

# New in RegTech:

Checking in with AIFMD II update, ESMA fund names guidance, SEC Names Rule for funds, & the enhanced European Central Bank reporting fund statistics

by:

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## In Europe, AIFMD II begins march toward implementation with ESMA's proposed standards

In Europe, [AIFMD II](#) – the regulatory overhaul set to impact AIFs and UCITS with respect to their authorization, delegation, reporting, liquidity management, depositaries and more – recently took another step toward implementation with ESMA's [launch of two consultations](#). On July 8th the regulator proposed AIFMD II regulatory technical standards (RTS), as well as Guidelines, addressing the use of liquidity management tools (LMTs). Both are open to comment until 8 October 2024.

AIFMD II is in fact a set of amendments to AIFMD as well as to the UCITS Directive, and as such will impact managers covered under either framework. In its [proposed RTS](#) of July 8th, ESMA specifies the characteristics of various LMTs available to open-ended AIFs and UCITS, including redemptions, suspension of subscriptions, swing pricing, dual pricing, side pockets and more. The consultation seeks feedback on how each tool should be defined (and if that should differ for different investment strategies, or for AIFs versus UCITS).

Meanwhile in its [proposed Guidelines](#), ESMA explains how managers should select and calibrate their LMTs, in light of fund characteristics such as investment strategy, liquidity profile and redemption policy.

Both the RTS and the Guidelines must be finalized by ESMA and submitted to the European Commission by 16 April 2025.

The table below shows notable dates leading up to AIFMD II's full implementation. (Fund managers should take particular note of the blue highlighted entries as they prepare their relevant compliance and operations adjustments.)

Date	AIFMD II implementation step
15 April 2024	AIFMD II enters into force (see below for “go-live” dates)
8 October 2024	Comment period ends, for ESMA consultations on RTS and Guidelines regarding LMTs
16 April 2025	<p>Deadline for ESMA to submit to Commission its RTS and Guidelines on LMTs of AIFs and UCITS</p> <p>Deadline for ESMA to submit to Commission its RTS on requirements for loan-originating AIFs</p>
16 October 2025	Deadline for ESMA to submit to the European Parliament, Council and Commission reports on costs charged by AIFMs and UCITS managers to investors
<p><b>Deadline for EU Member States’ transposition of AIFMD II into national laws</b></p> <p><b>“Go-live” date. Required applicability of AIFMD II in EU Member States (except for regulatory reporting, which is 16 April 2027)</b></p>	
16 April 2026	<p>Deadline for ESMA to issue Guidelines on AIF and UCITS names</p> <p>Deadline for ESMA to issue Guidelines for national competent authorities (NCAs) regarding their power to suspend the issue, repurchase or redemption of AIF and UCITS units</p> <p>Deadline for ESMA to submit to the Commission reports on collection of supervisory data regarding AIFs and UCITS</p>
16 April 2027	<p><b>“Go-live” date. Required applicability of AIFMD II in EU Member States, with respect to regulatory reporting by AIFMs and UCITS managers</b></p> <p>Deadline for ESMA to submit to Commission its RTS on regulatory reporting requirements of AIFMs and UCITS managers</p>
<p><b>Expiration of grandfather period for loan originating AIFs formed before 15 April 2024, regarding AIFMD II requirements on loan origination</b></p>	
16 April 2029	<p>Deadline for ESMA to submit to the Parliament, Council and Commission reports on delegation and compliance with AIFM and UCITS manager authorization requirements</p> <p>Commission to initiate reviews of AIFMD II and its impact on AIFMs and UCITS managers</p>

**“The revised AIFMD and UCITS Directive have introduced long-awaited provisions on the availability and use of Liquidity Management Tools. . . These new rules being proposed are in line with the latest global standards provided by the FSB and IOSCO, and will contribute to the strengthening of the EU regulatory and supervisory regime for investment funds.”**

| Verena Ross, ESMA Chair

## EU guidance on sustainable fund names to take effect in Fall 2024

Close followers of the EU's new [AIFMD II](#) regime will have noted that, among its many requirements (see the summary above), ESMA must develop guidelines on AIF and UCITS fund names by 16 April 2026. And yet already ESMA had started that process back in November 2022, when it launched a consultation on proposed guidelines for the use of ESG or sustainability-related terms in fund names.

After absorbing comments and waiting to see how AIFMD II's passage would unfold, ESMA [finalized those guidelines](#) on 14 May 2024. Meanwhile, ESMA states that it plans to consider producing additional guidelines on fund names – unrelated to ESG or sustainability terms – “in due course”. That would presumably happen before the AIFMD II-mandated deadline of 16 April 2026.

