PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION
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August 15, 2022

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

Re: SEC Names Rule - S7-16-22

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 and 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 the proposed changes to 17 CFR 270.35d-1, also referred to as Rule 35d-1 under the Investment Company Act of 1940 ("Names Rule"). For the most part, PIABA supports the proposed amendments to the Names Rule as it relates to investor protection.

As a preliminary matter, it appears that the Commission closely reviewed PIABA's prior letter relating to the solicitation for general comments on the Names Rule (SEC Names Rule Comment - S7-04-20; https://www.sec.gov/comments/s7-04-20/s70420-7068508-215496.pdf). PIABA greatly appreciates the fact that the Commission considered our members' interests and concerns when drafting the current proposed amendments.

The transparency of fund names is crucially important to individual investors. Oftentimes, retail investors, especially those who are not sophisticated in mutual fund analysis, base their purchase of funds solely upon the name of the fund. The reasonably rely on the name to inform them of a fund's objectives and risks. Similarly, retail investors frequently do little to investigate, much less monitor, the portfolio holdings or the specific strategy of a fund beyond relying on the fund's name. This is especially problematic for 401(k) plan investments, which are almost exclusively invested in mutual funds that employers make available from a pre-determined list of options, and comprise the entirety of retirement funds and savings for many Americans.

PIABA welcomed the initial adoption of the Names Rule in 2001. Our members saw instances of misleading fund names plummet following the implementation of the Names Rule. The larger asset management firms appear to have, by and large, adhered to the provisions of the Names Rule. Unfortunately, our members are seeing investors lured into unsuitable investments due to a resurgence of misleading names. Most of these instances involve small and medium fund managers. PIABA urges the Commission to increase the surveillance of these smaller fund managers and to uniformly enforce the Names Rule. Rigorous enforcement of the Names Rule will serve to protect individual investors.

PIABA believes that the Commission adopted the correct position that the Names Rule should be expanded to include the terms "growth" or "value." We urge the Commission to reconsider its position with respect to terms such as "balanced," "long/short," and "real return," as these types of fund names can also create a potentially misleading expectations of an investment focus.

As mentioned in PIABA's prior submission, affinity fraud occupies one of the darkest spaces of investment fraud. The proposed amendments to the Names Rule do not touch upon affinity groups. PIABA recommends, the Commission adopt a strict prohibition of the use of terms of well-known organizations (other than the fund issuer), affinity groups, or the reference to a specific population of investors (*e.g.,* "veterans" or "municipal employees") in fund names.

PIABA understands the complexities that index fund and ETF managers face when allocating investments, especially when their underlying holdings consist of other indices. It is unclear whether the proposed amendment to the Names Rule will apply to index funds with respect to the 80 percent holdings rule. Index funds should not be allowed to use any exemption from the technical holding requirements from the Names Rule as a 'safe harbor' for misleading fund names. In the event that index funds are not covered by the Names Rule, the Commission should issue a notice that misleading names used by index funds are still subject to the anti-fraud provisions of the Securities Acts.

PIABA appreciates the fact that the Commission proposes that funds holding substantial amounts of derivatives set forth notional values. It should be noted that individual investors generally do not understand the difference between fair market value and notional values. In the event that a fund is required to set forth a notional value, investors should be given adequate information as to how the notional value was determined, why it is being used, and how the concept of "notional value" differs from "market value."

The proposed changes to the Names Rule appear to be heavily focused on ESG. PIABA understands that many investors may want to invest in ESG focused funds. However, PIABA is concerned that ESG-focused names may distract investors to the actual risks involved in investing in these funds. As pointed out in our previous submission, many of these ESG funds invest in start-ups, an inherently risky sector, which may not be suitable for many individual investors. Additionally, these funds sometimes place a premium on ESG at the expense of a reasonably safe return on investment. PIABA recommends the Commission to closely monitor the marketing emphasis placed upon ESG funds to prevent investors from being misled that ESG funds are always suitable investments.

Investors heavily rely on the names of funds when making investment decisions. PIABA largely supports the proposed amendments to the Names Rule and applauds the Commission in placing the interests of investors first.

Thank you for your consideration herein.

Sincerely,

Michael Edmiston
PIABA President