Canadian Securities Administrators
Autorités canadiennes en valeurs mobilières

CSA Staff Notice 81-334 (Revised)

ESG-Related Investment Fund Disclosure

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A. Introduction

The purpose of this Canadian Securities Administrators (the **CSA**) Staff Notice (the **Notice**) is to provide guidance on the disclosure and sales communication practices of investment funds as they relate to environmental, social and governance (**ESG**) matters. This Notice also provides guidance on the types of investment funds that may market themselves as focusing on ESG or as considering ESG factors as part of their investment process. This Notice aims to bring greater clarity and consistency to ESG-related fund disclosure and sales communications to enable investors to make more informed investment decisions.

This Notice updates and replaces a prior version of this Notice that was issued on January 19, 2022 (the **2022 Notice**).

Following the publication of the 2022 Notice, staff of the CSA (**staff** or **we**) conducted ESG-focused reviews of the disclosure and sales communications of investment funds (the **ESG-Focused Reviews**). The ESG-Focused Reviews indicated that, given the evolving nature of ESG investing, there is a need to update the guidance set out in the 2022 Notice to address developments and issues that have arisen since the publication of the 2022 Notice. The ESG-Focused Reviews also indicated that there is a need to provide guidance for specific types of ESG-Related Funds (as defined below under “Types of funds covered in the Notice”) in order to reduce the potential for greenwashing, whereby a fund’s disclosure or marketing intentionally or inadvertently misleads investors about the ESG-related aspects of the fund.

The guidance provided in this Notice is based on existing securities regulatory requirements and does not create any new legal requirements or modify existing ones. This Notice clarifies and explains how the current securities regulatory requirements apply to ESG-related investment fund disclosure. It also includes best practices that, while not required, staff strongly encourage investment fund managers (**IFMs**) to adopt in order to help enhance ESG-related disclosure and sales communications. Where this Notice provides best practices, staff have used the language “staff encourage”.

Staff encourage investment funds, IFMs, and portfolio advisers to review this Notice.

B. Overview and Updates to the Notice

This Notice

- provides an overview of common ESG-related terms and strategies,
- summarizes the scope and purpose of, and key findings from, the ESG-Focused Reviews, and
- provides updated, relevant and practical guidance for investment funds, particularly ESG-Related Funds, and their IFMs to enhance the ESG-related aspects of the funds’ regulatory disclosure documents and ensure that the sales communications of such funds are not untrue or misleading and are consistent with the funds’ regulatory offering documents.

This Notice updates the guidance from the 2022 Notice to address developments and issues that have arisen since the publication of the 2022 Notice, as well as to provide guidance for specific types of ESG-Related Funds. The major changes in this Notice compared to the 2022 Notice are as follows:

- Inclusion of an explanation of the different levels of disclosure expectations for funds that do not reference ESG factors in their investment objectives but that use ESG strategies, depending on the degree of significance to which the consideration of ESG factors is given in the fund's investment process, i.e. depending on whether the fund is an ESG Strategy Fund (as defined below) or ESG Limited Consideration Fund (as defined below), as explained below under "Types of funds covered in the Notice"
- Inclusion of specific guidance for certain types of funds or funds in certain circumstances, including, but not limited to: (a) funds that track the performance of an ESG-related index; (b) funds that invest in underlying funds; (c) funds with carbon offset series; (d) funds that are subject to an IFM's general proxy voting or engagement approach that addresses ESG matters; and (e) funds managed by IFMs that apply an ESG strategy to more than one of their funds
- Inclusion of a reminder to IFMs about existing requirements relating to written ESG-related policies and procedures
- Clarification of whether certain ESG-related communications are sales communications, and on the use of disclaimers or explanatory language in sales communications.

Any examples provided in this Notice are for illustrative purposes only and are not meant to be exhaustive of all potential scenarios or approaches.

C. ESG-Related Terms and Strategies

While this Notice uses the term "ESG", there are other related terms that are commonly used by ESG-Related Funds and more broadly throughout the investment fund industry. Those terms include the following:

- sustainable
- responsible investing or RI
- socially responsible investing or SRI
- ethical
- green

ESG-Related Funds generally consider ESG factors in their investment decision-making processes. However, they may focus on only one or two of the three areas of ESG and may even have a concentrated focus on one or a small group of factors in any of the areas of ESG (e.g. a fund that is focused only on improving or promoting board diversity). For illustrative purposes, the following is a non-exhaustive list of ESG factors that may be considered by such funds in their investment decision-making processes:

Environmental	**Social**	**Governance**
Air and water pollution	Community relations	Audit committee structure
Biodiversity	Data protection and privacy	Board diversity
Climate change and carbon emissions	Diversity	Bribery and corruption
Deforestation	Employee engagement	Executive compensation
Energy efficiency	Human rights	Lobbying

Waste management	Indigenous inclusion and reconciliation[1]	Political contributions
Water scarcity	Labour standards	Whistleblower schemes

ESG-Related Funds incorporate ESG factors into their investment decision-making processes using one or more ESG strategies. The following are some common ESG strategies used by investment funds:

Screening	The fund applies rules based on defined ESG-related criteria to determine whether an investment is permissible. There are different types of screening, including *exclusionary* or *negative screening*, *best-in-class* or *positive screening*, and *norms-based screening*, which are explained immediately below.
Exclusionary or *negative screening*	The fund applies rules based on undesirable ESG-related criteria to determine whether an investment is not permitted, including the exclusion of certain types of investments, sectors, or companies from a fund's portfolio based on certain ESG-related criteria.
Best-in-class or *positive screening*	The fund applies rules based on desirable ESG-related criteria that determine whether an investment is permitted. In some cases, "best-in-class screening" and "positive screening" may have slightly different meanings: • Best-in-class screening: The fund invests in companies that perform better than their peers on certain ESG-related criteria. • Positive screening: The fund invests in companies that meet certain desirable ESG-related criteria.
Norms-based screening	The fund applies rules based on compliance with widely recognized ESG-related standards or norms (such as international conventions) that determine whether an investment is or is not permitted.
ESG integration	The fund considers, on an ongoing basis, ESG-related factors within an investment analysis and decision-making process with the aim of improving risk-adjusted returns.
Thematic investing	The fund selects assets to access specified ESG-related trends, such as climate change and the shift to a more circular economy.

[1] Some stakeholders are of the view that, given the importance of Indigenous inclusion and reconciliation in Canada, the concept of "ESG" should be expanded to "ESGI", with Indigenous inclusion and reconciliation being included as a separate area.

Impact investing	The fund invests with the intention of generating a positive, measurable social and/or environmental impact alongside a financial return. The aim is to contribute to, or catalyze, environmental or social improvements.
Stewardship (sometimes also referred to as active ownership)	The fund uses investor rights and influence (such as *proxy voting* and *shareholder* or *issuer engagement*, which are explained immediately below) to protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social and environmental assets on which their interests depend. This includes influencing the activities or behaviour of underlying portfolio companies on ESG-related matters.
Proxy voting	The fund votes on management and/or shareholder resolutions in accordance with certain ESG-related considerations or aims.
Shareholder or *issuer engagement*	The fund interacts with the management of the company through meetings and/or written dialogue in accordance with certain ESG-related considerations or aims. The term *shareholder engagement* is generally used where the fund is a shareholder of the issuer, while the term *issuer engagement* may be used where the fund is not a shareholder of the issuer but is instead a holder of debt securities of the issuer.

The above terms and definitions have been included for illustrative purposes only, and this Notice does not require or endorse the use of the above names and definitions for these ESG strategies, or the use of the ESG strategies themselves.

While many ESG strategies are widely used across the industry, there continues to be a lack of consistency in the ESG-related terminology and definitions used throughout the investment fund industry, especially with regard to ESG strategies, which increases the potential for investor confusion around ESG-Related Funds. Staff note, however, that since the publication of the 2022 Notice, the CFA Institute, Global Sustainable Investment Alliance, and Principles for Responsible Investment published a set of harmonized definitions for responsible investment approaches.[2] Staff continue to encourage industry participants, including IFMs, to develop and use common ESG-related terms and definitions, particularly with regard to ESG strategies, which would enable investors to better understand ESG-Related Funds and make informed investment decisions about them.

Guidance regarding the use of ESG-related terminology in fund names, regulatory documents, and sales communications is included below under “ESG-related terminology”.

[2] CFA Institute, Global Sustainable Investment Alliance and Principles of Responsible Investment, “Definitions for Responsible Investment Approaches” (November 2023), accessible at: https://rpc.cfainstitute.org/-/media/documents/article/industry-research/definitions-for-responsible-investment-approaches.pdf.

D. ESG-Focused Reviews

As discussed in the 2022 Notice, staff originally conducted reviews of the regulatory disclosure documents and sales communications of ESG-Related Funds and other funds that marketed themselves as ESG-Related Funds in 2020 and 2021 (the **2020-2021 ESG-Focused Reviews**). The findings from those reviews informed the guidance set out in the 2022 Notice.

After the publication of the 2022 Notice, staff conducted the ESG-Focused Reviews, which covered a selection of ESG-Related Funds in 2022 and 2023. Staff reviewed the following:

- prospectuses and related offering documents such as annual information forms (each, an **AIF**) and fund facts documents (each, a **Fund Facts**) or ETF facts documents (each, an **ETF Facts**), with a focus on the fund's name, investment objectives, fund type, investment strategies disclosure, summary of proxy voting policies and procedures, risk disclosure, and suitability disclosure,
- continuous disclosure, including management reports of fund performance (each, an **MRFP**),
- portfolio holdings,
- past ESG-related proxy votes, and
- sales communications.

The purpose of the ESG-Focused Reviews was to:

- assess whether the disclosure and sales communications of ESG-Related Funds were consistent with the guidance set out in the 2022 Notice;
- where staff identified issues, work with IFMs to correct such disclosure and sales communications in order to address potential greenwashing concerns; and
- determine whether further policy work is needed to improve the disclosure and sales communications of ESG-Related Funds in order to further reduce the potential for greenwashing.

Staff conducted:

- 112 ESG-focused reviews of the prospectuses, related offering documents, and sales communications of ESG-Related Funds as part of the regular prospectus review process (the **ESG Prospectus Reviews**), covering 57 IFMs;
- 39 ESG-focused reviews of the continuous disclosure, portfolio holdings, past ESG-related proxy votes, and sales communications of ESG-Related Funds as part of the continuous disclosure review process (the **ESG CD Reviews**), involving 35 IFMs and 50 funds;
- separate sales communication reviews on an as-needed basis, involving six IFMs.

In addition, staff also reviewed the disclosure documents and sales communications of three funds that seek exposure to carbon credits or allowances, including through futures, two crypto asset funds that offset their carbon footprint or that are "carbon negative" as compared to their carbon footprint, and two crypto asset funds that have a carbon offset series (collectively, the **Carbon-Related Funds**). Staff's reviews of Carbon-Related Funds involved five IFMs and were focused on identifying and addressing potential greenwashing issues arising from such funds. Specifically, while carbon credits and carbon offsetting are generally perceived to be related to environmental sustainability, not all Carbon-Related Funds consider ESG factors as part of their investment process. As a result, the manner in which Carbon-Related Funds are marketed could potentially raise greenwashing concerns.[3]

E. Key Findings and Guidance

This section

- outlines and explains the types of funds covered in the guidance in this Notice,
- summarizes the key findings from the ESG-Focused Reviews, and
- provides updated guidance on how existing securities regulatory requirements apply to investment funds as they relate to ESG matters, particularly ESG-Related Funds, in a number of areas of disclosure.

