use of (ESG) benchmarks by the fund industry is as underlying for Exchange Traded Funds. In such case, a fund is typically named after the index which it is tracking. The use of the name of the index is also an important feature for the funds' marketing since end investors want to invest in products with quality underlying of their trust. Neither CTB, PAB, nor any other ESG Benchmarks under the BMR are – as of today – subject to minimum criteria (thresholds) such as those proposed by ESMA. There are, however, specific minimum requirements for CTB and PAB under the BMR. The thresholds proposed in the ESMA guidelines are not compatible with those CTB and PAB-specific requirements. As a consequence of the proposed guidelines, the names of ESG benchmarks may no longer be used as fund names, if the ESG benchmarks do not implement the thresholds and other requirements from the proposed guidelines on top of the requirements under the BMR. As the use of a benchmark's name is a key feature for the fund industry, benchmark administrators would be under pressure to change the ESG benchmarks' methodologies so that they will also abide by the proposed guidelines.

If the proposed guidelines were applied to funds with an ESG benchmark as underlying, implementing the requirements for CTB and PAB alone would create an unusable ESG benchmark. PAB exclusions would have to be implemented for all benchmarks, removing one of the distinguishing characteristics of PAB. Furthermore, CTB's and PAB's methodological approach – mainly achieving decarbonization of the index portfolio – would have to be complemented by investments in sustainable assets as defined in the proposed guidelines.

Additional practical and global considerations

In order not to create new rules that conflict with existing regulations, complexify the existing regulatory framework or add to the administrative burden, potential gaps in the current regulatory framework should be identified before introducing new legislative requirements. Therefore, DBG would particularly welcome a review of SFDR. Such a review, together with e.g. new rules in BMR, could not only address several of the concerns mentioned in the CP, it could also consider the importance of data (un)availability, the status of the sustainability-alignment of the European economy and the EU's long term sustainable finance objectives such as the financing of the transition.

Moreover, to promote the development of sustainable finance and to provide clear guardrails with respect to greenwashing risks, we deem it important to acknowledge the full spectrum of ESG product and services in the financial market and avoid adopting a framework not fit for purpose, including the proposed guidelines, which would curb its development.

The future sustainable finance ecosystem will need to encompass primary as well as secondary markets and derivatives markets. While acknowledging that the primary funding need is crucial for the transition, it is equally important not to lose sight of the complete lifecycle of sustainable investments. Without adequate consideration of secondary and derivatives markets, it is difficult to envision the development of a robust sustainable finance market. This framework will need to incorporate the holistic ecosystem of participants, products, and services: from the project sourcing to the intermediation and price-making and the longer-term secondary-market investment, each of them brings a vital contribution to the market and is interdependent on the others. A robust secondary market will in turn require liquidity provision, buttressed by securities-lending and market-making in both cash and derivatives markets. Given that ESG is becoming more and more an unavoidable tool of future European economy financing and investment decision-making, it is also important that regulatory treatment of data, ratings and indices is on par with “traditional” financial data and that innovation in ESG-related products and maturity of the sustainable investment landscape is not deterred through unduly heightened regulatory or legal scrutiny.

All the issues identified at the EU level are compounded by a variability of approaches at the Member State level. Notably, there are diverging applications of the rules on what constitutes a sustainable financial product across the Union. This can lead to investor protection challenges such as lack of comparability, transparency and even mis-selling, for instance when products with a similar or even the same naming convention do not share the same underlying characteristics.

While we support that the proposed guidelines would introduce EU-wide rules and reduce market fragmentation, the list of sustainable investment frameworks (regulatory and market standards/labels) guiding product development in the field of ESG products is long and keeps growing. Implications for product design are often conflicting as a result. For instance, specific thresholds for baseline exclusions and portfolio construction criteria that are embedded and binding leads to a situation where it is actually not feasible to design a cross-border ESG index in the EU.

EU sustainability standards should ideally be fully compatible with global sustainability reporting standards, to not limit the cross-border distribution of EU funds outside the EU and not affect the competitiveness of the EU fund and index industry. Therefore, we encourage ESMA to ensure the consistency and interoperability of its proposals, as much as possible, with regulatory efforts in other jurisdictions such as the UK, including by engaging with IOSCO.

