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Every Fund Has One—The Amended Names Rule and Its Impact

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On September 20, 2023, the Securities and Exchange Commission (SEC) adopted amendments to Rule 35d-1 (the Names Rule or Rule) under the Investment Company Act of 1940, as amended (the 1940 Act), and made related form amendments (collectively, the Amendments).[1] The Amendments significantly expand the number of registered investment companies and business development companies (funds) subject to the Rule, and thus subject to having an 80% investment policy, while at the same time adding material substantive requirements that, in many instances, will require changes to investment disclosures and potentially fund portfolio investments, if not also fund names. In many aspects, by expanding the Names Rule and including substantive tests for compliance, the SEC appears intentionally to have used the Rule as a lever to regulate investment matters, such as portfolio composition, that the 1940 Act otherwise leaves to fund advisers and fund disclosures. It is the authors' view that the SEC's actions to use a rule derived from an anti-fraud police power in such circumstances is a rather cynical approach to the regulation of an established industry in the absence of any demonstrated abuse or problem.

Overview

In addition to the Rule's prior focus on fund names suggesting investment in particular types of securities, the Amendments cover fund names that suggest a fund focuses on investment strategies having "particular characteristics." The Amendments make many terms that historically have been viewed as related to a fund's strategy, such as "growth," "value," and "terms indicating that the fund's investment decisions incorporate one or more ESG factors," as well as many other terms, now subject to the Names Rule.

Although retaining an 80% portfolio investment test for funds subject to the Rule, the Amendments change how funds are required to address deviations from the test through establishment of minimum standards for compliance testing and setting of timeframes for variance from compliance. In addition, the Amendments change how derivatives exposure is measured under the Rule for compliance testing, alter investor notice requirements, and add significant recordkeeping requirements. The Amendments will have a widespread impact and necessitate that the majority of existing funds consider whether changes are required to current fund names, whether to adopt an 80% investment policy or to alter an existing 80% policy, and whether registration statement disclosure changes are required. Sponsors also will need to consider how to name new funds in light of the Amendments as the Rule's overall industry impact is absorbed.

The Amendments interject a new level of uncertainty for otherwise well-established fund investment policies and potentially introduce a large amount of

SEC Staff discretion in interpretation. Certain aspects of the Amendments, however, follow the SEC's originally proposed changes from June 2022 (the Proposed Rule), particularly with respect to registration statement disclosure changes, new form N-PORT reporting requirements, derivatives calculations, recordkeeping requirements, and notice requirements. Of note, however, is that the SEC departed from the Proposed Rule by permitting so-called integration funds to use environmental, social, and governance (ESG) factors in the fund name and also extending from the proposed 30 days to 90 days the time in which funds subject to the Rule have to regain compliance with their 80% policy in cases of deviation.

This article details the changes under the Amendments with respect to the scope of funds subject to the Rule, the treatment of derivatives under a fund's 80% policy, the treatment of deviations from 80% policies, registration statement disclosure requirements, Form N-PORT reporting, recordkeeping, and investor notice requirements. The article also highlights differences between the Proposed Rule and the Amendments.

Names Rule Scope

"Particular Characteristics"

The Amendments expand the scope of terms under the Names Rule that would require a fund to adopt a policy to invest at least 80% of the fund's assets in the manner suggested by the fund's name (an 80% Policy). Rule 35d-1 prior to the Amendments (the Prior Names Rule), applied to fund names that suggest a focus on a particular type of investment, industry, country or geographic region, or those that suggest certain tax treatment. The Amendments expand the application of the Prior Names Rule to fund names containing terms that suggest that the fund focuses on investments that have, or investments whose issuers have, "particular characteristics." This expanded scope applies regardless whether those characteristics describe an investment security or an investment strategy.