The guidance in this section is based on the findings from both the 2020-2021 ESG-Focused Reviews and the ESG-Focused Reviews, staff's observations in relation to ESG-related changes to existing funds, and the recommendations of the IOSCO Sustainable Finance Task Force for regulators and policymakers on sustainability-related practices, policies, procedures, and disclosure in asset management.[4]

Some areas of disclosure addressed in the guidance in the 2022 Notice were reviewed as part of the ESG-Focused Reviews but did not lead to any notable issues. This section therefore does not include any key findings for those areas.

To facilitate ease of reading, key elements of staff's guidance in each area of guidance have been presented in textboxes.

I. Types of funds covered in the Notice

The consideration of ESG factors in the investment process of a fund is a continuum that ranges from funds with an ESG focus to funds that do not consider ESG factors in their investment process.

The guidance in this Notice relating to disclosure and sales communication requirements sets out different disclosure expectations depending on whether a fund considers ESG factors as part of its investment process and the extent to which such factors are considered. Specifically, the guidance in this Notice differs for each of the following four types of funds, listed in descending order of how significant a role ESG factors play in their investment process:

- funds whose investment objectives reference ESG factors (**ESG Objective Funds**)
- funds whose investment objectives do not reference ESG factors but that use ESG strategies, where the consideration of ESG factors plays a significant role in their investment process (**ESG Strategy Funds**)
- funds whose investment objectives do not reference ESG factors but that use ESG strategies, where the consideration of ESG factors plays a limited role in their investment process (**ESG Limited Consideration Funds**, and together with ESG Objective Funds and ESG Strategy Funds, **ESG-Related Funds**)

[3] See the guidance below on funds that primarily invest in an ESG-related asset class but that do not consider ESG factors under "Are ESG factors considered as part of the fund's investment process?".
[4] International Organization of Securities Commissions, "Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management: Final Report" (November 2021), accessible at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD688.pdf.

- funds that do not consider ESG factors in their investment process (**Non-ESG Funds**).

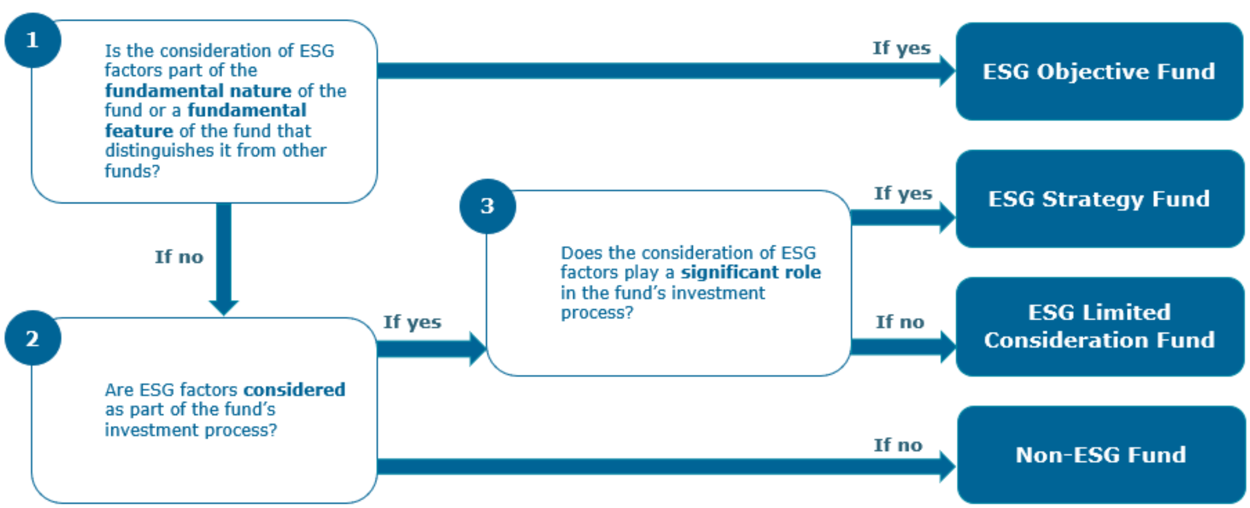
For greater clarity, a fund that considers ESG factors as part of its investment process is considered to be using an ESG strategy.

The names and definitions of the four types of funds are only being used in this Notice to explain the different disclosure and sales communications requirements that apply to each type of fund and are not intended to be used as investor-facing labels or classifications in prospectuses, other disclosure documents, or sales communications.

Generally, the different levels of disclosure expectations set out in this Notice are based on the concept that the more significant a role that ESG factors play in the investment process, the more ESG-related disclosure a fund is expected to provide. Similarly, the guidance in this Notice around sales communications is based on the principle that the more significant a role that ESG factors play in the investment process, the more ESG-related information a fund may include in its sales communications. Conversely, the guidance in this Notice reflects the concept that the more limited a role that ESG factors play in the investment process, the less ESG-related information there should be in both the disclosure documents and sales communications of the fund, so as not to over-emphasize the role of ESG considerations in the fund's investment process.

The general approach to determining whether a fund is an ESG Objective Fund, ESG Strategy Fund, ESG Limited Consideration Fund, or Non-ESG Fund is illustrated in Figure 1.

Figure 1.



The approach to determining whether a fund should reference ESG factors in its investment objectives (i.e. the question in Box 1 of Figure 1) is discussed below under "Investment objectives and fund names".

The below guidance provides information to assist IFMs in determining whether: (a) ESG factors are considered as part of a fund's investment process (i.e. the question in Box 2 of Figure 1); and (b) whether a fund's consideration of ESG factors plays a significant role in its investment process (i.e. the question in Box 3 of Figure 1).

(a) Are ESG factors considered as part of the fund's investment process?

As set out in Figure 1 above, the distinction between an ESG-Related Fund and a Non-ESG Fund is whether a fund considers ESG factors as part of its investment process.

In most cases, it should not be difficult for an IFM to determine whether its fund considers ESG factors as part of its investment process. However, there are some types of funds that may appear to consider ESG factors but that, in staff's view, may not actually consider ESG factors as part of their investment process, including the following:

- **Funds that invest in an ESG-related asset class but that do not consider ESG factors**: Staff's view is that funds that invest in an asset class that is related to an ESG-related segment of the economy solely because of the financial value of the asset class, but that do not consider ESG factors as part of their investment process, are Non-ESG Funds and should therefore not be marketed as ESG-Related Funds. An example would be a fund that invests in carbon credit futures solely due to the financial value of carbon credit futures, not due to ESG-related considerations.

- **Funds that are subject to an exclusionary screen that has no impact on the investment selection process**: In staff's view, a fund that is subject to an exclusionary screening strategy (including a firm-wide exclusionary screen) that has no impact on its investment selection process does not consider ESG factors as part of its investment process and is therefore a Non-ESG Fund. For example, some IFMs have a firm-wide exclusionary screen that excludes all issuers involved in landmines and cluster munitions, which would likely have no impact on the majority of funds, given the limited number of companies involved in these industries, particularly for funds that primarily invest in companies that operate in countries that are signatories to bans on landmines and cluster munitions. Such funds would be Non-ESG Funds, unless they use other ESG strategies as part of their investment process.

- **Funds that are subject to an IFM's general proxy voting or engagement approach that addresses ESG matters**: Some funds are managed by IFMs that have general proxy voting policies and procedures that are applicable to all or most of the IFM's funds, which address how the funds generally vote proxies on various issues, including ESG issues, but the funds do not use ESG-focused proxy voting as a principal investment strategy. Similarly, some funds are managed by IFMs that have a general engagement approach that is applicable to all or most of the IFM's funds, which covers a range of issues, including ESG issues, but the funds do not use ESG-focused engagement as a principal investment strategy. In both cases, the consideration of ESG factors usually plays a limited role, if any, in the investment process.

  Where a fund that does not have ESG-related investment objectives is managed by an IFM that has general proxy voting policies and procedures that address ESG matters among other matters or has a general engagement approach that addresses ESG matters among other matters, but the fund does not use any other ESG strategies as part of its investment process, staff's view is that the fund is not an ESG Strategy Fund. Depending on whether the ESG factors addressed in the proxy voting policies and procedures or contemplated in the engagement approach have any impact on the proxy voting or engagement approach of the fund, this type of fund may be either a Non-ESG Fund or ESG Limited Consideration Fund.

(b) <u>Does the consideration of ESG factors play a significant role in the fund's investment process?</u>

The guidance in this Notice relating to funds that do not refer to ESG factors in their investment objectives but that use ESG strategies differs depending on, as set out in Figure 1 above, whether the consideration of ESG factors plays a significant role in the fund's investment process – that is, whether the fund is an ESG Strategy Fund or ESG Limited Consideration Fund. This updated guidance is consistent with the principle from the 2022 Notice that both the prospectus and sales communications of a fund should be clear about the extent to which the fund is focused on ESG.

The need for different guidance for these two types of funds arose because of two key developments that occurred after the publication of the 2022 Notice:

1. Staff observed a considerable increase in the number of IFMs that included disclosure in their fund prospectuses about the consideration of ESG factors, often without being clear about the extent to which ESG factors are considered by the fund.

2. Staff also observed a significant number of statements on the websites of IFMs that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process despite the consideration of ESG factors not being referenced in the investment strategies disclosure in the prospectuses of those funds. Through the ESG-Focused Reviews, staff learned from IFMs that most such funds only consider ESG factors to a limited extent.

These developments raised greenwashing-related concerns about funds that only consider ESG factors to a limited extent being marketed as funds for whom the consideration of ESG factors plays a significant role in the investment process and about inconsistencies between sales communications and prospectuses regarding the role of ESG considerations in the investment process. The differences in disclosure expectations between an ESG Strategy Fund and an ESG Limited Consideration Fund set out later in this Notice are intended to address these greenwashing-related concerns.

While this Notice provides some questions for IFMs to consider when determining whether a specific fund is an ESG Strategy Fund or an ESG Limited Consideration Fund, staff's view is that there is no single factor that can be universally used to make this determination. We believe that the IFM of a fund is best positioned to assess the significance of the role that ESG factors play in the investment process of a fund.

The following questions may assist IFMs in determining whether the consideration of ESG factors plays a significant role in the funds' investment process and therefore, whether the fund is an ESG Strategy Fund or an ESG Limited Consideration Fund:

- **Are ESG factors routinely weighted heavily in the investment process of the fund?** If so, it is more likely that the fund is an ESG Strategy Fund. If ESG factors are considered, but the weight attributed to those factors is relatively low and they are more secondary to other factors in the investment process, the fund is more likely to be an ESG Limited Consideration Fund.

- **Are ESG factors likely to drive or impact an investment decision?** If ESG factors are routinely a driving factor in investment decisions, the fund is more likely to be an ESG Strategy Fund. However, if ESG factors are generally considered to such a limited extent that ESG factors would rarely be driving factors behind an investment decision, the fund would more likely be an ESG Limited Consideration Fund.

- **Are ESG factors always considered as part of the investment process?** If a fund's consideration of ESG factors is discretionary such that ESG factors may or may not be considered at any given time, the fund is more likely to be an ESG Limited Consideration Fund.

- **What purpose does the consideration of ESG factors serve for the fund?** If a fund considers ESG factors with the aim of trying to select issuers that possess certain types of positive ESG characteristics or attributes, is actively seeking to achieve a favourable ESG profile, or is aiming to achieve a specific ESG-related outcome, the fund is more likely to be an ESG Strategy Fund. In contrast, if ESG factors are solely being considered as one of many components in the fund's broader risk assessment process, the fund is more likely to be an ESG Limited Consideration Fund.

The issue of whether a fund is an ESG Strategy Fund or an ESG Limited Consideration Fund most often arises in the context of funds that use an ESG integration strategy as part of their investment selection process. This is because there can be a significant range in the role, impact and weight that ESG factors may have when they are integrated alongside traditional financial factors into the investment process for different funds by different IFMs. However, this issue may also arise for funds that use other types of ESG strategies as part of their investment process.