That said, while the CP draws a comparison between the proposed guidelines and other ESG fund names rules globally, the analogy is tenuous. For instance, the proposed 80% threshold cannot be compared with the SEC proposal to expand its requirement to adopt an 80% investment policy to cover names (including terms such as “ESG”) that reflect certain qualitative characteristics of the investments. The SEC intentionally does not define “ESG” or “sustainable investments” and there is no “do not significant harm” principle. Moreover, the SEC proposes to apply the 80% threshold to a series of fund names, not just ESG-marketed funds. The comment file on the SEC proposal provides strong evidence of why the 80% test is not fit for application to interpretive investment terms and would not necessarily lead to consistent application or results.

ESMA should also not develop sustainable finance regulation detached from other regulatory files, to ensure consistency but also a level playing field. The issue of the naming of funds is currently also being discussed in the course of the reform of AIFMD II and the UCITS Directive. Hence, the topic of ESG funds’ names should not be discussed in isolation of the latter.

<ESMA_QUESTION_FUNA_1>

Q2 : Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_2>
As stressed in our response on question 1, we believe that proposing a threshold is premature at this time and may be incompatible with ESMA’s objectives, given the implementation challenges. The guidelines should be careful not

to interfere with the objectives of BMR, hence, where a benchmark may be called ESG/sustainable/impact without minimum requirements under BMR, such benchmark – including its name – should be usable as underlying for a fund.

"*Article 8 of Regulation (EU) 2019/2088 remains neutral in terms of design of financial products. It does not prescribe certain elements such as the composition of investments or minimum investment thresholds, the eligible investment targets, and neither does it determine eligible investing styles, investment tools, strategies or methodologies to be employed. Therefore, nothing prevents financial products subject to Article 8 of Regulation (EU) 2019/2088 not to continue applying various current market practises, tools and strategies and a combination thereof such as screening, exclusion strategies, best-in-class/universe, thematic investing, certain redistribution of profits or fees. Certainly, many of those market practises, tools and strategies are also available to financial products subject to Article 9 of Regulation (EU) 2019/2088, provided the investments qualify as 'sustainable investments', as defined in point 17 of Article 2 of Regulation (EU) 2019/2088.*"

Notably, the use of an 'exclusion strategy' is sufficient for a financial product to be considered to 'promote, among other characteristics, environmental or social characteristics' under Article 8 SFDR. Such exclusion strategy could refer to the PAB exclusions or other exclusions. Hence, where a product uses PAB exclusions, it can be (100%) considered to be promoting environmental or social characteristics. If that is the case, the question arises whether – after applying PAB exclusions or potentially other environment- or social- related exclusions – the proposed requirement of at least 80% of the investments used to meet environmental or social characteristics or sustainable investment objectives would have to be considered redundant.

<ESMA_QUESTION_FUNA_2>

Q3 : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word "sustainable" or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_3>
Please see our response to question 1.

In addition, we would like to mention that an additional threshold of at least 50% of minimum proportion of sustainable investments would have significant impact on the usability of the names of ESG benchmarks for funds. In particular, the requirements for CTB and PAB are centred around the reduction of greenhouse gas (GHG) emissions for the entire benchmark, i.e. on a portfolio basis. This requirement is not aligned with and does not automatically correlate with the 50% of minimum proportion of sustainable investments as set out in the proposed guidelines.

<ESMA_QUESTION_FUNA_3>

Q4 : Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.

<ESMA_QUESTION_FUNA_4>
In order to avoid regulatory divergence, as long as the legislator has not agreed to introduce minimum thresholds for ESG funds in respective level 1 legislation, such threshold should not be created on level 3.

At the very least, if such thresholds were introduced, should not apply to the use of ESG benchmarks. As discussed above, the legislator has introduced two ESG benchmark labels under BMR and a threshold concept for the naming of ESG funds would interfere with the requirements for CTB and PAB.

Furthermore, the legislator has deliberately refrained from introducing any requirements on the methodology of ESG benchmarks but has only introduced disclosure rules for ESG benchmarks and the obligation to clearly state in the benchmark statement if a benchmark does not pursue ESG objectives.

If a thresholds-based system were nevertheless introduced, it should be made clear that where the methodology of a benchmark pursues ESG objectives, 100% of investments into a fund that tracks such a benchmark would be considered to “meet the environmental or social characteristics or sustainable investment objectives”.

<ESMA_QUESTION_FUNA_4>

Q5 : Do you think that there are other ways than the proposed thresholds to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives? If yes, please explain your alternative proposal. If yes, please explain your alternative proposal.