Notably, the SEC does not define the term "particular characteristics," and instead included a nonexclusive list of examples of "particular characteristics." The adopting release for the Amendments (the Adopting Release) highlights the SEC's view that "particular characteristics" will be recognized as any feature, quality, or attribute that suggests an investment focus. According to the Adopting Release, specific terms that have "particular characteristics" include: growth; value; ESG factors/terms; and terms that reference a thematic investment focus. The reader will note the inherent need to interpret what is or is not a "particular characteristic," and that differences in viewpoints may exist.

Multiple Investment Elements, Index Funds and Fund of Funds

In addition, when a fund's name suggests multiple elements of investment focus, the Amendments require that the fund's 80% Policy address all of the elements in the name suggesting an investment focus. The Adopting Release states that fund managers are permitted to take a reasonable approach in specifying how the fund's investments will incorporate each such element in the name and, importantly, the Adopting Release makes clear that each element of focus need not independently meet the 80% threshold included in such policies. Further, a fund of funds is permitted to include the entire value of investment in an acquired fund when calculating compliance with its 80% Policy as long as the acquired fund has an 80% Policy that is consistent with the investment focus of the fund of funds. The Amendments do not expressly address index funds, but the Adopting Release confirms that the terms in a market index referenced in an index fund's name would not be subject to an 80% investment policy test that would be in addition to the fund's policy to invest at least 80% of its assets in the index's components. However, the Adopting Release indicates that index funds should adopt policies and procedures under a fund's Rule 38a-1 compliance program around the name of its underlying index to ensure

the name of the index itself is not materially deceptive or misleading.

Name Exclusions from the Rule—Examples of No "Particular Characteristics" Provided in the Adopting Release

Although the Rule substantially expands the number of funds subject to the Rule, the Adopting Release states that funds whose names include terms that do not connote an investment focus continue to be excluded from the Names Rule. The reader will note the specific examples contained in the Adopting Release, and also perhaps note that the Rule itself provides no guidance in interpretation, making the Adopting Release an important source for relevant guidance. Such terms include names that reference characteristics of a fund's portfolio as a whole, without an additional term suggesting an investment focus, such as, duration, intermediate-term, balanced, global, or international. The SEC explained that such terms may indicate the fund's objective but do not necessarily communicate the specific type of or particular characteristics of the investments the fund would acquire. In addition, the Rule excludes elements of an investment thesis to be achieved or a particular investment technique to be utilized without specificity as to the particular characteristics of the component portfolio investments, such as real return, managed risk, long/short, and hedged. Further, the Adopting Release states that negative or exclusionary screening processes for investments, such as, fossil fuel free, are not covered by the Rule. The Adopting Release also states that a fund having a name indicating a specific population of investors, well-known organizations or affinity groups, such as Generation Z, would not be subject to the Rule. In addition, asset allocation determinations that evolve over time, such as target date funds and sector rotation funds are not subject to the Rule. The SEC rationalized that such terms communicate information to investors regarding the characteristics of the overall portfolio rather than the particular investments of the portfolio.

Importantly, in the Adopting Release, the SEC reiterated that funds that are not subject to Rule 35d-1 will continue to be subject to Section 35(d)'s prohibition on materially misleading or deceptive names and that such funds likewise will continue to be subject to the anti-fraud provisions of the federal securities laws regarding disclosures to investors. Similarly, the SEC stated its belief that a fund's name could be materially deceptive or misleading for purposes of Section 35(d) even if that fund has complied with the Names Rule's 80% investment policy requirement. The authors note that, to their knowledge, the SEC has never brought an enforcement action against a fund for any such practices as those described in this regard in the Adopting Release. For example, the SEC stated that, if a fund that is subject to Rule 35d-1 uses its 20% basket to invest in assets that are materially inconsistent with the investment focus or risk profile reflected by the fund's name, the fund's name "would be" materially deceptive or misleading under Section 35(d). The SEC also stated that a fund whose name references a market index could in some circumstances be a materially deceptive or misleading name, such as if the index's name suggests an investment focus the fund is not following, especially if a meaningful nexus does not exist between the index's components and the index name's suggested investment focus.