II. ESG-related terminology

Guidance on ESG-related terminology

Use of plain language: Staff remind IFMs that any description of ESG strategies and ESG factors included in a prospectus must be written using plain language, in accordance with the requirement that the prospectus provide full, true and plain disclosure of all material facts.[5] Similarly, if a fund's prospectus includes other ESG-related terms that may not be commonly understood, such as "circular economy", "ESG headwinds", and "science-based target", it should provide a clear explanation of those terms using plain language.[6]

Plain language or established industry meaning: Staff are of the view that ESG-related terms used in the fund's name, regulatory documents, and sales communications should be used in a way that is consistent with the plain language meaning, or, where applicable, established industry meaning, of such terms.

[5] Subsection 4.1(1) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*; General Instruction (5) to Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**); subsection 3B.2(1) of National Instrument 41-101 *General Prospectus Requirements*. See also, amongst others, subsection 113(1) of the *Securities Act* (Alberta), subsection 63(1) of the *Securities Act* (British Columbia), subsection 56(1) of the *Securities Act* (Ontario) and section 13 of the *Securities Act* (Québec).

[6] See also the guidance below on complicated or non-self-explanatory ESG factors under "Investment strategies disclosure".

III. Investment objectives and fund names

Key findings from ESG-Focused Reviews

Staff identified very few issues relating to fund names, while a significant number of the issues raised during the ESG Prospectus Reviews relating to investment objectives involved revising the investment objectives to provide greater clarity around the ESG focus of the fund, including being consistent with the name of the fund. Many of the comments relating to investment objectives involved revising the investment strategies to clarify the meaning of certain ESG-related terms or concepts relating to the ESG focus of the fund as identified in the investment objectives, such as "sustainable issuers", "environmental economy", and "clean energy-related companies".

There were also some specific issues raised in relation to index-tracking funds, funds that invest in underlying funds, and funds with carbon offset series, which are discussed in the guidance below.

Guidance on investment objectives and fund names

An investment fund is required to disclose, in its prospectus, the fundamental investment objectives of the fund, including information that describes the fundamental nature or fundamental features of the fund that distinguish it from other funds.[7] Similarly, an investment fund is required to include, in its Fund Facts or ETF Facts, as applicable, a description of the fundamental nature or fundamental features of the fund that distinguish it from other funds.[8]

A fund's name and investment objectives play key roles in identifying the primary focus of the fund and distinguishing it from other funds. To prevent greenwashing, the name and investment objectives of a fund should accurately reflect the extent to which the fund is focused on ESG, where applicable, including the particular aspect(s) of ESG that the fund is focused on.

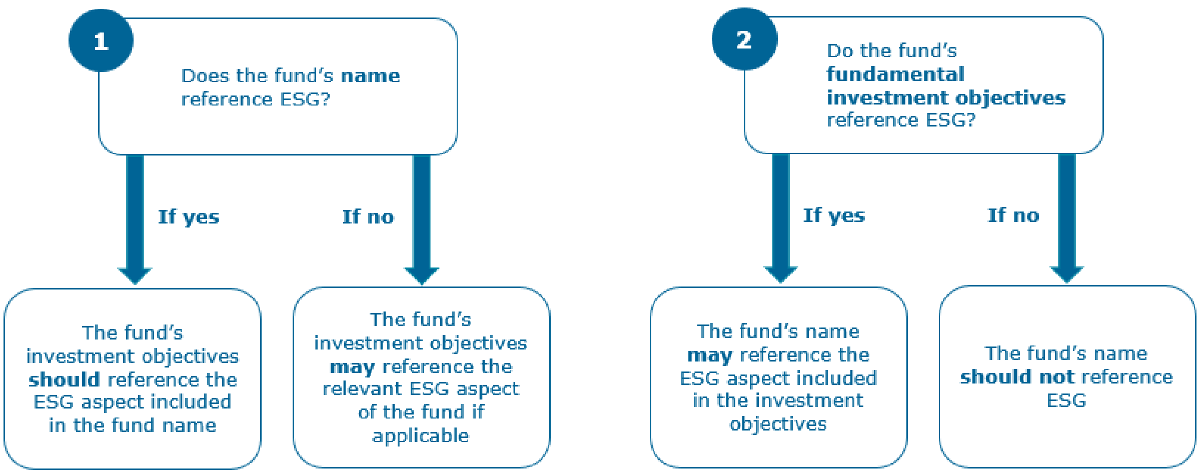
A fund that uses one or more ESG strategies as a material or essential aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, is required to disclose such ESG strategies as an investment objective in its prospectus[9] and in its Fund Facts or ETF Facts, as applicable.[10]

[7] Item 4(1) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**); Item 5.1(1) of Form 41-101F2.
[8] Item 3(1) of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**); Item 3(1) of Part I of Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**).
[9] Instruction (3) to Item 4 of Part B of Form 81-101F1 states that if a particular investment strategy is a material aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, this strategy must be disclosed as an investment objective. Similarly, Instruction (3) to Item 5 of Form 41-101F2 states that if a particular investment strategy is an essential aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, this strategy must be disclosed as an investment objective.
[10] Instruction (2) to Item 3 of Part I of Form 81-101F3; Instruction (2) to Item 3 of Part I of Form 41-101F4.

A fund that primarily invests or intends to primarily invest, or whose name implies that it will primarily invest, in a type of issuer or industry segment associated with ESG is required to indicate this in its fundamental investment objectives,[11] as well as in its Fund Facts or ETF Facts, as applicable.[12] For example, this may include a fund that intends to primarily invest in companies that are transitioning to a low-carbon economy or a fund whose name implies that it will primarily invest in the water conservation industry.

Staff note that the existing requirements draw a link between a fund's name and its investment objectives in order to ensure that there is consistency between them, given the importance of a fund's name in distinguishing it from other funds. Accordingly, in staff's view, where a fund's name references ESG or other related terms (e.g. sustainability, social responsibility, impact), the fundamental investment objectives of the fund should reference the aspect of ESG included in the name of the fund. This is illustrated in Figure 2 below.

Figure 2.



In staff's view, a fund that references ESG in its name should primarily invest in assets that meet the fund's ESG-related criteria. If a fund is permitted to primarily invest in assets that do not meet the fund's ESG-related criteria, the fund should not reference ESG in its name or investment objectives, as the name or investment objectives would not accurately reflect the primary focus of the fund and would therefore be misleading.

While the above guidance relating to fund names and investment objectives is intended to apply to all investment funds, the following guidance applies specifically to certain types of funds or funds in certain circumstances.

[11] Instruction (2) to Item 4 of Part B of Form 81-101F1 states that a mutual fund's fundamental investment objectives must indicate if the mutual fund primarily invests, or intends to primarily invest, or if its name implies that it will primarily invest, in a particular type of issuer or industry segment. Similarly, Instruction (2) to Item 5 of Form 41-101F2 states that if a fund primarily invests, or intends to primarily invest, or if its name implies that it will primarily invest, in a particular type of issuer or particular industry segment, the fundamental investment objectives should so indicate.
[12] Instruction (1) to Item 3 of Part I of Form 81-101F3; Instruction (1) to Item 3 of Part I of Form 41-101F4.

(a) Funds that track the performance of an ESG-related index

For ESG Objective Funds that reference any aspect of ESG in their name and whose investment objectives indicate that the fund tracks the performance of an ESG-related index, staff's view is that: (a) the ESG focus(es) of the index should be consistent with the ESG focus(es) indicated in the fund's name; and (b) the fund's investment objectives and/or investment strategies disclosure should indicate that the fund's portfolio will be comprised primarily of issuers that reflect the ESG focus(es) identified in the fund's name and investment objectives.

Unnamed ESG-related index: For ESG Objective Funds whose investment objectives state that the fund will track the performance of an ESG-related index in order to meet its ESG-related investment objectives, but that does not name the specific ESG-related index in the investment objectives, staff's view is that the investment objectives should clearly identify the ESG-related characteristics of any ESG-related index that the fund will track.

Investments in issuers that are not index constituents: Where an ESG Objective Fund's investment objectives indicate that the fund tracks the performance of an ESG-related index but the fund is permitted to track the index by investing in issuers that are not constituents of the index (including by using a sampling strategy), staff's view is that such issuers should have ESG characteristics that are similar to the constituents of the index, particularly in relation to the ESG characteristics that are relevant to the ESG focus of the fund. For example, if a fund whose investment objectives indicate that the fund will be tracking an index that is focused on environmental sustainability invests in issuers that are not index constituents, such issuers should share similar environmental characteristics to the index constituents.

(b) Funds that invest in underlying funds

For ESG Objective Funds that invest in underlying funds in order to meet their investment objectives, the ESG focus(es) of the underlying funds should be consistent with the ESG focus(es) of the fund.

In addition, staff remind IFMs that the holdings of any underlying funds held by a top fund, including any ESG-Related Fund, should be consistent with the investment objectives and strategies of the top fund, including, for example, any exclusionary screening criteria used by the top fund.

(c) Funds that intend to generate a measurable ESG outcome

Where an ESG Objective Fund intends to generate a measurable ESG outcome, staff encourage such funds to clearly state the intended outcome as part of their investment objectives in order to allow investors to identify funds that match their own ESG-related goals. For example, staff encourage funds that aim to reduce carbon emissions to disclose a measurable carbon emissions reduction target in their investment objectives. The inclusion of a measurable ESG outcome in a fund's investment objectives would also allow funds to provide meaningful continuous disclosure that reports on whether the fund is achieving its intended ESG outcome.

(d) Funds with carbon offset series

There are some funds, including crypto asset funds, that have a series whose distinguishing feature is that there is a carbon offsetting feature. These series generally reference carbon offsetting in their name. Staff's view is that, if the name of the series refers to carbon offsetting, the investment objectives of the series should refer to, and explain, the carbon offsetting feature of the series and state that prior approval of securityholders of the series will be obtained before the carbon offset feature of the series is changed.[13]

This is consistent with staff's view on funds that have a currency hedged series, which is that the investment objectives of a fund that has a currency hedged series should disclose that prior approval of securityholders of the currency hedged series will be obtained before the currency hedging strategy of the series is changed.

IV. Fund types

Guidance on fund types

A mutual fund that is not an exchange-traded mutual fund (an **ETF**) is required to identify, in its prospectus, the type of mutual fund that the fund is best characterized as.[14] Examples of types of mutual funds may include money market, equity, bond or balanced funds related, if appropriate, to a geographical region, or any other description that accurately identifies the type of mutual fund.[15]

Similar to fund names and investment objectives, the fund type identified in a fund's prospectus plays a role in identifying the focus of the fund.

Staff's view is that a fund that is not an ESG Objective Fund should not characterize itself as a fund that is focused on ESG or otherwise reference ESG in its fund type, as such a characterization may inaccurately suggest that the fund has an ESG-related focus.

V. Suitability

Guidance on suitability

An investment fund must include, in its Fund Facts or ETF Facts, as applicable, a brief statement of the suitability of the fund for particular investors, including describing the characteristics of the investor for whom the fund may or may not be an appropriate investment, and the portfolios for which the fund is and is not suited.[16] If the fund is particularly suitable for investors who have particular investment objectives, this can be disclosed.[17]

Similar to fund names, investment objectives, and fund types, in order to avoid greenwashing, the suitability statement should accurately reflect the extent of the fund's focus on ESG as well as the particular aspect(s) of ESG that the fund is focused on, but only if applicable.

[13] See the guidance below on the prior securityholder approval requirement for changes to the fundamental investment objectives of a fund under "ESG-related changes to existing funds".
[14] Item 3(a) of Part B of Form 81-101F1.
[15] Instruction (2) to Item 3 of Part B of Form 81-101F1.
[16] Item 7(1) of Part I of Form 81-101F3; Item 7 of Part I of Form 41-101F4.
[17] Instruction to Item 7 of Part I of Form 81-101F3; Instruction (1) to Item 7 of Part I of Form 41-101F4.

