

The logo for K&L GATES is displayed in white, uppercase letters on an orange rectangular background. The background of the entire slide features a blurred cityscape at night with a digital overlay of a world map and various financial charts, including candlestick and line graphs, in shades of blue and white.

K&L GATES

# What's in a Fund Name? SEC Approves Changes to the Fund Names Rule

Lance Dial, Partner, Boston  
Abigail Hemnes, Partner, Boston  
Franklin Na, Partner, Washington, DC  
George Zornada, Partner, Boston

# HOW AND WHY ARE WE HERE?

- Current Rule 35d-1:
  - Applies to investment types, industries, or geographies; tax-exempt investments
  - Does not apply to investment strategies (value investing, growth investing, ESG strategies, etc.)
- Amended Rule 35d-1:
  - Expands scope of rule to include names with “particular characteristics”
  - Requires terms to be defined with specific criteria
  - Requires notional valuation of derivatives instruments, generally
  - 90 day correction period



## WHAT TERMS ARE IN? WHAT TERMS ARE OUT?

- Investment types, industries, geographies, investments with “particular characteristics”
- What are “particular characteristics”?
  - Growth, value, ESG, etc.
  - “certain” thematic investments
- What are not “particular characteristics”?
  - Portfolio wide characteristics
  - Asset allocations
  - ESG “uplift” strategies



# COMPLIANCE MATTERS

- What stays the same:
  - Time of purchase test – sort of
  - “Under normal circumstances”
- What is new:
  - “Meaningful nexus between the given investment and the investment focus”
  - Real time recordkeeping
  - Quarterly review
  - 90 Day Cure Period
  - “Antithetical investments”



# ESG NAMES & INDEX FUNDS

## ■ *ESG Terms*

- Funds with ESG terms in their names are subject to the rule.
- Note: Further SEC action may be forthcoming.

## ■ *Index Funds*

- 80% policy with respect to its underlying index, but not with respect to other terms in its name.
- Written policies and procedures designed to ensure that the indexes they have selected to invest in do not have materially misleading or deceptive names themselves.



# UNLISTED CLOSED-END FUNDS AND BDCs

- Prohibited from changing 80% policy without shareholder vote, unless:
  - CEF or BDC conducts a tender or repurchase offer in advance of the change to the 80% policy;
  - CEF or BDC provides at least 60 days' prior notice to shareholders of the change to the 80% policy in advance of that offer;
  - Offer is not oversubscribed; and
  - Shares purchased at NAV.



# DERIVATIVES

- Notional value required
- Required adjustments:
  - Convert interest rate derivatives to their 10-year bond equivalents
  - Delta-adjust the notional amount of options
- Permitted adjustments:
  - Deductions available for cash, cash equivalents, US Treasury securities and the value of the asset sold short
- Exclusions:
  - Derivatives used to hedge currency if the notional amounts of the derivatives do not exceed the value of the hedged investments by more than 10%
  - Closed-out derivatives positions



# RECORDKEEPING REQUIREMENTS

- Funds required to have 80% policies also required to maintain written records of:
  - Investments included in the 80% basket and the basis for their inclusion **at the time the fund invested in the asset**;
  - The value of the 80% basket, as a percentage of value of the fund's **assets at the time the fund invested in the asset**;
  - The fund's quarterly review and records of investments included in the 80% basket and basis for inclusion; and
  - Documentation of any strategy drift and related response.





# N-PORT REQUIREMENTS

- Funds required to have an 80% policy, other than money market funds and BDCs, must report the following information on Form N-PORT for the third month of each quarter:
  - Whether an investment is in such fund's 80% basket;
  - The value of such fund's 80% basket, as a percentage of the value of fund assets; and
  - The definitions of terms used in the fund's name, including the specific criteria the fund uses to select the investments that the term describes.



# NOTICE REQUIREMENTS

- Funds must provide notice of changes to names subject to Names Rule with notice of any corresponding change to an 80% policy.
- The notice must include:
  - A description of the fund's 80% policy;
  - The nature of the change to the 80% policy;
  - The fund's old and new names; and
  - The effective date of any investment policy or name changes.
- E-Delivery: Prominent notice currently required in written notices must be in the subject line of communications for electronic transmittal.



# WHAT'S NEXT FOR COMPLIANCE?

- Compliance Dates:
  - Effective Date: 60 days following publication in the Federal Register.
  - Larger Entities: 24 months following the effective date to comply with the Amendments.
  - Smaller Entities: 30 months following the effective date to comply with the Amendments.
- To Do During Compliance Period:
  - Evaluate existing fund names
  - Revise, update or develop name, 80% policy
  - Revise policies and procedures
  - Obtain board approval, prepare filings, etc.



## DISCUSSION: IMPACT ON SAMPLE NAMES

- XYZ Adviser Fund A
- XYZ Growth Portfolio Fund
- XYZ Value Approach Fund
- XYZ Emergent 3D Printing Technology Fund
- XYZ Technology and Growth Fund
- XYZ Technology and Real Return Fund
- XYZ Sustainable Growth Fund



# CONCLUSION

- Questions?



K&L GATES