Vanessa A. Countryman
Secretary Securities and Exchange Commission
100 F Street NE
Washington
DC 20549
United States of America

By email: rule-comments@sec.gov.

Dear Madam Secretary:

Re: Comments: File No. S7-16-22: Investment Company Names

Minerva welcomes the Securities and Exchange Commission's (SEC) proposed rules on '*Investment Company Names*.' Greenwashing poses a clear financial risk to investors, and the SEC is correct to expect fiduciary companies to use nomenclature that is neither intentionally, nor unintentionally misleading.

Since 1995, Minerva has provided independent, objective and expert "Sustainable Stewardship" support services to professional investors. This includes decision useful ESG and proxy voting data as well a proxy vote agency. As such, Minerva has considerable practical experience of the varying standards of global financial markets disclosures and, critically, how best to align those market-by-market differences.

Over almost 30 years we have been finessing our approach to sustainability data identification, capture, analysis, and presentation. To deliver timely TCFD-aligned data that supports informed stewardship and voting decisions, Minerva puts itself in the shoes of the typical shareholder and only uses publicly available information sources, such as annual reports, proxy statements and company websites. We do not, and never have used private questionnaires as we believe this creates private or inside information. If it is important for even one investor, it is important for all.

Transparency in regard to our alignment with international initiatives is a key point of pride for Minerva. In 2015, after a far-reaching global analysis of ESG and sustainability disclosure regulations and investor initiatives, Minerva launched a new "Say on Sustainability" research module and associated voting guidelines to provide offered consistent and comparable insights into the world's largest companies approach to sustainability reporting disclosure quality. Minerva's sustainability research is fully aligned to both the Transition Pathway Initiative[1] (TPI) and TCFD principles.

As a leader in the sustainable stewardship space, Minerva is recognised for its involvement in anti-greenwashing initiatives. Minerva is a Stewardship Code signatory[2] and a founder signatory of the Best Practices Principles Group for Shareholder Voting Research (BPPG)[3].

[1] Home - Transition Pathway Initiative
[2] Investors I UK Stewardship Code I Financial Reporting Council (frc.org.uk)
[3] Best Practice Principles for Shareholder Voting Research (bppgrp.info)

Collectively, these frameworks address stewardship conduct issues covering conflicts of interest, transparency, service quality and engagement.

In September 2021, Minerva announced its participation in the Glasgow Financial Alliance (GFANZ)[4] Net Zero Financial Service Providers Alliance (NZFSPA)[5]. Central to that commitment is the alignment of relevant products and services to support the scaling and mainstreaming of Paris Agreement alignment into the core of our business. In being a founding member of the NZFSPA with aspirations for our own net zero operations, Minerva recognises the importance of clear messaging to avoid accusations of greenwashing.

With Minerva's rich ESG background in mind, we have put together the following response to the SEC's request for comment on this rule change proposal.

Overall, we welcome the inclusion of ESG factors into the scope of the SEC fund names rule and recognise these changes as the most significant to thematic investing product development However, we are cautious about the SEC's prescription over which parts of the investment process render a particular investment as 'ESG'. Funds should not be considered ESG funds solely because of their exclusion or inclusion of particular companies. This approach would suggest that sustainability or ESG factors are somehow outside the normal scope of how investors do or should assess investment risk. Rather, it is our experience that investors take a variety of approaches including issue specific tilting or weighting, use of ownership rights such as voting and engagement. When modern portfolio theory was initially developed and institutionalised by the investment community, these factors were not considered to be relevant or important. Evidence now suggests otherwise.[6] Therefore, by focussing upon the idea of 'investment policy' at the expense of provision for consideration of 'ownership policy,' the SEC's fund name rule proposal appears to be unduly limiting.

Investors who consider ESG, sustainability, climate change and stewardship currently face unprecedented levels of censure. The majority of this criticism is highly political and ill-informed, conflating issues and without a basic understanding of the underlying principles at play. Making fund names solely about whether certain companies are included in or excluded from a fund therefore does a disservice to much of the industry and perpetuates a "compartmentalist mentality" towards responsible and investment styles which take a more inclusive approach to risk.

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[4] Glasgow Financial Alliance for Net Zero (gfanzero.com)
[5] Committed to Net Zero - Net Zero Financial Service Providers Alliance (netzeroserviceproviders.com)
[6] Lukomnik, J., 2021. Moving beyond modern portfolio theory: investing that matters. Abingdon, Oxon ; New York, NY: Routledge.