Where appropriate, an ESG Objective Fund may state that it is particularly suitable for investors who have ESG-related investment objectives or who are interested in ESG-focused investments. However, if the fund is only focused on a particular aspect of ESG, such as gender diversity in leadership or the reduction of carbon emissions, staff's view is that any suitability statement that indicates that the fund is particularly suitable for investors who have ESG-related investment objectives should accurately reflect the particular aspect(s) of ESG that the fund is focused on.

Staff's view is that a fund that is not an ESG Objective Fund should not reference ESG in its suitability statement, as such a statement may inaccurately suggest that the fund has an ESG-related focus.

VI. Investment strategies disclosure

Key findings from ESG-Focused Reviews

Most of the issues raised during the ESG Prospectus Reviews related to investment strategies disclosure. Approximately two-thirds of the comments raised in this area related to unclear or inaccurate investment strategies disclosure, including disclosure relating to: (a) which types of ESG strategies are being used by the fund; (b) which specific ESG factors are considered as part of the ESG strategies; and (c) how such factors are being evaluated and monitored by the portfolio manager.

Staff also observed a trend of IFMs including disclosure about the consideration of ESG factors in the investment process of the IFM's funds that was not clear about the limited extent to which ESG factors are considered by many of the funds in the prospectus.

In addition, staff raised comments in relation to unclear or inadequate disclosure about specific elements of the fund's ESG strategies, including the fund's use of proxy voting and shareholder engagement as ESG strategies, company-level ESG ratings and scores, ESG-related indices and benchmarks, discretionary negative screening, and ESG-related targets. In particular, staff observed that it was not always clear from prospectus disclosure whether ESG-focused proxy voting and shareholder engagement were principal investment strategies of a fund or whether the IFM had a general proxy voting or shareholder or issuer engagement approach that addressed ESG matters among other matters.

There were also some specific issues raised in relation to index-tracking funds, funds that invest in underlying funds, and IFMs that did not have ESG-related policies and procedures for their funds, which are discussed in the guidance below.

Guidance on investment strategies disclosure

An investment fund is required to disclose in its prospectus the principal investment strategies that the fund intends to use in achieving its investment objectives and the process by which the fund's portfolio adviser selects securities for the fund's portfolio, including any investment approach, philosophy, practices and techniques used.[18]

Investment strategies disclosure provides clarity to investors about how the fund will achieve its investment objectives, including the nature and extent of the strategies employed by the fund, the

[18] Item 5(1)(a) and (b) of Part B of Form 81-101F1; Item 6.1(1)(a) and (c) of Form 41-101F2.

investment universe from which the fund will select its investments, and which countries, industries, sectors or companies the fund may invest in. Full, true and plain ESG-related investment strategies disclosure enables investors to understand the types of investments that the fund may make, the types of ESG strategies used by the fund, the ESG factors considered by the fund, and in the case of an ESG Objective Fund, the ways in which the fund will meet its ESG-related investment objectives.

ESG Objective Funds and ESG Strategy Funds should provide disclosure about the ESG-related aspects of their investment selection process and investment strategies. All ESG strategies (such as carbon offsetting), not just the most common ones discussed above under "ESG-Related Terms and Strategies", that are used as principal investment strategies or as part of a fund's investment selection process, should be disclosed in the investment strategies section of the prospectus.

In staff's view, the investment strategies disclosure of ESG Objective Funds and ESG Strategy Funds should include identifying any ESG factors used and explaining the meaning of each ESG factor (to the extent that the factor is not self-explanatory, as discussed further below) and how the ESG factors are evaluated and monitored. This should include an explanation of the types of resources and information used and considered by the IFM in evaluating and monitoring the ESG factors (e.g. third-party sustainability reports, discussions with management of the issuer, disclosure documents), including disclosing whether the evaluation of the ESG factor is quantitative or qualitative and whether the evaluation is conducted using third-party data.

Complicated or non-self-explanatory ESG factors: Some ESG factors may not be self-explanatory based on their name or may be more complicated for investors to understand, such as "involvement in severe controversial events" and "clean air". Other ESG factors may have a commonly understood meaning outside of the investment industry but may not be self-explanatory as a factor considered in an investment process, such as "climate change" and "human rights". In all such cases, the ESG factor should be explained clearly.

Investments that may appear to be inconsistent with ESG values: Staff note that ESG Objective Funds may invest in companies that appear to be inconsistent with ESG values. For example, some investors may expect funds that reference the environment or climate transition in their names or investment objectives to exclude investments in companies involved in thermal coal. However, the fund's disclosed ESG-related investment objectives and strategies may permit such holdings. For example, some of these funds may be permitted to invest in such companies up to a certain percentage of their portfolios, so long as proceeds from the investment are earmarked for environmentally friendly projects, or in order to use shareholder engagement to improve the environmental practices of those companies. To provide greater clarity to investors and in line with the principle of full, true and plain disclosure of all material facts, staff encourage ESG Objective Funds, particularly those with more specific ESG focuses (as compared to those with a broad ESG focus), to disclose whether the fund may, at any point in time, hold such investments, what those holdings would include (including examples), any thresholds or parameters around such holdings, and how such holdings meet the fund's investment objectives. If an ESG Objective Fund is not permitted to hold certain investments that appear to be inconsistent with ESG values at any point in time, staff encourage IFMs to disclose this in the fund's investment strategies disclosure along with information about the monitoring process used by the fund to screen out such investments, and the fund should ensure that its portfolio does not include any such investments.

Written policies and procedures: During the ESG CD Reviews, staff observed that while most IFMs that manage ESG-Related Funds have written policies and procedures relating to the fund's consideration of ESG factors and/or use of ESG strategies, or in the case of IFMs that are not the portfolio adviser of their funds, their oversight of the funds' portfolio adviser(s) in relation to the consideration of ESG factors and/or use of ESG strategies, some did not. Staff remind IFMs that an IFM that offers ESG-Related Funds should: (a) establish, maintain and apply written policies and procedures that cover its consideration of ESG factors and/or use of ESG strategies, or in the case of an IFM that is not the portfolio adviser of the funds, its oversight of the funds' portfolio adviser(s) in relation to the consideration of ESG factors and/or use of ESG strategies; and (b) have processes in place to ensure that its written policies and procedures are regularly updated, such as for changes in its business practice, industry practice or securities legislation.[19]

Unless otherwise noted, the above guidance relating to investment strategies disclosure applies to all ESG-Related Funds. The following guidance applies specifically to certain types of funds or funds in certain circumstances.

(a) ESG Limited Consideration Funds

An ESG Limited Consideration Fund is not required to provide disclosure in its prospectus about its use of ESG strategies (including its consideration of ESG factors in its investment process). However, staff's view is that, where an ESG Limited Consideration Fund includes statements about the fund's use of ESG strategies (including its consideration of ESG factors in its investment process) in its sales communications, the prospectus should include disclosure about the fund's use of ESG strategies.[20]

Specifically, if an IFM of an ESG Limited Consideration Fund includes disclosure in the fund's prospectus about its use of ESG strategies, the disclosure should clearly explain:

- the limited role that the consideration of ESG factors and/or use of ESG strategies plays in the fund's investment process, including the specific parts of the investment process during which ESG factors are considered, the weight given to ESG factors as a whole (rather than for each particular ESG factor), and the impact that ESG factors will have on the portfolio selection process; and
- whether this approach is specific to the fund in question or whether it is part of the IFM's general process that is applied across all or a segment of its funds, and if it is applied to only one or a segment of the IFM's funds, clearly identify the fund(s).

If the IFM of an ESG Limited Consideration Fund includes such prospectus disclosure, the disclosure must still meet the standard of full, true and plain disclosure.[21] Specifically, the disclosure should clearly explain the ESG strategies used, and the description of these strategies must be written using plain language[22] in order to ensure that investors are able to understand the fund's investment strategies. However, staff are of the view that an ESG Limited Consideration Fund should avoid including disproportionately extensive disclosure about the consideration of

[19] Sections 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and 11.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
[20] See the guidance below on the sales communications of ESG Limited Consideration Funds under "Sales communications relating to a fund's ESG focus, use of ESG strategies, etc.".
[21] See footnote 5 above.
[22] See footnote 5 above.

ESG factors in order to avoid misleading investors about the role that ESG factors play in the investment process of the fund.

(b) Funds that use proxy voting or engagement in relation to ESG matters as a principal investment strategy

If a fund uses proxy voting or shareholder or issuer engagement in relation to ESG matters as a principal investment strategy, the fund is required to disclose this in its investment strategies.[23] In staff's view, the disclosure should include the criteria used by the proxy voting or engagement strategy, the goal of the proxy voting or engagement strategy, and the extent of the monitoring process used to assess the success of the proxy voting or engagement strategy.

(c) Funds that are subject to IFM's general proxy voting or engagement approaches that address ESG matters

Some funds are managed by IFMs that have general proxy voting policies and procedures that address ESG matters among other matters or have a general shareholder or issuer engagement approach that addresses ESG matters among other matters, but the funds do not use ESG-focused proxy voting or shareholder or issuer engagement as a principal investment strategy. As discussed above under "Are ESG factors considered as part of the fund's investment process?", depending on the particular circumstances of each IFM's investment process, such a fund may be a Non-ESG Fund or ESG Limited Consideration Fund.

Where such a fund is an ESG Limited Consideration Fund, the investment strategies section of the prospectus may include disclosure about the consideration of ESG issues as part of the fund's proxy voting or engagement approach but should not suggest that ESG-focused proxy voting or engagement is a principal investment strategy of the fund. The investment strategies section should also be clear about the role that the consideration of ESG factors plays in the proxy voting or engagement approach.

Where such a fund is a Non-ESG Fund, staff's view is that the investment strategies section of the prospectus should not include any disclosure about the consideration of ESG issues as part of its proxy voting or engagement approach.

Disclosure relating to a fund's proxy voting policies and procedures is discussed below under "Proxy voting and engagement policies and procedures".

(d) IFMs that apply an ESG strategy to more than one of their funds

In addition to the investment strategies section of a prospectus, ETFs and non-redeemable investment funds are required to provide disclosure in the section of the prospectus relating to the IFM about an overall investment strategy or approach used by the IFM in connection with the funds that it manages,[24] which may include any ESG strategies. Similarly, mutual funds that are not ETFs are also permitted to include such disclosure in their prospectus.[25] Where such disclosure is provided in the section of the prospectus about the IFM, staff's view is that the disclosure should be clear as to which of the funds in the prospectus the ESG strategy applies to, in order to provide transparency to investors as to which specific funds managed by the IFM use the ESG strategy. In addition, if the IFM's approach to considering ESG factors in its investment

[23] See footnote 18 above.
[24] Item 19.1(5) of Form 41-101F2.
[25] Item 4.1(6) of Part A of Form 81-101F1.

process varies for different types of funds managed by the IFM (e.g. if the IFM considers ESG factors in its investment process differently for its passive index-tracking funds as compared to its actively managed funds), this should be clearly articulated, and the differences in the IFM's ESG approach should be clearly explained.

For mutual funds that provide disclosure about an ESG strategy that is applied across more than one of its funds in the introduction to Part B of the prospectus rather than in the fund-specific sections for each individual fund,[26] staff's view is that the fund-specific sections of the prospectus should include a cross-reference to such disclosure in the introduction to Part B of the prospectus so that it is clear to investors as to which of the funds in the prospectus uses the ESG strategy. In addition, if the IFM's approach to considering ESG factors varies for different types of funds, this should also be clearly explained.

