

Environmental, Social and Corporate Governance (ESG)

Actionable Insights and Business Solutions

Environmental, Social and Corporate Governance (ESG) factors play an ever-increasing role in corporate management and investment strategy, disclosure considerations, and corporate and finance transactions.

The recent ESMA Final Report on the Guidelines for funds' names using ESG or sustainability-related terms (the "Guidelines") marks a critical moment for asset managers. These Guidelines aim to clarify when the use of ESG or sustainability-related terms in fund names may be deemed unfair, unclear or misleading. The Guidelines introduce minimum asset allocation thresholds, exclusionary criteria and additional criteria which vary depending on the specific ESG or sustainability terms used in the name. Navigating these rules requires a solid grasp of regulatory frameworks and thoughtful strategic adjustments.

The Guidelines apply to all alternative investment funds ("AIFs") managed by EU-based alternative investment fund managers ("AIFMs"), as well as UCITS managed by UCITS management companies. ESMA estimates that around 1,700 EU-domiciled AIFs will be impacted by these new rules.

For funds with names that include terms such as "transition," "social," "governance," "environmental impact" or "sustainability" (or derivatives of these words), the Guidelines outline specific requirements. There is no exhaustive list of names that trigger the rules, so fund managers must use their judgment to assess whether their funds fall within the scope.

These Guidelines reflect the EU's push for greater transparency, accountability and consistency in how ESG funds are marketed. Funds with ESG-related names must now ensure that at least 80% of their assets are aligned with the binding elements of their investment strategy. This rule ensures that funds are genuinely committed to their ESG objectives, rather than using the ESG label superficially.

The Guidelines mandate the application of two sets of exclusionary criteria depending on the type of ESG fund. Funds that focus on climate transition, social and governance issues will need to adhere to the Climate Transition Benchmark exclusionary criteria. Meanwhile, funds with names linked to environmental sustainability or impact will also have to follow the additional exclusionary criteria outlined in the Paris-Aligned Benchmark.

Additionally, any fund that uses “transition” or “impact” in its name must demonstrate a clear, measurable path toward achieving a positive social or environmental transition. This should include a goal to create measurable social or environmental impact alongside financial returns. Similarly, funds with sustainability-related names are required to “meaningfully” invest in sustainable investments, as defined under Article 2(17) SFDR.

Although it is clear that these Guidelines apply to fund managed by EU-AIFMs, it remains uncertain whether non-European AIFMs marketing their funds within the EEA under the national private placement regime (NPPR) will also be affected. Another grey area is how strictly EEA regulators will apply the Guidelines to closed-ended funds that are no longer open for new distribution.

For many asset managers, these Guidelines signify a shift from voluntary ESG commitments to stricter regulatory obligations. Complying with these rules will require more than basic adherence; it will demand strategic foresight and an understanding of evolving market trends.

We recommend that asset managers monitor how the Guidelines are implemented by EEA Member States to gain clearer insight into the level of enforcement. This is especially important for non-European asset managers and closed-ended funds that had their final closing.

For EU-AIFMs, it’s advisable to integrate these Guidelines into their strategic planning, particularly if they intend to use ESG or sustainability-related fund names. Non-European AIFMs marketing closed-end funds under the NPPR in the EEA should also aim for compliance where feasible.

As ESG continues to reshape global financial markets, asset managers who successfully navigate these regulatory changes will be well-positioned to lead in a more sustainable financial future.

Proskauer and Holtara provide the following essential support on this journey:

Regulatory Compliance Review

We conduct a comprehensive review of existing ESG-labeled funds or funds that are in the pipeline, ensuring that fund names and investment strategies meet the requirements specified by ESMA.

Legal Structuring of ESG Funds

For asset managers launching new ESG products, we can help structure these funds to comply with both EU and global sustainability regulations. This may involve defining what constitutes “sustainable” or “ESG” within the fund documentation, ensuring that marketing materials and disclosures match regulatory expectations. This also minimizes the risk of greenwashing allegations.

Drafting and Amending Documentation

We assist with drafting or revising fund prospectuses, ensuring transparency in the descriptions of ESG criteria and investment objectives.

