

January 13, 2025

Client Alert | Investment Management



The Names Rule Pizza Shop: Menu Updates

The U.S. Securities and Exchange Commission (SEC) Division of Investment Management staff has published responses related to the SEC's 2023 amendments (2023 Amendments) to Rule 35d-1 (Names Rule) under the Investment Company Act of 1940 (1940 Act).¹ The responses (2025 FAQs), released January 8, revised and withdrew prior responses to frequently asked questions that were previously issued by the staff following the initial adoption of the Names Rule (2001 FAQs).²

While the 2025 FAQs removed certain 2001 FAQs that had become outdated or inapplicable in light of the 2023 Amendments, the most useful takeaways from the 2025 FAQs are the clarifications provided regarding the continued applicability of the remaining 2001 FAQs with the revisions discussed below. Of the clarifications provided, the most notable responses were the staff's views on the treatment of revised fundamental policies and the terms "high-yield" and "income" under the 2023 Amendments. The 2025 FAQs did not, however, go beyond the scope of the prior 2001 FAQs and, accordingly, leave more novel interpretive questions raised by the 2023 Amendments unanswered at this time.

Note: A chart highlighting the 2025 FAQs revisions to their corresponding 2001 FAQs is included in [Appendix A](#). For a comprehensive summary of the 2023 Amendments, view our previous client alert, "[The Names Rule Pizza Shop: No Sushi for You!](#)"

Highlights from the 2025 FAQs

- **Revised Fundamental Policies.** The staff noted, under certain circumstances, it would be consistent with current requirements under the 1940 Act for a fund to revise an existing 80% fundamental policy to comply with the 2023 Amendments without shareholder approval, to the extent the revision did not constitute a deviation from the existing policy or some other existing fundamental policy. As an example, the staff noted its view that a fund adding a "growth"

¹ [Division of Investment Management: Frequently Asked Questions: 2025 Names Rule FAQs \(January 8, 2025\); Investment Company Names, Investment Company Act Release No. 35000](#) (September 20, 2023). In issuing the 2023 Amendments to the Names Rule, the SEC stated that, among other items, the staff would be reviewing the 2001 FAQs and stated that portions of the 2001 FAQs may be moot, superseded or otherwise inconsistent with the final amendments and, therefore, may be withdrawn by the staff.

² [Frequently Asked Questions about Rule 35d-1 \(Investment Company Names\) \(2001 FAQs\)](#).

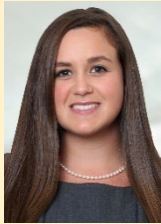
component to an existing 80% fundamental policy related to investing in equity securities generally would not be considered a “deviation” requiring shareholder approval. In addition to reviewing applicable state laws and a fund’s charter and bylaws, the staff noted a fund would need to evaluate whether revising a fundamental policy or adopting a new fundamental policy would require shareholder approval based on the fund’s individual circumstances.

- **Single-State Tax-Exempt Funds.** The staff restated its current position that single-state tax-exempt or municipal funds may include securities of issuers located outside of the named state in the fund’s 80% basket if the securities pay interest that is exempt from both federal income tax and the tax of the named state, provided that the fund discloses in its prospectus that it may invest in tax-exempt securities of issuers located outside of the named state.
- **Municipal Funds.** The staff reiterated its position that the terms “municipal” and “municipal bond” in a fund’s name suggest that the fund’s distributions are exempt from income tax and therefore such funds must adopt fundamental policies in compliance with the Names Rule. The staff also restated its position from the 2001 FAQs that funds that use the term “municipal” rather than “tax-exempt” may count securities that generate income subject to the alternative minimum tax toward the 80% investment requirement, while funds that use the term “tax-exempt” may not.
- **High-Yield.** The staff noted that the term “high-yield” is generally understood to describe corporate bonds with particular characteristics (i.e., below certain creditworthiness standards) and, therefore, would still generally require an 80% policy when used in a fund’s name. However, due to the market for below-investment-grade municipal bonds being smaller and relatively less liquid than its taxable counterpart when used in conjunction with the term “municipal” or “tax-exempt,” a fund would not be required to adopt an 80% policy with respect to the term “high-yield,” consistent with the historical treatment of these funds.
- **Money Market.** The staff indicated that the term “money market” in a fund’s name alone does not require an 80% policy; however, if a “money market” fund’s name refers to a type of money market instrument (e.g., “Treasury” or “Government”), an 80% policy would be required with respect to the referenced instrument.
- **Tax-Sensitive.** The staff provided its view that the term “tax-sensitive” and similar terms such as “tax-efficient,” “tax-advantaged,” “tax-managed” and “tax-aware” do not require an 80% policy as those terms reference overall characteristics of a fund’s portfolio and, therefore, indicate the fund’s objectives without communicating to investors the particular characteristics of the investments that will make up the fund’s portfolio.
- **Income.** The staff indicated that the term “income” in a fund’s name, when not referring to “fixed income,” relates to a portfolio-wide result and, therefore, does not alone require an 80% policy.
- **Withdrawn FAQs.** The staff also rescinded certain of the 2001 FAQs, primarily those that were outdated, related to items that are no longer relevant in light of the 2023 Amendments or that were explicitly addressed in the adopting release for the 2023 Amendments (e.g., references to capitalization ranges or bond maturities and durations). [Review the withdrawn FAQs in this chart published by the staff.](#)