(e) Funds that use targets for specific ESG-related metrics

If a fund's use of one or more ESG strategies includes the use of targets for specific ESG-related metrics, such as carbon emissions, staff encourage such funds to disclose those targets as part of their investment strategies and identify if those targets may evolve or change over time in response to changing circumstances.

(f) Funds that invest in underlying funds

ESG Objective Funds and ESG Strategy Funds that invest in underlying funds that have an ESG-related focus and/or that employ ESG strategies must describe the process or criteria used to select the underlying funds[27] and should disclose any parameters around the types of ESG focus(es) that the underlying funds will have.

In addition, staff's view is that, if the underlying funds are named in the prospectus, the investment strategies disclosure should describe the ESG strategies that are used by the underlying funds. If the underlying funds are not named in the prospectus, the investment strategies disclosure should describe the ESG strategies that are used by the underlying funds, to the extent that such strategies are known.

(g) Funds that use multiple ESG strategies

ESG Objective Funds and ESG Strategy Funds that use multiple ESG strategies should provide disclosure explaining how the different ESG strategies are applied during the investment selection process. In staff's view, this disclosure should include the order in which the strategies are applied if the specific order would have an impact on the securities being selected for the portfolio.

(h) Funds that use ESG ratings, scores, indices or benchmarks

In staff's view, where an ESG Objective Fund or ESG Strategy Fund uses internal or third-party company-level ESG ratings or scores, or ESG-related indices or benchmarks, as part of its principal investment strategies or investment selection process, the fund should explain how those ratings, scores, indices or benchmarks are used.

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[26] For mutual fund prospectuses, the investment strategies disclosure required by Item 5 of Part B of Form 81-101F1 may be disclosed under the heading "What Does the Fund Invest In?" as per Item 5(1)(a) and (b) of Part B of Form 81-101F1 or in the introduction to Part B of the prospectus as per Item 2(3) of Part B of Form 81-101F1.
[27] Item 5(1)(c)(iv) of Part B of Form 81-101F1.

For greater clarity, an ESG rating or score is an assessment of an organization or product's relative ESG characteristics, effectiveness and performance, including its exposure to ESG risks and/or opportunities. In addition, an index that does not have an ESG-related focus may still be considered to be an ESG-related benchmark if it is used as a benchmark to assess ESG-related performance, e.g. where a fund aims to have lower carbon emissions than a specific broad-based index.

Identification of the index, benchmark, rating or score: Staff's view is that, for ESG Objective Funds and ESG Strategy Funds that use ESG-related indices or benchmarks as part of their principal investment strategies or investment selection process, the fund should identify the index or benchmark used.[28] Similarly, for ESG Objective Funds and ESG Strategy Funds that use third-party, company-level ESG ratings or scores as part of their principal investment strategies or investment selection process, staff's view is that the fund should identify the provider of the ratings or scores.

Methodology: In staff's view, the disclosure should also include a description of the methodology used to create the company-level ESG ratings or scores, or ESG-related indices or benchmarks, including, for example, whether the methodology is based on quantitative or qualitative data and the degree to which subjectivity may be involved in the methodology.

(i) Funds that may not always use ESG strategies or that use them on a discretionary basis

To the extent that a fund's investment strategies indicate that a particular ESG strategy may be used but is not always used, staff's view is that the investment strategies disclosure should explain, where possible, when the ESG strategy will be used, including describing any parameters around when the ESG strategy will or will not be used. Similarly, staff have observed that the prospectuses of some funds state that the fund "may" exclude certain types of investments from their portfolios. If a fund has discretion over whether a type of investment is excluded from its portfolio, the level and scope of this discretion should be clearly disclosed.

(j) ESG index-tracking funds that invest in issuers that are not index constituents

Some ESG Objective Funds disclose in their investment strategies that the fund tracks the performance of an ESG-related index, without disclosing this in their investment objectives. For such funds, if the fund is permitted to track the index by investing in issuers that are not constituents of the index (including by using a sampling strategy), staff's view is that the investment strategies disclosure should be clear as to whether, in tracking the index, the fund may select issuers that are not index constituents. The investment strategies should also be clear as to whether the fund will select issuers with ESG characteristics that are similar to the constituents of the index, including identifying which specific ESG characteristics would be similar, such as, whether the ESG characteristics that would be similar are only those that are relevant to the particular ESG focus(es) of the fund.

[28] Staff remind IFMs that index mutual funds are required to, as part of their fundamental investment objectives, (a) disclose the name or names of the permitted index or permitted indices on which the investments of the index mutual fund are based and (b) briefly describe the nature of that permitted index or those permitted indices, in accordance with Item 4(5) of Part B of Form 81-101F1.

(k) Funds that obtain exposure to ESG-related investments indirectly

Where an ESG Objective Fund's investment objectives state that the fund will primarily invest in investments that are ESG-related (as determined by the ESG focus(es) of the fund) or that meet certain ESG-related criteria, but also state that the fund may meet this objective through indirect investments or by investing in companies with indirect exposure to such investments, the investment strategies should explain the nature of the indirect investments or exposure and how such indirect investments or exposure help the fund meet its ESG-related investment objectives.

(l) Funds whose names and/or investment objectives include the term "impact"

In order to avoid greenwashing, staff's view is that if a fund's name and/or investment objectives include the term "impact", the investment strategies disclosure should explain what type of impact the fund is aiming to achieve, since the term "impact", when used in the context of ESG investing, is generally understood to be a reference to impact investing.

VII. ESG-related changes to existing funds

Guidance on ESG-related changes to existing funds

Changes to fundamental investment objectives: Since the fundamental investment objectives of the fund should reference the aspect of ESG included in the name of the fund, [29] where a fund intends to change its name to add or remove a reference to ESG, the fund should consider whether it should also change its fundamental investment objectives in accordance with Figure 3. The guidance in Figure 3 is also applicable to a fund that intends to change the reference to ESG in its name in such a way as to change the ESG focus of the fund to a different ESG focus, such as changing a fund's name from "XYZ ESG Fund" to "XYZ Carbon-Neutral Fund" or "ABC Clean Water Fund" to "ABC Sharia Fund".

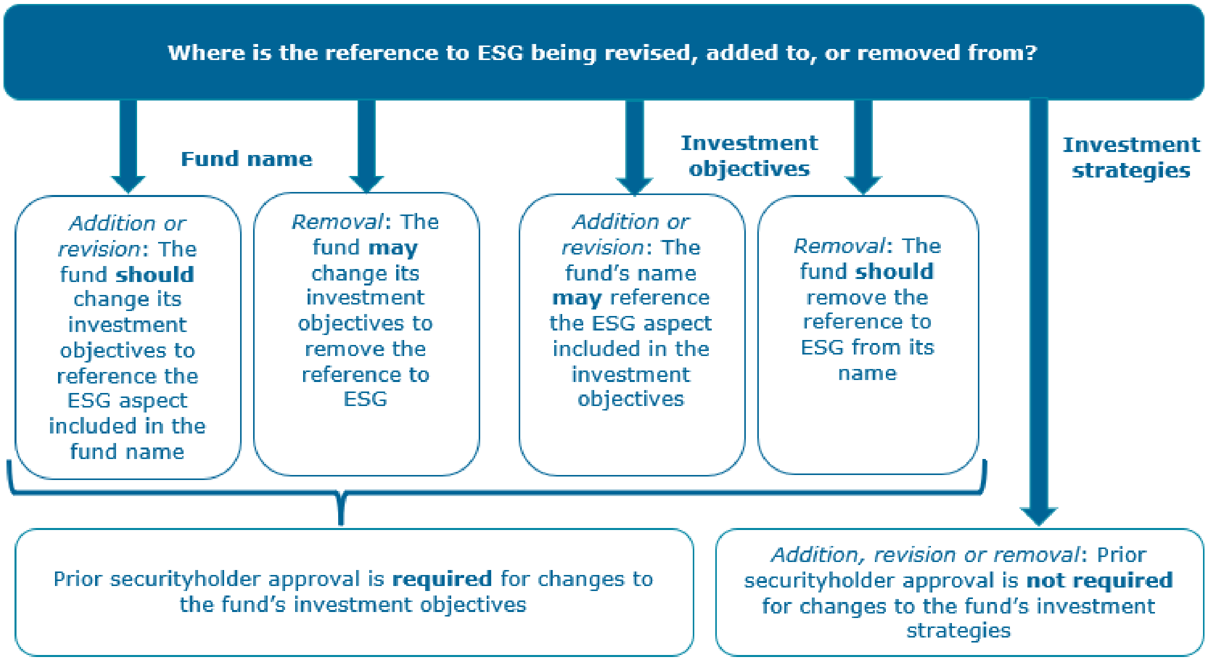
Prior securityholder approval: Staff remind IFMs that the addition or removal of references to ESG, or a change to the type of ESG focus of the fund, in the fundamental investment objectives of a fund requires prior securityholder approval, as illustrated in Figure 3.[30]

Changes to underlying fund: Some ESG Objective Funds have investment objectives that indicate that it invests in a single, named underlying fund. For such funds, if the ESG focus of the underlying fund, as identified in the investment objectives of the underlying fund, is changed or removed altogether, staff's view is that there has been a change to the fundamental investment objectives of the top fund.

Changes to investment strategies: Staff note that a fund that does not have ESG-related investment objectives may still use ESG strategies and may therefore reference ESG in its investment strategies disclosure without referencing ESG in its name or indicating that the fund is focused on ESG in its sales communications. Where an ESG strategy is not a material or essential aspect of a fund and is therefore not included in the fund's fundamental investment objectives, a fund that adds, revises or removes disclosure about the ESG strategy in its investment strategies disclosure is not subject to the requirement to obtain prior securityholder approval requirement, as illustrated in Figure 3.

[29] See the guidance above under "Investment objectives and fund names".
[30] Paragraph 5.1(1)(c) of National Instrument 81-102 *Investment Funds* (**NI 81-102**).

Figure 3.



VIII. Proxy voting and engagement policies and procedures

Key findings from ESG-Focused Reviews

Most of the comments raised in the ESG Prospectus Reviews in relation to the summary of the fund's proxy voting policies and procedures in the prospectus or AIF involved requesting that the summary of the proxy voting policies and procedures be revised to explain the ESG-related aspects of the policies and procedures, since the prospectus identified ESG-related proxy voting as an investment strategy of the fund.

Comments were also raised in a few circumstances in which there were inconsistencies in how the proxy voting strategy was described in the investment strategies section as compared to the summary of the proxy voting policies and procedures.

Guidance on proxy voting and engagement policies and procedures

(a) Proxy voting policies and procedures that address ESG matters

An investment fund must include in its prospectus and/or AIF,[31] as applicable, a summary of the policies and procedures that the fund follows when voting proxies relating to portfolio securities.[32]

[31] A fund that has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end must file an AIF in accordance with Part 9 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

[32] Item 30.1 of Form 41-101F2; Item 4.15(5) of Part A of Form 81-101F1; Item 12(7) of Form 81-101F2.

Further, an investment fund is also required to promptly send the most recent copy of its proxy voting policies and procedures to any securityholder upon request.[33]

Disclosure of a fund's proxy voting policies and procedures can provide clarity to investors about the ways in which proxy voting is used by ESG Objective Funds to achieve their ESG-related investment objectives, including the scope and limits of their use, and by ESG Strategy Funds as a principal investment strategy.

> If an ESG Objective Fund or ESG Strategy Fund uses ESG-focused proxy voting as a principal investment strategy, the prospectus and/or AIF, as applicable, should include a summary of the ESG aspects of the fund's proxy voting policies and procedures. This summary would provide clarity about how the voting rights attached to the fund's portfolio securities will be used to further the ESG Objective Fund's ESG-related investment objectives, or in the case of an ESG Strategy Fund, how the ESG-related proxy voting strategy is implemented.