The legal language needs to accurately reflect compliance with ESMA’s thresholds, preventing potential disputes or regulatory scrutiny due to misleading information.

Training and Internal Policies

We offer training programs for compliance officers, asset managers and marketing teams, educating them on how to implement these rules in practice. We can also help develop internal policies that ensure ongoing compliance as regulations evolve.

Mitigating Greenwashing Risks

With increasing scrutiny on greenwashing, we help clients establish risk mitigation strategies by reviewing claims made in ESG fund names and marketing materials. This proactive approach limits the risk of enforcement actions by regulators.

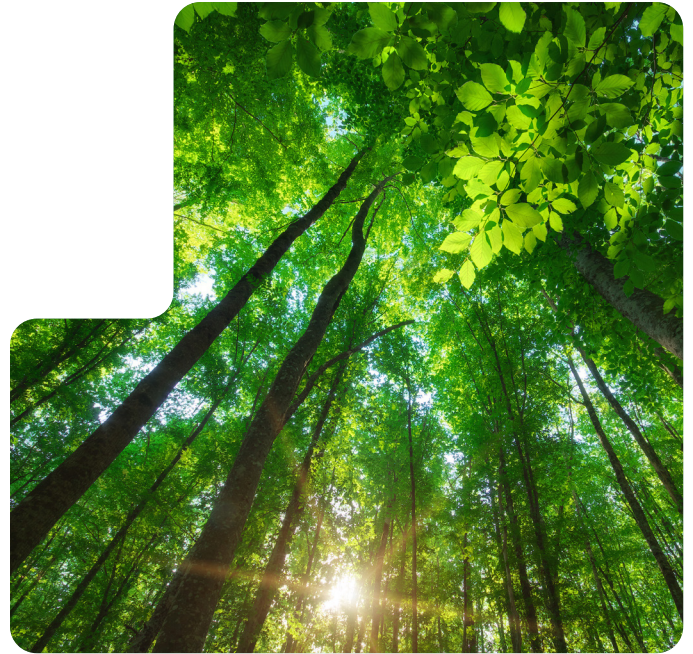
Representation in Regulatory Proceedings

In cases where fund managers face potential regulatory action due to non-compliance, we offer critical legal representation, defending the client’s actions and communicating with regulators when necessary.



Our cross-disciplinary team, consisting of lawyers from our Corporate/Transactional, Labor & Employment, Litigation and Tax Departments, is at the forefront of ESG developments globally.

ESMA guidelines on fund names



As the ESMA guidelines on fund names take effect on 21st November 2024 for new funds and 21st May 2025 for existing funds, aligning the fund offerings with the updated requirements has become a priority to ensure compliance. Our experts at Holtara and Proskauer can assist your team in navigating these requirements seamlessly, ensuring your funds remain compliant.

As industry leaders in sustainable finance, we understand the pivotal role that compliance and transparency play in today's investment landscape.

Our comprehensive solution designed to address the critical aspects of the ESMA guidelines include:

Compliance assessment



Evaluation: We assess if your fund is in scope and determine if the SFDR pre-contractual and website disclosures meet the asset threshold, exclusionary criteria and any additional asset-level requirements.



Baseline exclusions: We determine whether your fund complies with the asset threshold, baseline exclusion requirements and, if applicable, any additional exclusions.



Legal and regulatory assessment: We assess limitations in fund governing documents and side letter commitments and determine notification requirements to regulators.

Compliance confirmation



Investment requirements: We confirm that your fund meets the specific investment requirements related to the relevant terms used. This may involve amending investment strategies/portfolios and updating disclosures accordingly.



Fund name recommendations: If necessary, we will recommend changes to your funds' names to ensure compliance.



Legal and regulatory risk mitigation: We prepare SFDR pre-contractual and website disclosures and assist with changes to the fund governing documents and notifications to regulators, as required.

Why use Holtara?

- We are the go-to **ESG service provider for 400+ GPs & LPs** for more than 15 years
- We are a global team of **150+ ESG, climate, regulatory, data, and impact specialists**, speaking 10+ languages
- **Independently verified data** to ensure accuracy and credibility
- Excellent client service, combined with **tailored, scalable software**



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