<ESMA_QUESTION_FUNA_5>
Yes. Before introducing new rules or guidelines, we would encourage the existing regulatory framework to be completed and demonstrate its effectiveness. In the meantime, the ESAs and NCAs can already make full use of their existing legal mandates and powers to ensure that investors and consumers are protected against fraudulent sustainability claims. This must be an evolving process, in parallel with the market developments since the perception of sustainable investment is also still evolving.

<ESMA_QUESTION_FUNA_5>

Q6 : Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_6>
No. In general, DBG believes the current framework, where there is no EU legislation requiring minimum safeguards for financial products which pursue ESG objectives, is appropriate and working well. It would create regulatory divergence, if such requirement was introduced in sectoral legislation or by way of ESMA guidelines.

From the perspective of a benchmark provider, the introduction of such minimum safeguards would lead to market pressure and administrators of ESG benchmarks would be compelled to change the methodology of their ESG benchmarks. Such unintended consequences should be avoided.

As stated above, the current legislative position is not to apply minimum requirements to ESG financial products but only disclosure paired with the MiFID II suitability assessment. Based on this approach, there is no need to introduce minimum safeguards for investment funds with an ESG- or sustainability-related term in their name as the disclosure requirements under SFDR ensure that ESG products are transparent, also with regard to minimum safeguards. Under the MiFID II sustainability preferences definition, the investor will be asked whether their investment should consider principal adverse impact or be aligned with the EU Taxonomy or the ‘sustainable investment’ definition of the SFDR, both of which mean investments that follow the ‘do no significant harm’-principle.

The application of the exclusion criteria as set out in Commission Delegated Regulation (EU) 2020/1818 Article 12(1) to any ‘ESG’ product – and not only to PAB – would have a significant impact by excluding a large number of companies in the energy sector due to their oil and gas involvement. While the PAB exclusions are adequate for benchmarks with a Paris-aligned objective, excluding these oil and gas companies from broad ESG and Sustainability funds would limit the potential impact shareholders could have in the climate transition.

We would propose to use the exclusions in Art. 12(1)(a)(b)(c) instead of the entire PAB exclusions.

In addition, Article 12(2) requires the exclusion of companies that are found to significantly harm one or more of the environmental objectives referred to in Article 9 of the EU Taxonomy. Currently an SFDR Article 9 fund has the requirement of excluding companies that do significantly harm to any environmental or social objective that the fund has as part of its objectives – according to Art. 2(17) SFDR, while the Article 12(2) requirement is required for funds that would target the EU Taxonomy specifically.

<ESMA_QUESTION_FUNA_6>

Q7 : Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?

<ESMA_QUESTION_FUNA_7>

DBG does not see a need for specific provisions at this time for calculating minimum sustainable investment thresholds for derivatives for the purpose of these guidelines. Instead, we think that it is more beneficial to have a review and amendment on Sustainable Finance Disclosure Regulation (SFDR). If SFDR Article 8 and 9 disclosure requirements include derivatives in calculation of sustainable proportions of overall investments, there is no need to introduce a new calculation method for naming purposes. In case of a potential SFDR amendment in this direction, derivative products would be justifying their contribution to sustainable objectives.

Our rationale is based on the strong interconnectedness of the underlying assets and derivatives. As long as the underlying products are "sustainable" according to law i.e., SFDR Article 8 and 9 or proposed threshold etc., related derivative products should also be counted as sustainable. Especially plain vanilla derivatives such as exchange traded derivatives on single stocks, ETFs and indices have a straightforward connection to underlying assets and their contribution to sustainable investment can be easily calculated without any special methodology need. They have a standardized nature and the possibility to calculate the sustainability proportion, in other words proportion of investment in environmentally sustainable economic activities under SFDR. Futures and options on single stocks, ETFs and indices, as their underlying products, can currently be assessed for sustainability proportion. These products' exposure to its underlying can easily be measured using the notional amount or, for stock and ETF futures and options, the number of shares. Alternatively, the delta approach (notional position x hedge ratio % using underlying asset) can also be used for same purpose. The proportion of futures on ESG indices could be measured using the same methodology as for ETFs. ETFs' returns closely track a benchmark index. Via their holdings, which must be disclosed by law, it is possible to calculate the degree to which their investments are sustainable. Futures on indices embedding certain ESG methodologies have the same characteristics as ETFs. Since the underlying index must be UCITS compliant, its components, weightings, and methodology are also fully transparent, thus, which is also possible for the exchange traded derivative. In addition, ESG exchange traded derivatives have straightforward contribution to underlying products with sustainable purpose financial characteristics. Terms and functioning of the products are linked to ESG criteria. These derivatives aim hedging risk of sustainable projects or incentivize financial participants to meet their ESG targets. Last but not least, not all derivative contracts are settled as cash delivery at maturity instead some are delivered as real products. In that sense, for example natural gas is under green product category in green transition until 2030 and accepted as sustainable, physical delivery and use of those products at maturity is directly contributing to sustainability proportion.