The Amendments have broad implications for all funds. Funds with an 80% Policy will need to review their current names and 80% Policies, as well as their other permissible investments (for example, the 20% basket) to analyze whether changes are required. Funds without an 80% Policy will need to review their current names to analyze whether they now require an 80% Policy or if a change in the fund's name is necessary.

Investments Included in the 80% Policy Basket and Deviations from the 80% Policy

In determining whether a particular asset qualifies as invested in accordance with the 80% Policy, the SEC reiterated its stance from the Proposed Rules

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"that there must be a meaningful nexus between the given investment and the investment focus suggested by the name." The SEC, through "plain English" and "established industry use" requirements in the Amendments, provided funds with a degree of flexibility in determining what qualifies as a nexus between the 80% Policy and the investment, and provided a non-exhaustive list of possible methods for determining such a nexus. For example, the SEC stated that when considering a nexus between an investment and an industry, "if the securities are issued by companies that derive more than 50 percent of their revenue or income from, or own significant assets in, the industry," a nexus may be determined. The SEC added that the 50 percent threshold is not definitive and a smaller percentage may be utilized in certain instances.

In a departure from the Proposed Rules, which would have required daily compliance monitoring, funds will continue to be able to determine whether an investment falls under a fund's 80% Policy at the time of investment. However, in a potentially significant change from current practices, a fund will also be required to conduct at least quarterly reviews of its holdings to reassess compliance with its 80% Policy at the applicable quarter end. In practice, however, it remains to be seen if quarterly monitoring would still require more frequent monitoring in order to avoid a potential violation discovered only upon quarter-end testing.

A fund's 80% Policy will continue to apply "under normal circumstances" and funds will be able to depart from their investment policy in "other-than-normal circumstances." Funds also will retain the discretion to determine what is not a "normal circumstance." The adopting release provides that departures from adherence to the Rule would be permitted in certain instances, such as: market fluctuations, or instances where departures are not a result of the fund's purchase or sale of a security or the entrance or exit of an investment; in response to unusually large cash inflows or redemptions; in avoidance of a loss in response to adverse market, economic, political or other conditions, by taking a position in cash, cash equivalents or government securities; or as a result of the repositioning or liquidation of a fund's assets, the launch of a fund, or when 60 days' notice of an 80% Policy change has been provided, among others. Of note, the Adopting Release cautions that frequent or serial departures in other-than-normal circumstances may call into question a fund's determination of what circumstance is normal.

In addition, if a fund's assets deviate from its 80% Policy, the Amendments require a fund to come back into compliance with its 80% Policy as soon as reasonably practicable and in all circumstances within 90 days of the date of departure from compliance. This timeframe begins at the time of identification of a departure or if under other-than-normal circumstances, at the time the fund initially departs from the 80% Policy. As noted above, this is a significant change from current practice and, notably, this requirement cannot be waived by a fund's board. The only remedy under the Amendments is to seek exemptive relief from the SEC if a fund believes it would be appropriate and consistent with the protection of investors for the fund to depart from its 80% Policy for a period beyond 90 days. Such exemptive order must meet the standard under Section 6(c) of the 1940 Act. As with current practice, any future investments after the deviation must be made in a manner that will bring the fund into compliance with its 80% Policy.

As noted above, funds may also temporarily depart from their 80% Policies in connection with (1) reorganizations (no required time frame to come back into compliance); (2) fund launches (180 days to come into compliance); or (3) after notice of a change in fund policy is provided to shareholders (no required time frame to come back into compliance).

Counting Shorts and Derivatives under an 80% Policy

In another significant change from current practice, the Amendments require funds to use a

derivative instrument's notional value (subject to adjustments described below), rather than its market value, when determining the value of a fund's assets for purposes of its 80% Policy. "Derivative instruments" is broadly defined and includes any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar investment.