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[ESMA's guidelines on fund names with ESG or sustainability terms](#) cover AIFs and UCITS, and will begin to apply 3 months after their publication in the official EU languages on ESMA's website. (This has not yet happened, as of this writing. If it happens this month, that means the Guidelines will begin to apply in November 2024. Progress on ESMA Guidelines can be tracked at the Excel file linked [here](#).) Upon publication, national competent authorities will have 2 months to inform ESMA of whether they intend to follow the guidelines.

Upon application of the guidelines after the 3-month period, managers of newly created funds should comply with them immediately. Managers of existing funds should do so starting 6 months after that (i.e., 9 months after publication of the guidelines).

The guidelines specify:

- a fund using **transition**, **social** or **governance** related terms should:
  - devote at least 80% of its investments to meet environmental or social characteristics, or sustainable investment objectives, according to its binding investment strategy, as disclosed in pre-contractual disclosure templates for "Art. 8" and "Art. 9" products under SFDR
  - exclude investments in:
    - controversial weapons (as defined in international treaties, UN principles or national legislation)
    - tobacco cultivation or production
    - companies in violation of UN Global Compact principles or OECD Guidelines for Multinational Enterprises
  
- a fund using **environmental** or **impact** related terms should:
  - devote at least 80% of its investments to meet environmental or social characteristics, or sustainable investment objectives, according to its binding investment strategy, as disclosed in pre-contractual disclosure templates for "Art. 8" and "Art. 9" products under SFDR
  - exclude investments in:
    - controversial weapons (as defined in international treaties, UN principles or national legislation)
    - tobacco cultivation or production
    - companies in violation of UN Global Compact principles or OECD Guidelines for Multinational Enterprises
    - companies deriving at least 1% of their revenue from hard coal or lignite exploration, mining, extraction, distribution or refining
    - companies deriving at least 10% of their revenue from oil exploration, extraction, distribution or refining
    - companies deriving at least 50% of their revenue from gas exploration, extraction, manufacturing or distribution
    - companies deriving at least 50% of their revenue from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh
  - commit meaningfully to "sustainable investments" as defined in SFDR
  
- a fund using **sustainability** related terms should:
  - devote at least 80% of its investments to meet environmental or social characteristics, or sustainable investment objectives, according to its binding investment strategy, as disclosed in pre-contractual disclosure templates for "Art. 8" and "Art. 9" products under SFDR
  - exclude investments in:
    - controversial weapons (as defined in international treaties, UN principles or national legislation)



- tobacco cultivation or production
  - companies in violation of UN Global Compact principles or OECD Guidelines for Multinational Enterprises
  - companies deriving at least 1% of their revenue from hard coal or lignite exploration, mining, extraction, distribution or refining
  - companies deriving at least 10% of their revenue from oil exploration, extraction, distribution or refining
  - companies deriving at least 50% of their revenue from gas exploration, extraction, manufacturing or distribution
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- commit meaningfully to “sustainable investments” as defined in SFDR

ESMA points out that investors will be able to verify a fund’s adherence to the guidelines by consulting the fund’s periodic disclosures required under SFDR.

ESMA also notes that a firm’s involuntary, temporary deviation from the guidelines can be treated as a “passive breach” that may be corrected. But more serious departures from the guidelines would warrant further investigation by competent authorities.

With the compliance dates approaching soon, firms are advised to make the necessary adjustments, track their portfolios accordingly and reassess their investment strategies if needed. Notably, the 80% threshold is also reflected in existing rules in the US, albeit with different standards. As explained below, that regime has been enhanced to include ESG terms and various other requirements, and may warrant global firms considering both regimes holistically from operations, data and compliance perspectives.

**“Funds’ names are a powerful marketing tool. In order not to mislead investors, ESMA believes that ESG- and sustainability-related terms in funds’ names should be supported in a material way by evidence of sustainability . . . ”**

| ESMA, Public Statement, “Update on the guidelines on funds’ names using ESG or sustainability-related terms”

## Staying ahead of the SEC’s new Names Rule for funds

Increased regulatory concern with investment fund names, detailed above with respect to Europe, has been playing out in the US as well. In September 2023 the SEC [adopted enhancements](#) to its existing Names Rule, broadening its coverage.

The compliance dates are 10 December 2025 (for funds and their affiliates with combined net assets of at least \$1 billion) and 10 June 2026 (for all others.)