Key Takeaways

- The 2025 FAQs do not significantly depart from the staff's views in the corresponding 2001 FAQs but offer some welcomed guidance and clarity regarding revised fundamental policies and the terms "income" and "high-yield" under the 2023 Amendments.
- The rescinded 2001 FAQs will likely not affect a fund group's intended approach to compliance.
- The staff reiterated its position that funds that are not required to adopt an 80% policy are still subject to Section 35(d)'s general prohibitions on materially deceptive or misleading names and the federal anti-fraud provisions.
- Will there be more? The industry is eager for additional guidance on Names Rule implementation matters and a [delay in the compliance date](#) given the considerable operational and compliance burdens and difficulties presented by the rule.

For more information, contact:

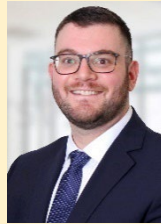


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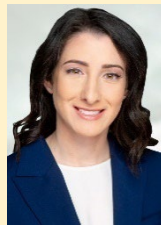


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Appendix A

| 2025 Question as compared to the 2001 FAQ Question | <u>2025 FAQ Answer</u> | 2025 FAQ Answer as Compared to the <u>2001 FAQ Answer</u> |
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| <p>If a fund wishes to adopt or revise a fundamental 80% investment policy to comply with rule 35d-1, as amended in 2023, does the fund need to obtain shareholder approval?</p> | <p>The Investment Company Act does not require shareholder approval to adopt a new fundamental policy unless the new fundamental policy deviates from an existing fundamental policy. See section 13(a)(3) of the Investment Company Act (requiring shareholder approval to <i>deviate</i> from a fundamental policy). Therefore, shareholder approval also would not be required where a fund already has a fundamental investment policy and wishes to revise this fundamental policy in light of the 2023 amendments, unless the revision of the policy constitutes a deviation from the existing policy or some other existing fundamental policy.</p> <p>For example, in the staff's view, a fund that has a fundamental 80% investment policy that broadly references equity investments would generally not be deviating from that policy if it were to revise this fundamental policy to reference equity investments with growth characteristics. A fund would need to determine, based on its individual circumstances, whether it would be necessary to seek shareholder approval to adopt a new fundamental investment policy (or revise an existing fundamental policy) in light of the 2023 amendments. A fund also should generally consider whether factors outside the Investment Company Act, such as state law or the fund's charter or by-laws, would require shareholder approval in order to</p> | <p>The Investment Company Act does not require shareholder approval to adopt a new fundamental policy unless the new fundamental policy deviates from an existing fundamental policy.⁴ Therefore, if a fund currently has a non-fundamental 65% investment policy and wishes to change the policy to a fundamental 80% investment policy, See section 13(a)(3) of the Investment Company Act would not require (requiring shareholder approval unless the new to deviate from a fundamental policy deviates from some other existing fundamental policy.)</p> <p>Therefore Similarly, under the Investment Company Act, shareholder approval also would not be required by where a fund that already has a fundamental 65% investment policy that and wishes to adopt or revise this fundamental 80% investment policy in light of the 2023 amendments, unless adoption the revision of the new policy constitutes a deviation from the existing policy or some other existing fundamental policy. A fund would therefore need to determine, based on its individual circumstances, whether it would be necessary to seek shareholder approval to change a fundamental investment policy to increase the investment threshold from 65% to 80%.</p> <p>For example, in the staff's view, a fund that has a fundamental policy to invest at least 65% of its assets in equity securities 80% investment</p> |