The SEC reasoned that this approach will provide a clear and consistent approach to derivative valuations and will simplify Names Rule compliance because all funds will have a specific standard to follow. Currently, fund complexes generally use the market value of a derivative instrument to comply with a fund's regulatory obligations, including for purposes of complying with Rule 18f-4 under the 1940 Act (the Derivatives Rule). As a result of the SEC's decision to use notional amount to value derivative instruments for Names Rule compliance, some funds may need to modify how they implement their investment strategies and risk management processes to satisfy their 80% Policy under the Names Rule. Alternatively, the notional amount adjustments (discussed below) may ease the compliance burden for some fund complexes. Sponsors should carefully consider how using the notional amount of its derivatives positions might affect its ability to satisfy its Names Rule obligations and whether certain funds may need to modify their use of derivatives or change a fund's name to avoid the Names Rule.

The Amendments permit a fund to include in its 80% Policy basket a derivatives instrument that provides investment exposure to one or more of the market risk factors associated with the investment focus suggested by the fund's name. To help determine whether a derivatives instrument provides investment exposure to one or more of the market risk factors associated with a fund's name, the fund generally should consider whether the derivative provides investment exposure to any explicit input that the fund uses to value assets associated with the investment focus suggested by the fund's name. For example, prepayment is an explicit risk factor in the price of a mortgage security, and, therefore, it would generally be appropriate for a fund whose name indicates a focus in mortgage securities to include related derivatives in its 80% Policy basket that hedge the prepayment risk of mortgage securities.

In adopting the Amendments, the Commission stated that, in addition to using derivatives as direct substitutes for cash market investments, some funds use derivative instruments to hedge exposures or to obtain exposure to market risk factors associated with the fund's investments (for example, interest rate risk and credit spread risk). Those instruments may have very high notional amounts, and, if the Names Rule did not allow funds to treat the notional amounts of those derivatives instruments as investments that reflect the fund's investment focus, the notional amounts of those derivatives instruments could cause a fund to fall out of compliance with its 80% Policy.

Nevertheless, the Amendments could negatively alter how fund complexes use derivatives. For example, a fund with "US equities" in its name might invest a limited percentage of its assets in non-US securities and then enter into derivatives to hedge risks associated with those securities. To comply with the fund's 80% investment policy, the value of the fund's US equity investments in the fund's 80% Policy Basket must represent at least 80% of the value of the fund's "assets." If the derivatives intended to hedge risks associated with the non-US equity securities in this example were valued using notional amounts, however, this would increase the value of the fund's "assets" and therefore could have a potentially large impact on the denominator for purposes of Names Rule compliance, possibly causing the fund to drop below the required 80% threshold. As a result, some funds may need to reduce their derivatives usage even if the primary purpose of the derivatives transactions is for hedging or risk management purposes, or change the fund name to avoid the Names Rule.

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The SEC acknowledged that using notional amounts would not be appropriate in all circumstances. These adjustments may ultimately limit the impact that the Amendments have on some fund complexes. Under the Amendments, a fund is required to adjust a derivative's notional amount under four scenarios, as outlined below.

Under the Amendments, required adjustments to the use of a derivative notional amount are as follows. First, funds must convert interest rate derivatives to their 10-year bond equivalents. The requirement to convert interest rate derivatives to 10-year bond equivalents is designed to result in adjusted notional amounts that better represent a fund's exposure to interest rate changes. Absent this adjustment, short-term interest rate derivatives can produce large unadjusted notional amounts that may not correspond to large exposures to interest rate changes.

Second, funds must delta-adjust the notional amount of options. A deep out-of-the money option can have a large unadjusted notional amount, but will provide limited investment exposure to the underlying reference asset. The SEC acknowledged that it would not be consistent with the goal of requiring funds to calculate derivative positions using notional amounts when assessing Names Rule compliance to permit the fund in this example to use such an option's unadjusted notional amount to satisfy its 80% Policy. As a result, funds must delta-adjust the notional amount of options.