For context, the use of deceptive names by registered investment companies and business development companies has already been prohibited by statute in the US (under the Investment Company Act, in Sections 35(d) and 59.) And in 2001 the SEC further set forth how such names would be considered deceptive, with its initial Names Rule (Rule 35d-1) stating that a fund's name suggesting a particular *type of investment, industry or geographic area* would trigger a requirement that the fund have a policy to invest at least 80% of the value of its assets accordingly.

Now with its [amended Names Rule](#), the SEC *additionally* requires the following:

- **Broader scope.** The '80% rule' applies more broadly to any fund names suggesting investments with "particular characteristics" (even if not connoting an investment strategy). That includes terms like "*growth*" or "*value*", or suggesting *ESG characteristics*.
- **Investment focus or tax-exempt distributions.** Fund name terms suggesting an investment focus, or tax-exempt distributions, must be consistent with their plain English meanings.
- **Quarterly review.** A fund must review its portfolio every quarter, to ensure compliance with the 80% threshold (and generally must cure non-compliance within 90 days).
- **Derivatives calculation.** Swaps, futures, options and similar instruments (but not currency derivatives used to hedge foreign currency risk) may be included for satisfaction of the 80% test, based on their notional value. Short positions also count (based on their notional value if they are derivatives with short exposure, or on the value of the assets sold short if they are physical short positions).
- **Form N-PORT reporting.** On [Form N-PORT](#), for the third month of every quarter, reporting must include the value of the fund's 80% basket (see Item B.11.b), whether each investment is included in the 80% basket (Item C.2.e), and definitions of terms used in fund names (item B.11.a).
- **Prospectus disclosure.** In its prospectus a fund must define the terms used in its name, and set forth the criteria it uses to select its investments reflecting those terms.
- **Change to investment policy.** A fund adopting the required 80% investment policy may not change it without a shareholder vote, subject to certain exceptions.
- **Recordkeeping.** A fund must maintain written records documenting compliance with the Names Rule for at least 6 years, including: the investments that are included in the 80% basket, the basis therefor, the value of the 80% basket as a percentage of the value of the fund's assets, and any departures from Names Rule compliance.

Those various requirements demand well-planned compliance and operational adjustments. In sum, a firm's implementation of the new Names Rule must allow sufficient time for it to:

- evaluate the impact of the Rule
- determine necessary changes
- seek board and/or shareholder approval needed, for changes to fund names or investment strategies
- develop an ongoing assessment of fund portfolios, with systems and service providers as needed

With the first compliance date for larger firms 16 months away, they can be ready for it by embarking on their adjustments now. Moreover, firms that are also impacted by the European guidance on ESG-related fund names that takes effect much sooner (possibly as early as November 2024 for new funds, and May 2024 for existing funds), as explained further above, will benefit from harnessing their efforts to satisfy both regimes as soon as possible.

For more information on the SEC's new Names Rule, see its [Fact Sheet](#) as well as the full [Release](#).

**"The Names Rule reflects a basic idea: A fund's investment portfolio should match a fund's advertised investment focus."**

| Gery Gensler, SEC Chair

## European Central Bank finalizes new reporting requirements on investment fund statistics

As we covered in our [January](#) issue, the European Central Bank (ECB) has been formulating more stringent reporting requirements for funds in the euro area, with enhancements to its Regulation on investment fund statistics.

After a consultation period, the ECB [finalized its effort](#) on June 12th, with its publication of a [recast Regulation](#) that increases reporting requirements including:

- a general monthly reporting frequency
- granular reporting of securities without publicly available identification codes
- additional asset and liability breakdowns
- information on income, fees and the classification of investment funds

Striving for a more comprehensive statistical view of the investment funds sector, the ECB and the European System of Central Banks use the reported information for monetary policy and for promoting financial stability in the euro area.

The Recast regulation is binding on all [euro area](#) countries (i.e. those whose currency is the euro), while other EU Member States may implement its provisions at their discretion.

The new reporting will apply 6 months later than originally proposed, and as such will be required starting at these times:

- for monthly reporting, for the reference period as of December 2025 (with the first reporting in February 2026)
- for annual reporting: for the reference period as of 2025 (with the first reporting in June 2026)

Some other deviations from the original proposal are listed in Table 2 of the ECB's [Feedback statement](#), which contains additional details on the new regime.

**"Investment funds constitute the largest subsector of the euro area non-bank financial sector. ... The recast Regulation addresses a number of high priority requirements for additional data for analysing developments in the euro area investment fund sector. It also includes features aimed at enhancing the harmonisation and integration of datasets containing investment fund data."**

| ECB, "Feedback statement - Responses to the public consultation on the recast ECB Regulation on investment fund statistics"





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