

Amendments to the Names Rule

Article By:

Abigail P. Hemnes

George Zornada

Franklin H. Na

Donela M. Qirjazi

Christine Mikhael

On September 20, 2023, the SEC adopted amendments to the Names Rule (35d-1) that will significantly expand the Names Rule's applicability and will require all funds to consider whether changes are required to their names, 80% policies, disclosures, compliance tests and reporting requirements.

In summary, under the final rule, fund names with terms that suggest such funds focus in investments that have, or investments whose issuers have, *particular characteristics* will be required to have an 80% policy. The SEC declined to define "particular characteristics" but stated that covered terms include "growth" and "value," terms with ESG- or sustainability-related characteristics, and terms that reference a thematic focus. Terms used in the fund's name that suggest an investment focus or that the fund's distributions are tax-exempt must be defined consistently with such terms' plain English meaning or established industry use in the fund's prospectus, which must also include the criteria the fund uses to select investments that the term describes. Funds are required to review their portfolio assets' inclusion in their 80% baskets at least quarterly. If a fund falls out of compliance with its 80% policy, it will have 90 days to get back into compliance. To determine compliance with its 80% policy, the final rule requires a fund to use a derivative instrument's notional amount, rather than its market value, with certain adjustments. Unlisted registered closed-end funds or BDCs that are required to adopt an 80% policy may not change that policy without a shareholder vote, with certain exceptions.

The SEC also amended Form N-PORT to require funds to report the value of their 80% basket and whether an investment is included in the 80% basket. The final rules also include recordkeeping provisions related to a fund's compliance with the names rules.

An in-depth client alert on the amended Name Rules will be circulated in the coming weeks.

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