General proxy voting or engagement approaches that address ESG matters: As discussed above under "Are ESG factors considered as part of the fund's investment process?", a fund that does not use ESG-focused proxy voting as a principal investment strategy but that is managed by an IFM that has general proxy voting policies and procedures that address ESG matters among other matters may, depending on the nature of the IFM's investment process, be a Non-ESG Fund or ESG Limited Consideration Fund. If the fund is an ESG Limited Consideration Fund, the prospectus and/or AIF, as applicable, should not suggest that ESG-focused proxy voting is a principal investment strategy of the fund, and where the summary of the fund's proxy voting policies and procedures refers to ESG matters, it should be clear about the role that the consideration of ESG factors plays in the proxy voting approach.

Website availability of proxy voting policies and procedures: In order to provide investors with greater transparency, staff also encourage all investment funds to make the most recent copy of their proxy voting policies and procedures available on their designated websites.

(b) Engagement policies and procedures that address ESG matters

Staff encourage all ESG Objective Funds and ESG Strategy Funds that use ESG-focused shareholder or issuer engagement as a principal investment strategy to make their shareholder or issuer engagement policies and procedures publicly available in order to provide investors with greater transparency into the scope and nature of the fund's use of engagement as an ESG strategy.

IX. Risk disclosure

Guidance on risk disclosure

An investment fund is required to describe, in its prospectus, any material risks associated with an investment in the fund,[34] including any risks associated with any particular aspect of the fundamental investment objectives and investment strategies.[35]

[33] Subsection 10.4(3) of NI 81-106.
[34] Item 9 of Part B of Form 81-101F1; Item 12 of Form 41-101F2.
[35] Instruction (2) to Item 9 of Part B of Form 81-101F1; Item 12.1(1) of Form 41-101F2.

Risk disclosure enables investors to better understand the potential material risks associated with investing in the fund, including the impact of those risks on a fund's performance.

(a) Risk disclosure by ESG-Related Funds

The risk disclosure of ESG-Related Funds enables investors to better understand the challenges faced by the fund in meeting its ESG-related investment objectives, if applicable, or using its ESG strategies.

An ESG-Related Fund should consider whether there are any material risk factors that are applicable to the fund as a result of the fund's ESG-related investment objectives and/or its use of ESG strategies and disclose any such risk factors. Examples may include concentration risk, risk of underperformance due to the fund's ESG-related focus, and risk arising from potential over-reliance on third-party ESG ratings in assessing the ESG performance of underlying holdings.

(b) ESG-related risk disclosure by all funds

The disclosure of material ESG-related risks by all types of funds, regardless of whether they are ESG-Related Funds, may assist investors with making informed investment decisions about how ESG-related issues can impact their investments.

All investment funds, regardless of whether they are ESG-Related Funds, should consider whether there are any material ESG-related risk factors that are applicable to the fund and disclose such risk factors where applicable. Examples of such risk factors may include climate change risk and bribery and corruption risks.

In order to be able to provide useful ESG-related risk disclosure, staff remind IFMs to ensure that their risk management framework takes ESG-related risks into account.

X. Continuous disclosure

Key findings from ESG-Focused Reviews

Most of the funds that were reviewed as part of the ESG-Focused Reviews met the continuous disclosure expectations set out in the 2022 Notice. However, there were two notable observations from the ESG-Focused Reviews pertaining to best practices and portfolio holdings.

Firstly, most funds did not follow the best practices relating to continuous disclosure that were set out in the 2022 Notice, including those related to MRFP disclosure about the fund's progress or status with regard to meeting the fund's ESG-related investment objectives and disclosure about past proxy voting records and shareholder engagements.

Secondly, during the course of the ESG-Focused Reviews, staff became aware of instances in which a fund had inadvertently held investments that should have been screened out based on the negative screens set out in the investment strategies of the fund.

Guidance on continuous disclosure

An investment fund must include, in its MRFP, a summary of the results of operations of the investment fund for the financial year to which the MRFP pertains, including a discussion of how the composition and changes to the composition of the investment portfolio relate to the fund's fundamental investment objective and strategies.[36] Staff note, however, that funds are only required to disclose information that is material.[37]

Continuous disclosure, including the MRFP, enables investors to monitor a fund's performance and evaluate its ability to meet its objectives on an ongoing basis. For funds that have ESG-related investment objectives, continuous disclosure can help prevent greenwashing by allowing investors to monitor the fund's ESG performance and therefore evaluate the fund's progress in terms of meeting its ESG-related investment objectives.

(a) Reporting on composition and changes to the composition of the investment portfolio

An ESG-Related Fund is required to disclose in its MRFP how the composition and changes to the composition of the investment portfolio relate to the fund's ESG-related investment objectives and/or strategies where such information is material.[38] For example, if a fund that excludes companies that are involved in gambling divests its holdings in a company because it has recently become involved in the gambling industry, the fund must disclose its divestment and the reason for the divestment in the MRFP, where such information is material.

ESG Limited Consideration Funds: While an ESG Limited Consideration Fund is less likely than an ESG Objective Fund and ESG Strategy Fund to change the composition of its investment portfolio due to its ESG investment strategies, there may be circumstances in which an ESG Limited Consideration Fund changes the composition of its investment portfolio due to its consideration of ESG factors. Where such information is material, an ESG Limited Consideration Fund is required to disclose this in its MRFP.[39]

Prohibited portfolio holdings: For an ESG-Related Fund whose investment strategies include negative screens, staff's view is that if the fund, at any point, holds any investments that should have been screened out in accordance with the negative screens set out in the prospectus, the fund should disclose the holding and information about the fund's divestment of the holding in its MRFP.

[36] Items 2.3(1) of Part B and 2.1 of Part C of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**).
[37] Item 1(d) of Part A of Form 81-106F1.
[38] See footnote 36 above.
[39] See footnote 36 above.

(b) Reporting on ESG-related outcomes

> In order to provide investors with meaningful disclosure about the ESG-related outcomes of a fund, staff encourage ESG Objective Funds to disclose, as part of the summary of the results of the fund's operations in the MRFP, the ESG-related aspects of those operations, including the fund's progress or status with regard to meeting its ESG-related investment objectives. For example, in the case of a fund whose investment objectives state that the fund will invest in companies that contribute to the fight against climate change, staff are of the view that investors would benefit from continuous disclosure that explains which companies the fund has invested in during the relevant period and how they have contributed to the fight against climate change.
>
> Staff are of the view that all ESG Objective Funds, not just impact funds, funds with a measurable ESG-related outcome, or funds that use certain ESG-related metrics or key performance indicators, should be able to report on whether they're achieving their ESG-related investment objectives. An ESG Objective Fund that uses any ESG strategies as part of its investment selection process in order to meet its ESG-related investment objectives, including a best-in-class strategy or negative screening strategy, can report on whether its portfolio composition is meeting its ESG-related investment objectives and whether the ESG strategies have been successfully applied during the time period covered by the MRFP.
>
> As part of the summary of the results of the fund's operations in the MRFP, staff encourage both ESG Objective Funds and ESG Strategy Funds to disclose any key quantitative metrics used by the IFM to assess whether the fund has satisfied any ESG considerations included in its investment objectives and/or investment strategies.

Reporting for funds that generate a measurable ESG outcome: Staff encourage ESG Objective Funds that intend to generate a measurable ESG outcome to report in their MRFPs on whether the fund is achieving that outcome. For example, where a fund's investment objectives refer to the reduction of carbon emissions, staff are of the view that investors would benefit from disclosure in the fund's MRFP that includes the quantitative key performance indicators for carbon emissions.

Reporting outside of the MRFP: In addition to the required disclosure in the MRFP, staff encourage ESG Objective Funds to provide investors with additional periodic information on how they are meeting their ESG-related investment objectives. We remind IFMs that websites and such non-regulatory documents are considered to be sales communications under NI 81-102, which is discussed further below under "Definition of sales communication".

Assessment, measurement and monitoring: In order to be able to provide useful disclosure about the fund's progress or status with regard to meeting its ESG-related investment objectives, staff encourage IFMs to regularly assess, measure and monitor the ESG performance of the ESG-Related Funds that they manage.

Unless otherwise noted, the above guidance relating to continuous disclosure applies to all ESG-Related Funds. The following guidance applies specifically to funds that use certain types of ESG strategies.

(a) Funds that use proxy voting as an ESG strategy

Past proxy voting records on websites: An investment fund is required to maintain a proxy voting record[40] and make its most recent annual proxy voting record available on its designated website, as well as promptly send it to any securityholder upon request.[41] While these requirements only apply to a fund's most recent annual proxy voting record, staff encourage all funds, particularly ESG Objective Funds and ESG Strategy Funds that use proxy voting in relation to ESG matters as a principal investment strategy, to make all of their annual proxy voting records, including historical records from previous years, available on their designated websites. In staff's view, such disclosure would provide greater transparency into how the fund's ESG-focused proxy voting strategy has historically been implemented, and in the case of an ESG Objective Fund, how the fund has historically used proxy voting to meet its ESG-related investment objectives.

MRFP disclosure: Staff encourage all ESG Objective Funds and ESG Strategy Funds that use proxy voting in relation to ESG matters as a principal investment strategy to include, as part of the summary of the results of the fund's operations in the MRFP, disclosure about how the past proxy voting records during that period align with the ESG-related investment objectives and/or strategies of the fund.

(b) Funds that use engagement as an ESG strategy

Staff encourage all ESG Objective Funds and ESG Strategy Funds that use engagement in relation to ESG matters as a principal investment strategy to provide disclosure about: (a) past engagement activities on their designated websites; and (b) how the fund's past engagement activities align with the ESG-related investment objectives and/or strategies of the fund as part of the summary of the results of the fund's operations in the MRFP.

XI. Sales communications

Key findings from ESG-Focused Reviews

As part of the ESG-Focused Reviews, staff identified a number of sales communication issues relating to misleading or inaccurate ESG-related statements, or statements that otherwise conflicted with prospectus disclosure.

The most common types of sales communication issues identified in the ESG-Focused Reviews are described below:

- **Statements about ESG-related investment objectives and strategies**: One of the most common issues raised by staff in relation to sales communications involved statements regarding the fund's ESG-related investment objectives or strategies that were misleading or inconsistent with the fund's prospectus disclosure. Some of the sales communications indicated that the fund's ESG focus was broader than the ESG focus identified in the prospectus, such as referring to "ESG" or "social responsibility" where the focus of the fund was only one aspect of ESG, such as environmental factors or an even narrower focus, such as screening out fossil fuels. There were also inconsistencies between the

[40] Section 10.3 of NI 81-106.
[41] Section 10.4 of NI 81-106.

description of specific ESG strategies or factors in the prospectus as compared to the sales communication.

- **Statements regarding applicability of IFM's ESG approach to its fund line-up**: Another common sales communication issue involved statements on the websites of IFMs that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process when in reality, only a smaller subset of the IFM's funds consider ESG factors. This discrepancy was often identified where there were statements on the websites of an IFM that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process despite ESG factors not being referenced in the investment strategies disclosure in the prospectuses of those funds. In some cases, these statements did not accurately reflect that only a subset of the IFM's funds consider ESG factors while in other cases, these statements did not accurately reflect the limited extent to which ESG factors are considered in the investment process of most of the IFM's funds.

- **Statements regarding consideration of ESG factors throughout the investment process**: A related sales communication issue that staff identified in the ESG-Focused Reviews involved statements on the websites of IFMs that suggested that the IFM considered ESG factors as part of their broader investment process when in reality, for some of the IFM's funds, ESG factors were only considered as part of the IFM's stewardship activities (e.g. proxy voting and shareholder engagement), but not as part of the investment selection process.