Minerva' concerns about the way the proposed rule is that it may:

- detract from the importance of ownership rights to effect positive change at portfolio companies.
- narrows the scope of what counts as ESG investing. This would detract from approaches to responsible investment that focus on engagement to encourage positive change. Divestment is not the only approach that investors take.
- Shift power, influence, and responsibility of what constitutes a "good" (compliant) ESG investment to comply with the rules. Such box-ticking is unhelpful as it encourages the gaming of ESG ratings, thereby discouraging a thoughtful integrated approach to long-term investment. As we have said in other forums and consultations, it is not remotely relevant that ESG ratings diverge, they are opinions which measure different things for different reasons. What matters is that investors understand the underlying thesis and can access the raw data to determine their own approach.
- move ESG research and analysis towards an even more adversarial environment where legal challenges to ESG opinion might occur, thereby incurring undue costs and creating unnecessary distraction for issuers and investors.

In collaborating with companies that do not explicitly align with the ESG movement, there is an opportunity for the ESG investing industry to create change in the places it is needed most. Effective use of responsible ownership strategies to evolve corporate responses to sustainability challenges and opportunities is a critical component of responsible investment. Bearing in mind the overall direction of travel on climate change, biodiversity and sustainability, fund name should also accommodate the possibility for funds to focus on Impact and improving the sustainability of investee companies. As part of that, such funds would need to be able to demonstrate how their investment process and ownership strategies are aligned with the stated focus of the fund with are clear, transparent, and understandable statements of investment and stewardship principles.

In response to section II, subsection A. – "80% Investment Policy Requirement"

Investors may have expectations about the composition of a portfolio; the name should also therefore signal expectations as to the investment style of the portfolio. A "climate impact engagement fund" for example may legitimately target high carbon emitters with a view to engaging with them to address climate risks and so reduce their carbon intensity and emissions over time. The names rule proposal should seek to avoid creating a situation where such a fund could not hold high carbon intensity stocks despite the strategy being to use engagement and stewardship strategies that would precisely target such companies to affect a material emissions reduction by them. Therefore, the naming rules need to be clear about including not just "Policy" but "Strategy" as well.

The 80% policy requirement should be sufficiently flexible to enable a fund manager to demonstrate that proportion of the fund is being managed consistently with the strategy of the fund, as an alternative to using the fund constituents themselves as the only measure.

In response to request for comment #3, #4 & #10

Managers of funds that use "ESG" or similar terms on their title should be required to report both investment types AND investment strategies, particularly as there is potential for conflict

between the two. Evaluation of Investment Policy should not be applied solely to investment selection.

In response to request for comment #5

Assessment should focus upon management and mitigation of risk, not just exposure to risk. Therefore the 80% coverage assessment should include risk mitigation in addition to risk avoidance.

In response to request for comment #6

Yes, it is possible that funds with similar names might contain very different constituents. This must be explainable by reference to management activities undertaken and their relevance to performance targets chose (so an ESG named fund should by definition have ESG metrics related to the ESG theme(s) of the fund, to demonstrate impact progress)

In response to request for comment #10

Where funds reference ESG (or similar) in their title, they should evidence how at least 80% of the fund is managed in alignment with the theme or give a clearer indication in the title as to the precise use of ESG data on the process (e.g., "ESG selected", "ESG managed", "ESG benchmarked", "ESG Impact", "ESG weighted", "ESG improvement", etc.)

In response to request for comment #13

Funds of funds models present some of the most significant challenges for investors due the inability of investors to properly look-through to understand exactly what risk exposures investors face. In these cases, the naming rules should be used to encourage transparency and require the fund of funds manager to obtain, aggregate and report all like information from all underlying funds.

In response to section II, subsection D. – "Materially Deceptive and Misleading Use of ESG Terminology in Certain Fund Names"

Greenwashing is a fraud on investors and the market and Minerva fully supports the principle that it should be prevented. However, we are concerned about the unintended consequences of ESG labelling rules which are so narrow that they effectively disbar investors from offering authentic, integrated, and impactful strategies. In preventing funds that use ESG factors in a genuinely integrated way from referencing ESG in their fund titles, they risk being viewed as equivalent to funds which do not use any ESG factors at all. After all, if ESG issues are just another risk factor then every fund is potentially an ESG fund, particularly when considering climate transition risk and TCFD alignment.