To sum up, the EU's sustainable financing is an ultimate target to reach together with all financial products' contribution without treating unequally as "inclusives" and "exclusives", then, mature and healthy derivatives market ecosystems need to be developed supporting the primary and secondary markets for sustainable underlying products to reinforce a liquid sustainable market which is needed to ensure that sustainable finance is fully integrated into mainstream financial markets.

<ESMA_QUESTION_FUNA_7>

a) Would you suggest the use of the notional value or the market value for the purpose of the calculation of the minimum proportion of investment?

<ESMA_QUESTION_FUNA_1>
Adequate calculation methods might differ based on the type of underlying asset classes, but also for particular facets of exchange traded derivatives, such as futures and options. DBG's ultimate objective is to reflect exchange traded derivatives' contribution into the sustainable economy in an accurate way, taking the characteristics of the asset and sub-asset classes into consideration. The treatment of derivatives under SFDR is unclear and would benefit taking into account the market characteristics. While we believe that market led initiatives and flexibility as to the application of an adequate methodology for the asset classes is key, we see merit in developing a framework in relevant legislation(s) with different asset segments allowing for the deployment of the most adequate methodology. A market led initiative would allow various market participants, to exchange views and perspectives and design a supportive ecosystem for the relevant asset class.

Secondly, we would like to ask for more clarification on "notional value" approach since it does not seem clear for us if "notional value for derivative position" or "allocation of the funds" are addressed in the question. For sake of simplicity and to provide a response, we will assume "cash allocation" is addressed because it makes more sense as the cash money plugged into the economy, either stock, bond or cash does not matter in our view.

We can see merit in use of the notional value method for stock and ETF futures and options' minimum proportion of investment calculation because we find it to reflect the exchange traded derivatives' contribution to the real economy with the nominal position they represent in trading. Notional value can better represent the size of the exposure of this particular exchange traded derivative class and will directly reflect the cash allocated into the derivatives.

On the other hand, an approach that considers the price sensitivity of a derivative contract with respect to changes in the underlying price can also be an alternative way to represent exchange traded derivatives' contribution, in particular for fixed income and credit futures, as well as for options in general. We refer to this as "delta"-based approaches.

When it comes to interest rate derivatives, a proposal would be to look at the DV01 of the derivative position, rather than at its notional value. For example, in interest rate swaps, the DV01 represents the sensitivity of the derivative position with respect to changes of 1 basis points in the fixed rate. In Government Bond futures, the DV01 measures the expected price change of the future as a result of a 1 basis point move of the yield of the underlying bonds.

This approach would allow to look at how exchange traded derivatives contribute to the "sustainability" ratio of a portfolio from a "risk management" perspective of the portfolio.

For options contracts, the nominal value approach has less merits, while an approach based on the sensitivity of the option price to changes in the underlying price (delta approach) can provide a more accurate assessment of the exposure and more adequately reflect the exchange traded derivative characteristics.

In essence, for certain exchange traded derivatives, sensitivity to the changes in the underlying assets are reflecting more accurately the exposure with this so-called delta or DVO1 approaches. Coming back to our point on the connection of underlying and exchange traded derivatives, it is relatively straightforward to assess exchange traded derivatives degree of sustainability as long as this feature/characteristic is measurable in the underlying instrument.

The sustainability metric on ESG indices, for example, could be measured using the same methodology as for ETFs. ETFs' returns closely track a benchmark index. Via their holdings, which must be disclosed by law, it is possible to calculate the degree to which their investments are sustainable. Futures on indices embedding certain ESG methodologies have the same characteristics as ETFs. Since the underlying index must be UCITS compliant, its components, weightings, and methodology are also fully transparent. Thus, it is possible to calculate the degree of sustainability the exchange traded derivative on the ESG index based on the underlying's sustainability metric.