Third, funds must exclude derivatives used to hedge currency risk associated with a fund's foreign currency denominated investments if the notional amounts of the derivatives do not exceed the value of the hedged investments by more than 10 percent. A US equity fund may invest up to 20 percent of its assets in stocks of companies domiciled outside of the United States. The fund would not include the foreign stocks in its 80% Policy Basket, and therefore these foreign stocks would be in the denominator in the calculation that the fund would use to determine compliance with its 80% investment policy. The Amendments state that a fund must exclude a currency derivative if: (1) the derivative position is entered into and maintained by the fund for hedging purposes; and (2) the notional amounts of the derivatives do not exceed the value of the hedged investments (or the par value thereof, in the case of fixed income investments) by more than 10 percent. The SEC believes that by excluding these derivatives from the Names Rule compliance calculation, the adjustments address concerns that including certain derivatives at their notional amounts in this calculation could limit the use of derivatives for hedging purposes.

Fourth, funds must value each physical short position using the value of the asset sold short. If a fund sold short one share of a security for $100, the market value of the position would be $0 at that time because the fund has $100 in short sale proceeds but also a liability in the form of the obligation to return a share worth $100. If the fund had obtained the same short exposure via a swap, the notional amount would be $100. Valuing the physical short position at $100 for purposes of the Names Rule—the value of the asset sold short—provides comparable values for Names Rule purposes for the swap and physical short sale.

In addition, funds may make the following adjustments to a notional amount. First, funds may deduct cash and cash equivalents and US Treasury securities with remaining maturities of one year or less from assets, up to the notional amounts of the fund's derivatives instruments *and* the value of the asset sold short. Cash and cash equivalents may effectively function as low-risk collateral for derivatives instruments. Because the notional amount of the derivatives instruments for which the cash and cash equivalents effectively function as collateral is already included in the denominator of the 80% investment test, including the cash and cash equivalents held as such collateral could effectively "double-count" the fund's exposure.

Second, funds may exclude any closed-out derivatives positions when calculating assets for

purposes of determining compliance with its 80% Policy when those positions result in no credit or market exposure to the fund. The Amendments do not require closed-out positions be closed out with the same counterparty in order for a fund to exclude them from the calculation of its assets, which is a significant departure from Rule 18f-4 under the 1940 Act. Unlike the Derivatives Rule, the Amendments do not require closed-out positions to be "closed out" with the same counterparty. Essentially, the Amendments permit a fund to exclude derivatives positions for purposes of the Names Rule so long as there is no credit or market exposure to the fund.

The Amendments adopt, substantially as proposed, the derivatives instruments that a fund may include in its 80% Policy. In particular, the Amendments require the inclusion of any derivative instruments that provide investment exposure to investments suggested by the fund's name. In addition, a fund may include in its 80% Policy a derivative instrument that provides investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name. As a result, derivative instruments included in a fund's 80% Policy basket must either function as a substitute for direct investments in the securities suggested by the fund's name or be used to facilitate the fund's investment in those securities by increasing or decreasing the fund's exposure to risk factors associated with those securities.

No Absolute Prohibition on the Use of ESG Terms in Names for "Integration Funds"

In a departure from the Proposed Rules, the Amendments do not take action regarding so-called "integration funds," which are funds that include ESG terms in their names but consider ESG factors alongside other non-ESG factors in investment decisions where none is more significant than another. The Adopting Release noted that the description of integration funds in the Names Rule proposal mirrored the definition of integration funds in the SEC's ESG Disclosure Proposal,[2] and determined that they are continuing to consider comments on that proposal and are not adopting the proposed change at this time. Of note and as described above, fund names with terms suggesting a fund focuses on ESG factors, including integration funds, must adopt an 80% Policy and comply with the Amendments.

Registration Statement Disclosure Changes

In addition to adopting an 80% Policy, fund names that fall under the Names Rule are required to define in their prospectuses the terms used in their names, including the criteria the fund uses to select the investments that the term describes. A fund with an existing 80% Policy should review whether the policy requires definitions or definitional edits, and funds that become subject to the 80% Policy requirement may need to define or edit terms.