- **Statements regarding ESG-related outcomes**: Staff identified several instances of sales communications that included inaccurate claims about the fund's ESG-related outcomes. For example, some of the sales communications indicated that the fund was aiming to produce specific ESG-related outcomes or impacts, despite the fund only using a best-in-class approach. Other sales communications inaccurately indicated that certain outcomes or impacts achieved by the underlying companies were outcomes or impacts of the fund itself, while others made claims about certain outcomes or impacts without substantiating those claims.

- **Inclusion of fund-level ESG ratings, scores, or rankings**: Staff identified a few websites and sales communications that included fund-level ESG ratings, scores or rankings in a manner that was not consistent with the applicable guidance in the 2022 Notice. In particular, staff identified the following issues: (a) disclosing fund-level ESG ratings, scores or rankings developed by the IFM of the fund; (b) where a fund-level ESG rating was disclosed for a fund that does not have ESG-related investment objectives, not disclosing the same type of fund-level ESG rating for all of the other funds that it manages where such ratings are available; and (c) not including all of the accompanying disclosure set out in the 2022 Notice that staff believe IFMs should include in order to make the inclusion of fund-level ESG ratings in the sales communication not misleading, including, in particular, not providing a link to the fund's website containing the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months.

Guidance on sales communications

A sales communication pertaining to an investment fund is prohibited from including a statement that conflicts with information that is contained in the fund's regulatory offering documents.[42] In addition, a sales communication pertaining to an investment fund is also prohibited from being untrue or misleading.[43]

The Companion Policy to NI 81-102 (**81-102CP**) lists some of the circumstances in which a sales communication would be misleading. One such circumstance is if the sales communication contains a statement that lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement in the sales communication not misleading.[44] Another circumstance is if the sales communication contains a statement about the characteristics or attributes of an investment fund that makes exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment fund or an investment in securities issued by the fund.[45]

In addition, staff are of the view that sales communications should not contain statements that are vague or exaggerated, or that cannot otherwise be verified.[46]

Sales communications, including websites, play a key role in providing information about the investment objectives, investment strategies, and performance of funds that investors may consider investing in. Therefore, sales communications relating to ESG that are true, not misleading, and consistent with a fund's regulatory offering documents are important in order to prevent greenwashing.

(a) Definition of sales communication

Staff's view is that webpages on an IFM's website and other communications that discuss the IFM's ESG investing approach are sales communications, with the exception of Required ESG-Related Initiative Communications (as defined below), for the following reasons:

- **Promoting a particular investment strategy**: 81-102CP states that an advertisement or other communication that promotes any particular investment strategy would be a sales communication.[47] In staff's view, the consideration of ESG factors as part of a fund's investment process is an investment strategy.

- **Not an image advertisement**: Staff are of the view that an advertisement or other communication that discusses an investment strategy used by the IFM's funds, including an ESG investing approach, is not merely promoting the corporate entity or the expertise of the IFM,[48] as the communication is promoting an investment strategy used by funds managed by the IFM, which would make it a sales communication. For greater clarity, staff's view is that an advertisement or other communication that references ESG but that

[42] Paragraph 15.2(1)(b) of NI 81-102.
[43] Paragraph 15.2(1)(a) of NI 81-102.
[44] Paragraph 13.1(1)1 of Companion Policy 81-102CP to National Instrument 81-102 *Investment Funds* (**81-102CP**).
[45] Subparagraph 13.1(1)3(b) of 81-102CP.
[46] OSC Staff Notice 81-720 *Report on Staff's Continuous Disclosure Review of Sales Communications by Investment Funds.*
[47] Subsection 2.15(3) of 81-102CP.
[48] Subsection 2.15(3) of 81-102CP states the following: "The Canadian securities regulatory authorities are of the view that image advertisements that are intended to promote a corporate identity or the expertise of an investment fund manager fall outside the definition of 'sales communication'."

does not discuss the IFM's ESG investing approach and only promotes the IFM's corporate entity or the expertise of the IFM is not a sales communication.

- **Inducing the purchase of securities**: Staff are of the view that an advertisement or other communication that discusses an investment strategy used by the IFM's funds, including an ESG approach, is made to induce the purchase of securities of the funds managed by the IFM,[49] since investors can only obtain exposure to the investment strategy being promoted through investing in the funds.

Required ESG-Related Initiative Communications: In staff's view, there is one circumstance in which public communications that include information about an IFM's ESG investing approach are not sales communications. Where such communications are explicitly required to be made public as part of the IFM's commitment to a voluntary ESG-related initiative that is: (a) administered by an organization that is not affiliated with the fund or its IFM, portfolio adviser or principal distributor; and (b) widely recognized (**Required ESG-Related Initiative Communications**), staff's view is that they are not sales communications, as they do not promote the IFM's ESG investing approach and are instead intended to fulfill the IFM's requirements under the initiative. However, staff are of the view that any such communications made purely on a voluntary basis by the IFM are sales communications, as they are promotional in nature. Examples of voluntary ESG-related initiatives are included below under "Commitments to ESG-related initiatives".

Applicability of sales communication to all of an IFM's funds: Where a sales communication includes statements about the IFM's ESG investing approach but does not identify a specific fund or group of funds to which the statements apply or do not apply, staff's view is such a sales communication pertains to all of the funds managed by the IFM.

(b) Use of disclaimers or explanatory language

As part of the ESG-Focused Reviews, staff identified a number of sales communications that required disclaimers or other explanatory language to make the sales communication not misleading. Where disclaimers or any other explanations, qualifications, limitations or other statements are necessary or appropriate to make a sales communication not misleading, staff's view is that such language should be included in the sales communication itself, unless there are physical or technical limitations that would prevent the sales communication from including such language.

If there are such limitations, staff's view is that the disclaimer or explanatory language should be accessible in a different document or webpage within "one click" of the sales communication. In staff's view, the sales communication should specifically indicate that the disclaimer or explanatory language can be accessed on the other document or webpage, and where technologically possible, the link should directly lead to the disclaimer or explanatory language on that other document or webpage. In staff's view, it is not sufficient for the sales communication to simply include a link to another document or webpage which contains the disclaimer or explanatory language if it would not be apparent from the sales communication that the disclaimer or explanatory language is contained on the other document or webpage.

[49] The definition of "sales communication" in section 1.1 of NI 81-102 includes communications that are made "to a person or company that is not a securityholder of the investment fund … to induce the purchase of securities of the investment fund".

Where it is not possible to include a disclaimer or explanatory language in the sales communication itself or on a different document or webpage within "one click" of the sales communication (which may be the case with billboards, television advertising, or certain forms of social media, for example) staff's view is that the sales communication should be created or written in such a way as to not need any disclaimers or explanatory language to make it not misleading.

(c) Sales communications relating to a fund's ESG focus, use of ESG strategies, etc.

A sales communication pertaining to an investment fund should accurately reflect the extent to which the fund is focused on ESG, as well as the particular aspect(s) of ESG that the fund is focused on. In staff's view, a fund should not include statements in its sales communications that indicate that it is focused on ESG unless the fund is an ESG Objective Fund.

In general, staff's view is that a sales communication that does not accurately reflect the extent and nature of a fund's focus on ESG, or lack thereof, would both be misleading and conflict with the information in the fund's regulatory offering documents.

Examples of such sales communications may include those that do any of the following:

- suggest that a fund is focused on ESG when it is not
- suggest that a fund is focused on all three components of ESG when it is only focused on one component, such as governance
- suggest that ESG factors are considered as part of the investment process of, or that ESG strategies are used by, all or most of an IFM's fund line-up when ESG factors are only considered, or ESG strategies are only used, by a smaller subset of the IFM's funds
- misrepresent the extent and nature of the use of ESG strategies by the fund (or by all or most of an IFM's fund line-up), including:
  - in the case of an ESG Limited Consideration Fund, suggesting that the consideration of ESG factors plays a more significant role in the investment process than it actually does or being unclear about the limited role that the consideration of ESG factors plays in the investment process
  - in the case of a fund where the use of an ESG strategy is discretionary, stating that the fund uses the ESG strategy without clearly disclosing that the use of the strategy is discretionary
  - suggesting that ESG factors are considered as part of the investment process as a whole where ESG factors are only considered in a specific part of the investment process (e.g. suggesting that ESG factors are considered as part of the investment selection process when they are only considered as part of the IFM's stewardship activities)
  - failing to:
    - disclose that there is a maximum limit to the fund's use of those strategies;
    - actually use the advertised ESG strategies, including using different types of ESG strategies altogether; or
    - prominently disclose material aspects of the ESG strategies.

Staff's views on the types of ESG-related statements that may and may not be included in the sales communications of each of the different types of funds covered in this Notice are as follows:

- **ESG Objective Funds**: An ESG Objective Fund may include statements in its sales communications that accurately reflect the extent to which the fund is focused on ESG, as well as the particular aspect(s) of ESG that the fund is focused on.
- **ESG Strategy Funds**: An ESG Strategy Fund may include statements in its sales communications that accurately reflect the types of ESG strategies used by the fund and the extent to which the fund uses ESG strategies. However, such funds should not exaggerate the extent of the fund's focus on ESG in their sales communications.
- **ESG Limited Consideration Funds:** An ESG Limited Consideration Fund may include statements in its sales communications regarding the fund's use of ESG strategies as part of its investment process (including its consideration of ESG factors), but such statements should: (a) be clear about the limited role that the consideration of ESG factors plays in the fund's investment process, including identifying the specific parts of the investment process in which ESG factors are considered, the weight given to ESG factors, and the impact that ESG factors will have on the portfolio selection process; and (b) only be included if disclosure relating to the limited role that the consideration of ESG factors plays in the funds' investment process (including identifying the specific parts of the investment process in which ESG factors are considered) is included in the prospectus.[50] For greater clarity, this includes sales communications relating to the IFM's ESG investing approach where the consideration of ESG factors plays a limited role in the investment process.
- **Non-ESG Funds**: A Non-ESG Fund should not refer to ESG in its sales communications, with the exception of factual information about the ESG characteristics of its portfolio (such as fund-level ESG ratings, scores or rankings, or ESG metrics). However, the factual information about the ESG characteristics of its portfolio should not be framed in a way that suggests that the Non-ESG Fund is aiming to achieve any ESG-related goals or is trying to create a portfolio that meets certain ESG-related criteria.

In staff's view, sales communications that promote an IFM's ESG approach to managing its funds should be clear about how the IFM's ESG approach applies to all of its funds, to the extent that the application of the ESG approach or use of different strategies varies across different funds.

Staff have noticed that some ESG-Related Funds provide more detail about the fund's ESG strategies in their sales communications than they do in their prospectuses. Staff remind IFMs that a prospectus must provide full, true and plain disclosure of all material facts, including the investment strategies of the fund.

[50] See the guidance above on investment strategies disclosure for ESG Limited Consideration Funds under "ESG Limited Consideration Funds".

(d) Sales communications that reference a fund's ESG performance

A fund must not include misleading statements in its sales communications about the ESG performance or ESG-related outcomes of the fund.[51]

Examples of such sales communications may include those that do any of the following:

- make inaccurate claims about the fund's ESG performance or results
- make inaccurate claims about the existence of a direct causal link between the fund's investment strategies and ESG performance or results
- manipulate elements of disclosure to present the fund's ESG performance or results in a positive light, such as cherry-picking data.

(e) Sales communications that include fund-level ESG ratings, scores or rankings

Staff understand that some IFMs may wish to include fund-level ESG ratings, scores or rankings on their websites or other sales communications. These would include, but are not limited to, fund-level ESG ratings or scores that are primarily weighted averages of the company-level ESG ratings or scores of the underlying portfolio holdings of the fund (**Portfolio-Based ESG Ratings**), and fund-level ESG rankings based solely on Portfolio-Based ESG Ratings (**Portfolio-Based ESG Rankings**).