This issue is a consequence of the proposal's hyper-focus upon the investment selection process. To resolve this issue, we would suggest promoting the idea of allowing those funds which integrate ESG factors into their processes to retain the term "ESG integrated" and allowing those funds which genuinely use ESG-alignment as a "determinative" in their investment selection process to make use of a more explicit term such as "ESG driven" or "ESG oriented". This differentiation would also bring the naming rules more into line with the concepts of "Article 8" (integrated) and "Article 9" (ESG positive) funds established by the

European Commission’s SFDR regime. This would have the further benefit of enabling US investment advisors to be better equipped to compete in the EU market, and to streamline capacity to make more cost-effective fund offerings for both the EU and the US markets.[7]

As ESG factors are relevant as both risks and opportunities that can have a material impact on investment decisions, then logically, we have to accept that they may just as likely be ‘determinative’ in an investment decision as other material non-ESG related factors. Advisors who have decision making processes that use ESG factors in this financial materiality context have taken the time to understand how ESG factors relate to their financial investment decision-making and on that basis. It would be unreasonable and unfair to prevent them from referencing ESG or sustainability in their fund names.

The crucial factor here is how an investment advisor is *making use* of ESG inputs, for which there are a range of considerations which might be used in isolation or in combination: Some will put greater weighting towards financial materiality calculations for an integrated consideration of risk and return; others will use it to exclude companies from their investible universe; others will use ESG factors to identify risk factors to engage with invested companies about in order to manage and mitigate the financial impact of ESG risks; others will use it for measuring and reporting the ESG impacts of their investments and progress or evolution in relation to them. All of these investment approaches legitimately use ESG factors and advisors should not be precluded from reflecting that in fund names. To do so prevents investors from gaining a clear and unambiguous understanding of how their assets are being managed.

There is considerable confusion about the role of screening or tilting and its perception as a concerted “boycotts, divest” strategy to achieve political objectives, when in reality they are a prudent risk-mitigation strategy to preserve long-term value. There is therefore an urgent need for the proposed rule to include ownership policy alongside investment policy. This would create a level playing field for those advisors for whom stewardship and engagement on financially material ESG issues with the express intention to improve portfolio company performance (and hence, portfolio performance) is the preferred approach instead of negative screening or tilting.

In response to request for comment #63 & #64

An ESG integrated fund should be free to use the term “ESG integrated” in its title, to differentiate it from those funds which do not use ESG issues as factors in the investment process. Those funds which use ESG as a determining factor in the investment process should be encouraged to use a term such as “ESG driven” or similar. Any terms such as “integration,” “driven” or “selected” should be clearly explained to investors in the fund information pack, including an explanation of the ESG elements of the investment AND ownership processes. By including ownership as a legitimised part of the scope of the meaning of “investment policy,” this would enable use of the term “ESG integrated” by funds without fear of genuine ESG engagement and/or ESG performance improvement-oriented funds falling foul of the 80% rule.

In response to request for comment #65

Where an integration fund is invested in companies whose activities are at odds with the stated objective of the fund, but who are targeted for transitioning away from those activities (using

[7] Sustainability-related disclosure in the financial services sector | European Commission (europa.eu)

the example the consultation document refers to of “net zero”), then advisors must be required to set out the metrics and targets which relate to those activities and report regularly on progress against those targets to investors. Inability to do so may be used as grounds for preclusion from using the term “ESG Integrated.” We would suggest terms to mandate might include “ESG Engagement,” “ESG Progress,” “ESG Impact”, “ESG Performance”. We would suggest that “ESG Integration” should bring with it a requirement to specify the ESG factors which are integrated into the investment policy and how they view them as material.

Additional Responses

We do not believe that the acronym “ESG” on its own is particularly helpful. ESG evolved relatively recently from much earlier ethical or CSR investing concepts which focussed on either specific international treaty policy issues (for example controversial weapons) or religious/moral norms (for example, no alcohol). While individually laudable, they concentrate on a narrow sub-set of the wider sustainability challenges that investors, companies and their stakeholders currently face. [8] ESG factors can also become unduly focussed on negative or “detracting” factors rather than positive, problem-solving opportunities or “contributors.” Consequently, it is entirely possible to create a fund with strong sustainability characteristics that does not pass traditional ESG negative screening criteria (for example exclusion of controversial products). Equally it is possible to develop a fund with poor sustainability characteristics but strong ESG characteristics. Furthermore, not all ESG or sustainability funds can necessarily articulate their impact, for example with reference to the Sustainable Development Goals.

[8] Using the Brundtland definition of sustainable development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*,” UN Secretary General, 1987. *Our Common Future: Report of the World Commission on Environment and Development*. [online] New York: United Nations.p.374. Available at: <https://digitallibrary.un.org/record/139811>.