Terms are supposed to be defined consistent with their "plain English" meaning or established industry use. The Adopting Release states that funds will have the flexibility to use a "reasonable" definition of the terms in their names and flexibility to determine the specific criteria used to select investments. Whether a term should be defined consistent with its plain English meaning or established industry use will be a context-based analysis.

Importantly, the SEC acknowledged in the Adopting Release that different portfolio managers or third-party data providers may use different definitions for the same term as long as it is not inconsistent with a term's plain English meaning or established industry use. As a result, what is reasonable will vary with a fund's name and will depend on the nexus established between the fund's name and the definition of the fund's investment focus. The SEC noted that there may be instances where an established industry use may be subject to industry debate, in which case the fact that there is a good faith debate as to the definition would indicate consistency with established industry use factor. The SEC added that, similar to other prospectus

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disclosures, this disclosure should follow the general instructions of Form N-1A, which requires funds to avoid "excess detail, technical or legal terminology, and complex language."

Notably, the ability of funds to ascribe reasonable definitions is not in the actual text of the Names Rule and appears only in the discussion in the Adopting Release. In practice this could result in a large amount of discretion in interpretation by the SEC Staff.

Additionally, the Amendments include a requirement that the new information required under the Amendments must be filed using inline eXtensible Business Reporting Language or "inline XBRL".

Changing a Fund's Name in Response to a Names Rule Determination

The Adopting Release does not directly address the process by which an existing fund should reflect in its registration statement and other disclosures any changes to its name or principal investment strategies in response to a determination that its name now requires the adoption of an 80% Policy under the Amendments, including whether such changes would require such a fund that is an open-end fund to file a post-effective amendment pursuant to paragraph (a) of Rule 485 under the Securities Act of 1933. The Amendments are likely to impact a significant number of funds, which could potentially create a substantial burden for registrants, as well as the SEC Staff. This is particularly true in light of the interpretive challenges presented by the scope of the phrase "investments that have, or whose issuers have, particular characteristics" under the amended Rule. Accordingly, registrants will need to carefully consider the materiality of any changes to existing funds' disclosure for purposes of Rule 485(a) as a result of the Amendments.

New Form N-PORT Reporting

The Amendments expand materially recordkeeping and reporting requirements. Specifically, largely as proposed, the Amendments require funds having 80% Policies, other than money market funds and small business investment companies, to report the following information on their Form N-PORT for the third month of each quarter: whether an investment is in a fund's 80% Policy basket; the value of the fund's 80% Policy basket, as a percentage of the value of fund assets; and the definitions of terms used in the fund's name, including the specific criteria the fund uses to select the investments that the term describes.

Differing from the Proposed Rules and given that the Rule does not require the continuous monitoring of compliance with the Rule, the Amendments did not adopt the proposed requirement to report the number of days during the period that a fund's 80% Policy basket's value was less than 80% of the value of the fund's total assets.

New Recordkeeping Requirements

In a modification from the Proposed Rules, the Amendments do not include a requirement of funds that do not adopt an 80% Policy to maintain a written record of the analysis they took in determining that the Names Rule does not apply to their fund's name. However, the Amendments do require funds with 80% Policies to maintain written records of the following to demonstrate compliance with the Amendments: record of investments included in the 80% Policy basket and basis for inclusion at the time the fund invested in the asset; the value of the 80% Policy basket, as a percentage of value of the funds' assets at the time the fund invested in the asset; quarterly review and records of investments included in the 80% Policy basket and basis for inclusion; if drift has caused the fund to no longer meet the 80% Policy requirement, record of the date this was identified and the reason for departure; reasons for any departures, including why the fund departed if it did so for circumstances that are other-than-normal; dates of departures from the 80% Policy requirement in other-than-normal circumstances; and the notices sent to shareholders.