The aforementioned paragraph delineated different approaches to the calculation method for exchange traded derivatives' contribution into sustainability. However, we are aware that it might take some time to adopt the congruent methodology for inclusion of exchange traded derivatives. The EU Platform on Sustainable Finance working group concluded that the market value of the derivative instruments should be used in the calculation of the denominator until the inclusion of derivatives in the numerator is concluded.

The additional suggestions explained in the paragraph above have the purpose of opening this debate once again and to enrich the possible range of options for how to include derivatives positions within the sustainable finance framework in Europe.

Nevertheless, we see merit in the proposal of the EU Platform's and Sustainable Finance working group's solution of using the market value of derivatives in the denominator for the interim time.

<ESMA_QUESTION_FUNA_1>

b) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?

<ESMA_QUESTION_FUNA_2>
As specified above, instead of introducing any new measures, we find beneficial to have SFDR review and amendment. If SFDR Article 8 and 9 disclosure requirements include derivatives in calculation of sustainable proportions of overall investments, there is no need to introduce a new calculation method for naming purposes.

<ESMA_QUESTION_FUNA_2>

Q8 : Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds' names as any other fund? If not, explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_8>
No. As stated above, the EU Benchmark Regulation exhaustively sets out the rules for ESG Benchmarks. Any "addition" to those requirements by way of sectoral guidelines would create a de facto requirement for benchmark administrators to change the methodologies for ESG benchmarks so that they also meet the requirements of the guidelines. This would lead to further regulatory divergence, would contradicts the EU BMR and should be avoided.

Benchmark administrators are already requested by the market to align the design of methodologies for ESG benchmarks with Article 8/9 of SFDR, the EU Taxonomy and the MiFID sustainability preferences. In addition, there are many industry labels and requirements of national competent authorities which clients often want the benchmark administrator to take into account. This challenging situation should not be worsened by the introduction of another regime.

<ESMA_QUESTION_FUNA_8>

Q9 : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

<ESMA_QUESTION_FUNA_9>
No. If a physical underlying has a sustainable objective or promotion E/S objectives, the corresponding synthetic replication i.e., index derivative is also doing the same. We cannot say that an ESG index is 100% sustainable but a futures product, for example, on the underlying ESG index, is contributing 0% to sustainability. If the common goal is

reaching, among others, a green transition in Europe, there should not be unequal treatment to different products. All products should be included. If the derivatives community will be part of the conversation, they can participate to tangible plans for e.g., green transition, by way of adding, new green product development. SFDR imposes that derivatives are excluded from the numerator in taxonomy alignment ratio, but are included in the denominator which makes them eligible instruments for taxonomy classification, but 0% aligned, in contradiction with the previous regulatory standpoints. Besides product level, the same asymmetric approach also applies at entity level for all financial institutions when measuring their Taxonomy alignment ("Green investment ratio" and "Green asset ratio"). These inequalities regarding ESG derivatives need to be addressed rapidly, as they can be highly confusing and open to misrepresentation.

<ESMA_QUESTION_FUNA_9>

Q10 : Do you agree of having specific provisions for "impact" or impact-related names in these Guidelines?

<ESMA_QUESTION_FUNA_10>
No. Given the continuing discussion about defining a "sustainable investment", we would caution regulators against prescribing new terminology, especially terms that would be featured prominently in a fund's name.

In addition, from the point of view of a benchmark administrator, if the guidelines are to move forward, ESMA should make clear that such requirements do not apply to funds using an ESG benchmark as underlying, at minimum because this would conflict with the objectives of the EU Benchmark Regulation. The EU Benchmark Regulation does not contain such prescriptive requirements but creates transparency by way of a disclosure regime. A benchmark administrator is – including with regard to existing impact benchmarks – free to design a methodology that it considers an "impact" methodology. If implemented, the guidelines would conflict with the approach the legislator of the EU Benchmark Regulation has taken in this respect. It would have significant impact on benchmark administrators if existing benchmarks would have to be modified due to the introduction of such rules. This would infringe the legitimate expectations by benchmark administrators that the benchmarks that have been created on the basis of the EU Benchmark Regulation can also be used as intended by their customers, in particular the fund industry.

<ESMA_QUESTION_FUNA_10>

Q11 : Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?

<ESMA_QUESTION_FUNA_11>
No. Please see our response to question 10. From the point of view of a benchmark administrator, at least for funds using an ESG benchmark as underlying, such requirements should not apply.

