

ESMA GUIDELINES FOR FUNDS MARKETING WITH ESG AND SUSTAINABILITY RELATED TERMS

On 21 November 2024, new [European Securities and Markets Authority \(ESMA\) guidelines](#) on funds' names using environmental, social and governance (ESG) or sustainability related terms (the "Guidelines") entered into force and are relevant to EU fund managers and managers looking to market their funds in the EU. The purpose of the Guidelines is to enhance investor protection in the EU by addressing greenwashing risk stemming from ESG or sustainability related terms being used inappropriately in investment fund names.

Subject to EU Member State adoption, the Guidelines apply from 21 November 2024 for new funds and will apply from 21 May 2025 for existing funds.

The specific requirements for compliance correlate to three distinct categories of funds, based on the type of ESG or sustainability related terms used in their name, as set out in the table below.

It is expected that local regulators in EU Member States will apply the Guidelines to both EU-domiciled alternative investment fund managers and non-EU domiciled alternative investment fund managers which market funds in their jurisdiction. Fund managers that do not comply may be subject to regulatory investigation in the relevant EU Member States.

Key Requirements

Name Categories	Examples of relevant terms*	Must meet	Must Exclude
"Transition, social and governance related terms ("Category 1")	<ul style="list-style-type: none"> Transition: any term derived from the word "transition" and those from: "improve", "progress", "evolution", "transformation", "net-zero" Social: any terms related to words that give the impression of the promotion of social characteristics, e.g., "social", "equality" Governance: any terms giving the investor any impression of a focus on governance, e.g., "governance", "controversies" 	80% threshold linked to the proportion of investments used to meet environmental or social characteristic or sustainable investment objectives in accordance with the binding elements of the investment strategy.	Investments in: <ul style="list-style-type: none"> companies involved in any activities related to controversial weapons; companies involved in the cultivation and production of tobacco; and companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.
Environmental or impact related terms ("Category 2")	<ul style="list-style-type: none"> Environmental: any terms giving the investor any impression of the promotion of environmental characteristics, e.g. "green", "climate" Impact: any terms derived from the base word "impact", e.g. "impacting" 	As per category 1 above.	Exclusions as per Category 1, plus: <ul style="list-style-type: none"> companies deriving 1% or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite; companies deriving 10% or more of their revenues from the exploration, extraction, distribution or refining of oil fuels; companies deriving 50% or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels; and companies deriving 50% or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO₂ e/kWh.

Name Categories	Examples of relevant terms*	Must meet	Must Exclude
Sustainability-related terms ("Category 3")	Any term derived from the base word "sustainable", e.g. "Sustainability".	<ul style="list-style-type: none"> As per category 1 above, plus Commit to investing meaningfully in 'sustainable investments' referred to in Article 2(17) of SFDR. 	As per Category 2 above.

* There is no specific list of all the words which trigger compliance with the Guidelines.

NATIONAL COMPLIANCE

National regulators of the EU Member States can choose whether to comply, and apply the Guidelines, or explain why they have not complied. The deadline to give a "comply or explain" statement has passed. As of 20 November 2024, 18 out of 27 EU Member States had not published a relevant statement, apparently due to a lack of clarity about the Guidelines, although a number have raised further questions. Ireland and Luxembourg, among others, have opted to comply, and it is expected that national compliance statements will follow from other EU Member States.

NEXT STEPS FOR FUND MANAGERS


- New funds should ensure that if an ESG or sustainability related term is to be used in the fund name, the investment strategy requirements of the Guidelines are complied with.
- Existing funds should ensure that if an ESG or sustainability related term is used in the fund name, the investment strategy requirements of the Guidelines will be complied with.

RELATED DEVELOPMENTS

- As part of the UK Sustainability Disclosure Requirements (the "UK SDR"), the FCA has introduced a number of restrictions around the naming and marketing of unlabelled UK products (those which don't fall within one of the four voluntary product labels introduced from 31 July 2024) which are promoted to retail investors by UK managers and use sustainability-related terms. These restrictions will enter into force in December 2024 (certain firms which submitted a completed application to the FCA by 1 October 2024 could apply for an extended deadline of 2 April 2025).
- Please see our separate briefing: [ESG Alert - UK SDR v EU SFDR](#) for further information.

For More Information

For further information, including how Weil can support with next steps and compliance and / or to be notified of future Weil ESG publications, please contact any of the authors below.




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