These records are required to be maintained for at least six years following the creation of the records or the date sent, as applicable, the first two years of which must be in an easily accessible place. Further, the Amendments do not include a particular form of documentation but instead allow for flexibility for funds to determine how to document the information required under the recordkeeping requirements.

In a modification from the Proposed Rule, the Amendments with respect to unit investment trusts (UITs) provide that the 80% Policy and recordkeeping requirements are only applicable at the time of initial deposit given the fixed and transparent portfolio of securities a UIT holds and the limitations on the ability to acquire and sell securities.

Change to Notice Requirements

The Amendments retain the existing requirement that a fund may either consider its 80% Policy a fundamental policy or the fund adopts a policy to provide the fund's shareholders with at least 60 days' prior notice of any change in the policy. The Amendments, however, change the notice requirements to be more prescriptive and to add that shareholders be informed of the change in the name of a fund along with change in the 80% Policy.

The Amendments, like the Prior Names Rule, incorporates a requirement that the notice be "in plain English and delivered separately from other documents." The Amendments note that when included in paper form, the notice may be included in the same envelope as other written documents. Further the notice is required to include the following or a similar prominent legend: "Important Notice Regarding Change in Investment Policy [and Name]." Differing from the Prior Names Rule, the Rule requires that any notice in paper form must include such statement on the envelope in which the notice is delivered. Other aspects of the notice requirements remain similar to the Prior Names Rule with some modification for electronic delivery. In particular, the prominent notice that was required in written notices must be included in the subject line of communications for electronic transmittal. Further, the Amendments make clear that funds must send notices directly to shareholders and are not permitted to post notices on their website as an alternative.

The Amendments also include certain new requirements such as the requirement that a notice must include, as applicable, a description of the fund's 80% Policy; the nature of the change to the 80% Policy; the fund's old and new names; and the effective date of any investment policy or name changes.

New Limits for Changes by Unlisted Closed-End Funds and Business Development Companies

Similar to other funds, unlisted closed-end funds (CEFs) and business development companies (BDCs) are subject to the Names Rule. However, they are subject to special rules related to changing their 80% Policies given an investor's limited or no ready recourse if a fund were to change its investment policy. In a modification from the Proposed Rules, unlisted CEFs and BDCs are prohibited from changing their 80% Policy without a shareholder vote, unless: the fund conducts a tender or repurchase offer in advance of the change to the 80% Policy; the fund provides at least 60 days' prior notice to shareholders of the change to the 80% Policy in advance of that offer; the offer is not oversubscribed; and the fund repurchases shares at their net asset value.

Because such funds frequently invest in illiquid assets and conduct limited tender offers for liquidity purposes, the conduct of a tender offer for a potentially larger than normal amount may not be practical, which could in effect result in a requirement for a shareholder vote.

Conclusion

The Amendments are effective as of December 11, 2023, with compliance dates varying based on fund complex size. Fund groups with net assets of $1 billion or more must comply with the

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Amendments by December 11, 2025 (24 months after the effective date), and fund groups with net assets of less than $1 billion must comply with the Amendments by June 11, 2026 (30 months after the effective date). The extended transition period will allow fund complexes time to evaluate their funds and seek any required board approval for name changes and/or adoption of 80% Policies for funds that did not fall under the Names Rule prior to the Amendments. In addition, the extended transition period will allow sponsors to stage compliance along with certain other recently adopted rules, including amendments to the Tailored Shareholder Reports for mutual funds and exchange-traded funds.

Of note, certain UITs are exempt from the new requirements, including the monitoring and record-keeping requirements, unless an 80% Policy was adopted or was required to be adopted at the time of initial deposit.

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NOTES

1 *See Enhancements to Prevent Misleading or Deceptive Investment Fund Names*, Investment Company Act Release IC-3500 (September 20, 2023) [88 FR 70436 (October 11, 2023)].

2 *See Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices*, Investment Company Act Release No. 34594 (May 25, 2022) [87 FR 36654 (June 17, 2022)].

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