While staff are of the view that the Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings that staff have observed to date are not "performance data" and "performance ratings or rankings" within the context of Part 15 of NI 81-102 (**Part 15**), other types of fund-level ESG ratings, scores and rankings that are not Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings may be considered "performance data" or "performance ratings or rankings". Similarly, while staff are of the view that the comparison of Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings that staff have observed to date are not comparisons of performance within the context of Part 15,[52] the comparison of other types of fund-level ESG ratings, scores and rankings that are not Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings may be considered to be comparisons of performance.

If a type of fund-level ESG rating, score or ranking is considered "performance data" or a "performance rating or ranking", or a comparison of that type of fund-level ESG rating, score or ranking is considered to be a comparison of performance, sales communications that include this type of fund-level ESG rating, score or ranking, or a comparison thereof, may not be able to comply with some of the provisions of Part 15 that relate to "performance data", "performance ratings or rankings" and comparisons of performance (the **Performance Requirements**). Staff remind IFMs to review and consider the Performance Requirements to determine whether such sales communications are in compliance with Part 15 and encourage IFMs that wish to include other types of fund-level ESG ratings, scores and rankings in their sales communications to contact staff of their principal regulator as needed.

[51] See footnote 43.
[52] See, for example, subsection 15.3(1) and sections 15.7 and 15.7.1 of NI 81-102.

Any sales communication that includes fund-level ESG ratings, scores or rankings, including Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings, must not be misleading. In staff's view, a sales communication that includes fund-level ESG ratings, scores or rankings may be misleading for a number of reasons, including any of the following:

- there are conflicts of interest involving the provider that prepares the fund-level ESG rating, score or ranking;
- the selection of the specific fund-level ESG rating, score or ranking is the result of cherry-picking fund-level ESG ratings, scores or rankings in order to present the fund's ESG characteristics or performance in a positive light;
- the selected fund-level ESG rating, score or ranking is not representative of the ESG characteristics or performance of the fund;
- the sales communication does not include explanations, qualifications, limitations or other statements necessary or appropriate to make the inclusion of the fund-level ESG ratings, scores or rankings in the sales communication not misleading.

Guidance on how to avoid these four issues is provided below.

Staff note, however, that a sales communication that includes fund-level ESG ratings, scores or rankings may also be misleading for reasons that have not been identified in this Notice and remind IFMs to review and consider the requirements under Part 15 when preparing sales communications.

Conflicts of interest

To address conflicts of interest, staff's view is that the fund-level ESG rating, ranking or score that is included in the sales communication should be prepared by a provider that:

(a) rates, scores or ranks the ESG characteristics or performance of the fund through an objective methodology that is (i) applied consistently to all funds rated, scored or ranked by it, and (ii) disclosed on the provider's website;

(b) is not a member of the organization of the fund;[53] and

(c) is not paid to assign a fund-level ESG rating, score or ranking to the fund by the promoter, manager, portfolio adviser, principal distributor or participating dealer of any fund or any of their affiliates.

In addition, for a fund-level ESG ranking, the ranking should be based on a published category of funds, such as Canadian equity funds, that is not established or maintained by a member of the organization of the fund.

Selection of fund-level ESG rating, score or ranking

To help ensure that the selection of the fund-level ESG rating, score or ranking is not the result of cherry-picking, staff are of the view that the selection of the rating, score or ranking should be consistent with the following parameters:

[53] See the definition of "member of the organization" in section 1.1 of National Instrument 81-105 *Mutual Fund Sales Practices*.

(a) the IFM should consider whether the selected fund-level ESG rating, score or ranking is an accurate representation of the fund (and its portfolio, if the fund-level ESG rating, score or ranking is based on the fund's portfolio) during the time period that the sales communication appears or is in use and therefore, whether the inclusion of the selected fund-level ESG rating, score or ranking in a sales communication may be misleading;

(b) for a fund-level ESG ranking, the ranking should be based on a published category of funds, such as, for example, Canadian fixed income funds, that provides a reasonable basis for evaluating the ESG characteristics or performance of the fund;

(c) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Objective Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds that it manages;

(d) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Strategy Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds and ESG Strategy Funds that it manages;

(e) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Limited Consideration Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds, ESG Strategy Funds, and ESG Limited Consideration Funds that it manages; and

(f) if a fund-level ESG rating, score or ranking is disclosed on the website of a fund that is a Non-ESG Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the funds that it manages.

However, staff do not view paragraph (c) as applicable to an ESG Objective Fund that has a specialized ESG focus, such as a fund focused on climate change, if the fund-level ESG rating, score or ranking that is being disclosed is specific to the specialized ESG focus of the fund, such as a rating relating to carbon emissions.

Staff note that the principles from paragraphs (c), (d), (e) and (f) would also apply to sales communications that cover more than one fund and sales communications for which different versions of the same sales communication are produced for most or all of the IFM's funds. An example of the latter type of sales communication is a "fund profile", which is typically a short overview document that covers one fund. IFMs generally produce and make publicly available a fund profile document for most or all of the IFM's funds, and each fund profile document usually uses the same format and includes the same type of content. For both types of sales communications, staff would have concerns about cherry-picking fund-level ESG ratings, scores or rankings to present a particular fund's ESG characteristics or performance in a positive light if the rating, score or ranking was not included in the sales communication(s) for all such applicable funds in accordance with paragraphs (c), (d), (e) and (f). For greater clarity, staff do not consider the principles from paragraphs (c), (d), (e) and (f) to be applicable to sales communications that only cover one fund and for which different versions of the same sales communication are not produced for most or all of the IFM's funds.

In addition, staff encourage funds that wish to disclose fund-level ESG ratings, scores or rankings in their sales communications to disclose fund-level ESG ratings, scores or rankings from at least 2 different providers.

Representativeness of fund's ESG characteristics or performance

Furthermore, for a Portfolio-Based ESG Rating, if only a certain percentage of a fund's underlying portfolio is covered by the Portfolio-Based ESG Rating (i.e. if less than 100% of the fund's underlying portfolio has been rated), staff's view is that the IFM should consider whether the portion of the portfolio that has not been rated has substantially similar ESG characteristics to the rest of the portfolio and therefore, whether the Portfolio-Based ESG Rating is an accurate representation of the ESG characteristics or performance of the entire portfolio. If the portion of the portfolio that has not been rated does not have substantially similar ESG characteristics as compared to the rest of the portfolio, the Portfolio-Based ESG Rating may not be an accurate representation of the entire portfolio and therefore, the inclusion of the Portfolio-Based ESG Rating in a sales communication may be misleading.

The above guidance also applies to Portfolio-Based ESG Rankings that are based on Portfolio-Based ESG Ratings where less than 100% of the fund's underlying portfolio has been rated.

Accompanying disclosure

Finally, to avoid being misleading, staff are of the view that a sales communication that includes fund-level ESG ratings, scores or rankings should include the following disclosure:

(a) the name of the provider that prepared the fund-level ESG rating, score or ranking;

(b) the date or time period covered by the fund-level ESG rating, score or ranking:

    (i) if the fund-level ESG rating, score or ranking is as of a specific point in time, the date of the specific point in time;

    (ii) if the fund-level ESG rating, score or ranking covers a time period:

        (A) the period of time; and

        (B) a brief explanation of how the fund-level ESG rating, score or ranking was determined for the specified time period (e.g. if the fund-level ESG rating, score or ranking is based on an average of the monthly fund-level ESG ratings, scores or rankings from the past 12 months);

(c) how often the fund-level ESG rating, score or ranking is updated by the provider (e.g. on a monthly basis);

(d) cautionary language stating that the fund's ESG characteristics and performance may differ from time to time;

(e) for Portfolio-Based ESG Ratings, the percentage of the fund's underlying portfolio holdings that has been rated;

(f) for Portfolio-Based ESG Rankings, the percentage of the fund's underlying portfolio holdings that has been rated for the purpose of the Portfolio-Based ESG Rating on which the Portfolio-Based ESG Ranking is based;

(g) for fund-level ESG ratings or scores, the range of the fund-level ESG rating or score (e.g. AAA to CCC);

(h) for fund-level ESG rankings:

    (i) the classification of the peer group used for the ranking (e.g. Canadian equity);

    (ii) the number of funds in the peer group; and

    (iii) the fund-level ESG rating or score of the fund that was used to determine the fund's fund-level ESG ranking;

(i) if the fund is not an ESG Objective Fund, cautionary language that states that the fund does not have ESG-related investment objectives;

(j) if applicable, cautionary language that states that the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) does not evaluate the ESG-related investment objectives of, or any ESG strategies used by, the fund and is not indicative of how well ESG factors are integrated by the fund;

(k) a one- or two-sentence summary explaining what the fund-level ESG rating, score, or ranking measures or assesses, including:

    (i) for a fund-level ESG ranking, language identifying the fund-level ESG rating or score that the ranking is based on;

    (ii) for a Portfolio-Based ESG Rating or Portfolio-Based ESG Ranking, language that states that the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) is a weighted average ESG rating or score of the company-level ESG ratings or scores of the underlying portfolio holdings of the fund; and

    (iii) for a fund-level ESG rating, score or ranking that is not a Portfolio-Based ESG Rating or Portfolio-Based ESG Ranking, an explanation of what the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) measures or assesses;

(l) if the sales communication is online, a link to the full methodology of the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based);

(m) if the sales communication is not an online sales communication, language explaining how to easily access, free of charge, the full methodology of the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based);

(n) if applicable, a statement indicating that other providers may also prepare fund-level ESG ratings or scores (or in the case of fund-level ESG rankings, the fund-level ESG ratings or scores on which the rankings are based) using their own methodologies, which may differ from the methodology used by the provider;

(o) if the sales communication is online, a link to the fund's website containing the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months;

(p) if the sales communication is not an online sales communication, language explaining how to easily access, free of charge, the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months; and

(q) a cross-reference to the fund's prospectus for further information about the fund's investment objectives and strategies.

In addition, staff encourage funds to disclose separate fund-level ratings, scores or rankings, as applicable, for each of the three components of ESG.

The above accompanying disclosure should be clear and not buried within fine print.

Staff note that while the above list of accompanying disclosure has been provided to assist IFMs in the preparation of sales communications for their funds, the list is non-exhaustive and a sales communication that includes fund-level ESG ratings, scores or rankings and the above accompanying disclosure may still be misleading for other reasons.

XII. Commitments to ESG-related initiatives

Guidance on commitments to ESG-related initiatives

Staff recognize that some IFMs are signatories to, or participants in, voluntary ESG-related initiatives, such as the Principles for Responsible Investment, Task Force on Climate-related Financial Disclosures, and the Net Zero Asset Managers Initiative, and publicly disclose this information on websites and in other communications.

For IFMs that are signatories to, or participants in, ESG-related initiatives that are at the entity-level and that do not relate to the investment strategies of the funds managed by the IFM (including the IFM's ESG investing approach), staff's view is that any disclosure of their signatory status or commitment to these initiatives should be clear that the commitment is at the entity-level rather than at the fund-level, and where applicable, that the funds managed by the IFM may not be focused on ESG.

Staff's views on public communications that include information about an IFM's ESG investing approach in relation to its commitment to a voluntary ESG-related initiative are discussed above under "Definition of sales communication".

F. Conclusion

Full, true and plain disclosure is essential to maintaining and strengthening investor confidence and efficient capital markets. In addition, it is important that investment funds be marketed to investors using sales communications that are not untrue or misleading, and that are consistent with a fund's regulatory offering documents. Staff will continue to monitor the regulatory disclosure documents and sales communications of ESG-Related Funds and any other funds that market themselves as being ESG-Related Funds and consider future policy initiatives as needed.

We encourage IFMs to consider the guidance in this Notice when preparing the regulatory disclosure documents and sales communications of investment funds, particularly ESG-Related Funds.

Questions

Please refer your questions to any of the following:

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