PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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April 15, 2019

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: S.E.C. Names Rule Comment- S7-04-20

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international, not-for profit, voluntary bar association that consists of attorneys who represent investors in disputes with the financial services industry. Since its formation in 1990, PIABA's mission has been to promote the interests of the public investor by, among other things, advocating for public education related to investment fraud and industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Securities & Exchange Commission ("SEC" or the "Commission") that govern the investment products and investment services offered to the public.

PIABA appreciates the opportunity to comment on 17 CFR 270.35d-1 ("Names Rule") and would fully support a change or update to the Names Rule that would improve investor protection. At the outset, PIABA notes, at least at the time of writing this letter, that most comment letters sent to the SEC appear to have been submitted on behalf of individual investors. That is, of course, because the transparency of fund names is crucially important to individual investors. Oftentimes, investors, especially those who are not sophisticated, base their purchase of funds solely upon the name of the fund. Retail investors frequently do little to check on the portfolio holdings of a fund or the specific strategy of a fund beyond looking at the name on their monthly account statement. Indeed, many investors would not know how to check fund holdings if that thought even occurred to them. This is especially problematic for 401k investments, which are almost exclusively invested in mutual funds that employers select and comprise the retirement funds and savings for many Americans. Any changes or interpretations of the Names Rule should be undertaken with a full measure of investor protection in mind.

PIABA feels strongly about this issue because there are countless examples of misleading names that caused significant harm to unsuspecting investors. Perhaps the most notable example is what occurred with Bear Stearns at the beginning of financial crisis of 2007-2008, which was marked by the collapse of two Bear Stearns hedge funds in July of 2007. These two funds consisted of collateralized debt obligations backed by non-traditional sub-prime loans. Besides the low quality of the securities owned by the funds, the fund managers employed an investment strategy of substantial leverage, ranging from 10 to 25 times the net asset value of the holdings. This was unequivocally a very risky strategy and one that required incredible sophistication for any investor to be able to evaluate. Nevertheless, Bear Stearns marketed the funds to 'accredited' retail investors under the names- **"High-Grade Structured Credit Strategies Fund"** and **"High-Grade Structured Credit Strategies Enhanced Leverage Fund"**. Although the name of the second fund referenced the term 'leverage', the term 'high-grade' is what likely stood out in the minds of the investors who were sold the funds. Billions of dollars were lost in these two Bear Stearns funds. Similar events happened with funds marketed by Morgan Keegan & Co. that were also structured finance funds, but used names to suggest they were more traditional funds and Charles Schwab's Yield-Plus series of funds that were marketed as money market and even

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treasury security alternatives. Sadly, with the current crisis in the financial markets, PIABA members are seeing similar misleading names result in large, unsuspecting investor losses.

PIABA believes that the proposed changes to the Names Rule is a step in the right direction to attempt to better protect investors. However, PIABA recommends that the rule go farther. For example, the portfolios of many individual investors contain a large concentration of index funds. The release indicates that the Names Rule does not currently apply to "indices" which suggests that funds that are meant to follow an index (most trade as Exchange Traded Funds – ETFs) will not be covered under this rule. The release does not indicate whether ETF's that are based on an index are subject to the Names Rule. As a number of those index-based ETFs include leverage and other complex strategies and do not always track an index as direct as many investors might suspect, PIABA believes this is a dangerous oversight. Any inquiry into the Names Rule should include a review with respect to the applicability of the Names Rules to index funds and ETF's. The release also notes that the Names Rule "does not apply to the use of terms that suggest an investment strategy (such as "growth" or "value")". PIABA contends that the Names Rule should apply to the investment strategy of a fund, particularly were the investment strategy entails a high degree of risk. The terms "growth" and 'value" should not used to mislead investors as to aggressive, high risk funds.

The release further states that, "[t]he Names Rule does not apply to the use of the terms 'actively managed', 'tax managed', 'long-term', and 'short-term'". These are the types of words investors rely upon when choosing to invest in a fund. PIABA believes the exclusions the SEC is making are fir important descriptive words that investors often rely upon and that the investor is best protected if every word used within a name is subject to scrutiny by the Commission under the auspices of the Names Rule. There should be no safe harbors when it comes to naming funds.

PIABA very strongly believes that the names utilized by funds must accurately and fully reflect the securities and industry sectors held by the funds. The Commission questioned whether a test that requires that the type of investment suggested by a fund's name contribute at least a minimum amount (*e.g.,* 80 percent) of a funds return. Although a percentage minimum may be helpful to investors, the requirement may serve to foster the creation of funds and products which are inherently unsuitable to investors. PIABA urges the Commission to tread cautiously with respect to mandating minimum asset holdings of a particular fund, instead forcing funds to accurate describe the fund and its characteristics in the name of the fund.

Affinity fraud occupies one of the darkest spaces of investment fraud. PIABA commends the Commission for recently publishing an investor alert on affinity fraud[1]. PIABA strongly feels that the Commission should adopt a strict moratorium of the use of well-known organizations, particular affinity groups, or the reference to a specific population of investors (*e.g.,* "veterans" or "municipal employees") in fund names.

The majority of comment letters submitted to the S.E.C. to date deal with concerns about "ESG" (environment, social, and governance) funds. The release notes that close to three hundred funds currently use terms such as "ESG", "Clean", "Environmental", "Impact", "Responsible", "Social", or "Sustainable" in their names. While PIABA recognizes that some individuals may prefer to invest in such a manner, ESG investing involves two obvious pitfalls. First, many of these funds invest in start-ups which may not be suitable for many individual investors. Second, the funds sometimes place a premium on ESG at the expense of a reasonably safe return on investment. While PIABA maintains that ESG funds should invest as their name implies, such funds should describe more concerning the investments in the fund than just ESG and may deserve extra scrutiny by the Commission.

With respect to disclosure of risk, investor protection would be best served by requiring all fund names to list a risk factor between one to ten to allow investors to easily ascertain whether a particular fund fits their risk tolerance. Many of the terms often used to describe fund and investment objects are not easily understood and often misinterpreted, and a simple number system should be something more easily understood by the investing public.

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[1] https://www.sec.gov/oiea/investor-alerts-bulletins/ia_affinityfraud.html.

Finally, the release requests comments on whether consideration should be given to repealing the rule. Inasmuch as this the Names Rule exists primarily for the protection of investors; no justifiable reason exists for the repeal of the rule. To the contrary, the Commission should increase its efforts to apply the rule to protect investors when reviewing new funds for approval. Repealing the rule would unquestionably allow unscrupulous fund managers and promoters to use names that would mislead and ultimately hurt investors.

As set forth above, investors heavily rely on the names of funds when making investment decisions. In proposing any changes to the Names Rule, the Commission should place the interests of investors above any other concerns.

Thank you for your consideration herein.

Sincerely,

Samuel B. Edwards
PIABA President