<ESMA_QUESTION_FUNA_11>

Q12 : The proposals in this consultation paper relates to investment funds' names in light of specific sectoral concerns. However, considering the SFDR disclosures apply also to other sectors, do you think that these proposals may have implications for other sectors and, if so, would you see merit in having similar guidance for other financial products?

<ESMA_QUESTION_FUNA_12>
Generally, yes. We agree that ESMA and other regulators should continue to aim for a level regulatory playing field and fair competition across the financial sector. Different requirements across financial products, on top of the already existing and complex regulatory framework, will only lead to increased consumer confusion. At the same time, we are not convinced that, for example, applying the 80% test across a variety of sustainable investment products,

not just funds using ESG or sustainability-related terms, would be appropriate, though theoretically this would be consistent with the concept of a "level regulatory playing field."

<ESMA_QUESTION_FUNA_12>

Q13 : Do you agree with having a transitional period of 6 months from the date of the application of the Guidelines for existing funds? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_13>
No. At least a 12-month transition period would be necessary from the perspective of a benchmark administrator. Should the guidelines come into effect, ESG methodologies for potentially all ESG benchmarks offered by a benchmark administrator would have to be redesigned. This requires internal research and development, a pre-assessment involving key users of ESG, public consultations and ultimately the roll-out of such new benchmarks.

<ESMA_QUESTION_FUNA_13>

Q14 : Should the naming-related provisions be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines? If not, please explain your answer.

<ESMA_QUESTION_FUNA_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FUNA_14>

Q15 : What is the anticipated impact from the introduction of the proposed Guidelines?

<ESMA_QUESTION_FUNA_15>
As summarized in our response to question 1, while we support ESMA's objectives, we are concerned that the expansive scope of the guidelines, together with the prescriptive approach, is premature and, if adopted, would create further implementation challenges that may contradict other EU sustainable finance regulatory initiatives and lead to outcomes that would not benefit investors or the market. We look forward to the SFDR review along with other regulatory initiatives to bring clarity to market participants so the existing regulatory framework can fully deliver on its aims and address greenwashing risks.

As an example of one anticipated impact, from the view of benchmark administrators, the introduction of the guidelines would require benchmark administrators to make significant changes to the methodologies of their ESG benchmarks – in order for the ESG methodologies to be in line with the guidelines so that clients (asset managers) who intend to use the ESG benchmarks, e.g. as underlying for ETFs, can still use the name of the ESG index for the respective fund. Changes to the methodologies would potentially be required for the PAB exclusion criteria and to meet the 50- and 80% thresholds. Changes of benchmark methodologies can occur only within the framework of the BMR, i.e.:

- Benchmark administrators have rules for the design of their benchmarks which are based on the applicable legal requirements, i.e. of the BMR, UK BMR or other legal requirements for benchmarks. This means any contemplated changes must be checked against such benchmark design rules.
- Benchmark administrators must ensure that a change of methodology does not violate any of the requirements on benchmark methodology in the internal rules for the design of their benchmarks or legal requirements.
- After a change in methodology is implemented, the revised methodology must remain executable and result in an accurate and reliable representation of the economic realities of the interest the benchmark seeks to measure.

- Benchmark administrators must check whether the contemplated changes are to be considered material changes.
- In case the proposed changes to the index methodology are deemed material, a public consultation will be performed in accordance with BMR. It is very probable that the changes that will need to be made to the methodologies of ESG benchmarks if the guidelines need to be applied, will be considered material. This process would take time (at least 6 month) to implement.
- Methodology changes need to be approved consistent with the governance of the benchmark administrator and might be the topic of 2nd line activities and/or checked by the oversight function of the benchmark administrator.

An initial DBG analysis shows that a significant portion of the energy sector would be screened out using the PAB exclusion criteria and would potentially eliminate methodologies that would use a best-in-class approach to selecting high performing ESG energy companies.

Similarly, introducing a minimum proportion of sustainable investments as defined by Article 2(17) of Regulation (EU) 2019/2088 (SFDR) as disclosed in Annexes II and III of SFDR would require a change in the methodology to ensure that the 50% threshold can be met. As this threshold is not in the original ESG index concepts, this would entail either a complete redesign of the index methodology or a renaming of the indices.

<ESMA_QUESTION_FUNA_15>

Q16 : What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_FUNA_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FUNA_16>

Q17