

[Securities Regulation Daily Wrap Up, INVESTMENT COMPANIES—SEC seeks comment on rule governing fund names, \(Mar. 2, 2020\)](#)

Securities Regulation Daily Wrap Up

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The Commission seeks to eliminate the use of misleading names by investment companies and asks whether current requirements are effective.

As part of the SEC's ongoing efforts to improve the investor experience and modernize its regulatory approaches, the agency has issued a request for public comment on its requirements restricting the use of potentially misleading fund names. According to the Commission, fund names can have a significant effect on investor decisions, and the current requirements may not be as effective as they could be to protect investors. Market developments since the adoption of Investment Company Act Rule 35d-1 may have had an impact on the rule's efficacy, and the SEC asks if there are alternatives that could improve the framework that would ensure that fund names inform and do not mislead investors (*Request for Comments on Fund Names*, [Release No. IC-33809](#), March 2, 2020).

"This request for comment is another important step in our efforts to better inform and protect Main Street investors and improve the investor experience," [said](#) SEC Chairman Jay Clayton.

Fund names. In 2001, the Commission adopted Rule 35d-1 to prohibit registered investment companies from using materially deceptive or misleading names. The rule also requires any fund that has a name focusing on a particular investment type to invest at least 80 percent of its assets in that type of investment. The rule states that a fund name suggesting a particular investment focus is not misleading if the fund has adopted a policy to invest the requisite amount of assets in the particular investment type suggested by the name. Fund names are also subject to the antifraud provisions Investment Company Act.

Comments requested. Given the importance of fund names to investors, the Commission is considering whether Rule 35d-1 should be updated. The SEC notes that funds are increasingly using derivatives and other financial instruments to provide leverage, and the market values of derivative investments held by funds may be small while potential exposure is significant. Further, the increased use of hybrid financial instruments by funds and the varying consideration of environmental, social, and governance as an investment strategy versus an investment policy may be affecting the application of the fund-names rule, the Commission explains.

As such, the SEC is requesting input on challenges that Rule 35d-1 may present, as well as potential alternatives for prohibiting the use of deceptive and misleading fund names. Specifically, the Commission asks whether the 80-percent threshold continues to be appropriate and whether an asset-based test is the best means by which to determine whether the use of a particular name is misleading. The SEC also seeks comment on challenges unique to funds that invest in derivatives and requests input on whether and how its approach should take into account derivatives' notional value and if funds should account for derivatives holdings using a methodology other than market value or notional value.

Among other things, the SEC also asks whether the provision of 60 days of notice to investors before changing an 80-percent investment policy provides meaningful investor protection and whether the rule should impose different or more specific requirements. The agency also seeks input on how funds determine whether a particular investment is part of a given industry and if Rule 35d-1 should provide flexibility to funds that intend to focus their investments in nascent industries or industries relying emerging technologies. In addition, the Commission asks whether the rule should apply to terms such as "ESG" or "sustainable" that reflect qualitative characteristics of investments.

Comments are due within 60 days of publication in the *Federal Register*.

The release is [No. IC-33809](#).

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