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Regulation: Industry Comments on SEC's Fund Name Proposal

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Regulation

By Sara Bussiere
Associate | Global Litigation

The SEC's proposal to amend the "Names Rule," first announced in May 2022, has elicited significant comment from industry. With these changes, the SEC's goal is to improve standards of marketing by ensuring that funds are able to show that 80% of their holdings match the fund's name. Over 100 companies and investors have submitted public comments ahead of the deadline next week, and the SEC reports holding 11 meetings with industry groups.

Commentary is mixed. For instance, a spokesperson for Better Markets, a financial reform group, stated that they "wholeheartedly support" the proposed changes and that "investors need to know that their funds are being invested in the way that they expect. The name is a very powerful influence." On the other hand, Capital Group called the proposal a "proposed expansion of scope [that] is an overly broad and unhelpfully blunt solution." Fidelity expressed concerns that funds would only be given 30 days to remedy their non-compliance with the 80% rule. It argues that 180 days would be more appropriate and that, by "prescribing a rigid set of conditions, the [SEC] may be unintentionally hampering a fund's ability to meet new and unforeseen challenges." The Investment Company Institute stated that the proposals would increase costs for funds due to the increased monitoring required to maintain compliance. The SEC estimates that costs to industry could reach $5 billion.

Taking the Temperature: Reactions to the proposed rule reflect the reality that compliance with ESG-focused regulation often will be complex, time-consuming and costly. Well-intentioned investment firms also are understandably concerned about the risks of inadvertent non-compliance. While all these concerns should abate over time as consensus forms around ESG-related measurement metrics and taxonomies (*i.e.*, what constitutes a sustainable investment), for the moment the challenges to investment firms remain formidable given the overall lack of firm guidance on these issues.