| 2025 Question as compared to the 2001 FAQ Question | 2025 FAQ Answer | 2025 FAQ Answer as Compared to the <u>2001 FAQ Answer</u> |
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| | adopt or revise a fundamental 80% investment policy. | <p><u>policy that broadly references equity investments would</u> generally would not be deviating from that policy if it adopted a new <u>were to revise this</u> fundamental policy to invest at least 80% of its assets in equity securities and would not be required to obtain <u>reference equity investments with growth characteristics. A fund would need to determine, based on its individual circumstances, whether it would be necessary to seek</u> shareholder approval. By contrast, a fund that has a fundamental policy to invest at least 65%, but not more than 75%, of its assets in equity securities would not be able to adopt a new fundamental policy to invest at least 80% of its assets in equity securities without deviating from the <u>investment policy (or revise an</u> existing fundamental policy. In this case, shareholder approval of the new fundamental policy would be required under the Investment Company Act.) <u>in light of the 2023 amendments.</u> A fund should also <u>should generally</u> consider whether factors outside the Investment Company Act, such as state law or the fund's <u>fund's</u> charter or by-laws, would require shareholder approval in order to adopt <u>or revise</u> a fundamental 80% investment policy.</p> |
| How does rule 35d-1 apply to single-state tax-exempt funds? Are single-state tax-exempt funds required to satisfy the 80% investment | A fund with a name that suggests that its distributions are exempt from both federal and state income tax, e.g., the Maryland Tax-Exempt Fund, must have a fundamental policy to invest, under normal circumstances, either: (i) at least 80% of the value | A fund with a name that suggests that its distributions are exempt from both federal and state income tax, e.g., the Maryland Tax-Exempt Fund, must have a fundamental policy to invest, under normal circumstances, either: (i) at least 80% of the value |

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| <p>requirement only with securities of issuers located in the named state?</p> | <p>of its assets in investments the income from which is exempt from both federal income tax and the income tax of the named state, or (ii) its assets so that at least 80% of the income that it distributes will be exempt from both federal income tax and the income tax of the named state. See rule 35d-1(a)(3).</p> <p>A single-state tax-exempt fund may include a security of an issuer located outside of the named state in the fund’s 80% basket if the security pays interest that is exempt from both federal income tax and the tax of the named state, provided that the fund discloses in its prospectus that it may invest in tax-exempt securities of issuers located outside of the named state. See 2023 Adopting Release at n.125; 2001 Adopting Release at n.30.</p> | <p>of its assets in investments the income from which is exempt from both federal income tax and the income tax of the named state, or (ii) its assets so that at least 80% of the income that it distributes will be exempt from both federal income tax and the income tax of the named state. See rule 35d-1(a)(3).</p> <p>A single-state tax-exempt fund may include a security of an issuer located outside of the named state in the <u>fund’s</u> 80% basket if the security pays interest that is exempt from both federal income tax and the tax of the named state, provided that the fund discloses in its prospectus that it may invest in tax-exempt securities of issuers located outside of the named state. <u>See 2023 Adopting Release at n.125; 2001 Adopting Release at n.30.</u></p> <p>Single state tax exempt funds are not subject to section (a)(3) of the rule (relating to funds with names that suggest investment in a specific country or geographic region).</p> |
| <p>Are funds with the term “municipal” in their names treated like tax-exempt funds under rule 35d-1(a)(<u>43</u>)?</p> | <p>Yes. In the staff’s view, the terms “municipal” and “municipal bond” in a fund’s name suggest that the fund’s distributions are exempt from income tax. Therefore, funds that use these terms in their names would be expected to comply with rule 35d-1(a)(3). However, in the staff’s view, funds that use the term “municipal” rather than “tax-exempt” may count securities that generate income subject to the alternative minimum tax toward the 80%</p> | <p>Yes. The<u>In the staff’s view, the</u> terms “municipal” and “municipal bond” in a fund’s name suggest that the fund’s distributions are exempt from income tax. Therefore, funds that use these terms in their names would be expected to comply with rule 35d-1(a)(<u>43</u>). However, <u>in the staff’s view,</u> funds that use the term “municipal” rather than “tax-exempt” may count securities that generate income subject to the alternative minimum tax toward</p> |

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| | investment requirement, while funds that use the term “tax-exempt” may not. | the 80% investment requirement, while funds that use the term “tax-exempt” may not. |
| How does rule 35d-1 apply to a fund that uses the term "high-yield" in its name? | <p>In the staff’s view, the term “high-yield” is generally understood in the financial and investment community to describe corporate bonds with particular characteristics—that is, bonds that are below certain creditworthiness standards (traditionally measured by certain credit ratings). Based on this view, a fund with the term “high-yield” in its name therefore generally would need to adopt an 80% investment policy under rule 35d-1(a)(2).</p> <p>In contrast, in the staff’s view, funds that use the term “high-yield” in conjunction with the term “municipal,” “tax-exempt,” or similar in their names have not historically invested at least 80% of their assets in bonds that meet the funds’ high-yield rating criteria. Staff understands that the market for below investment grade municipal bonds is smaller and relatively less liquid than its taxable counterpart, and therefore tax-free high-yield bond funds have historically invested to a greater degree in higher grade bonds than taxable high-yield funds. Although a fund that uses the term “high-yield” in conjunction with the term “municipal,” “tax-exempt,” or similar in its name would need to adopt an 80% policy to invest in “municipal” or “tax-exempt” securities, the staff would not object if, in light of this specific historical practice for high-yield municipal funds, such a fund were to invest less than 80% of</p> | <p><u>In the staff’s view, the term “high-yield” is generally understood in the financial and investment community to describe corporate bonds with particular characteristics—that is, bonds that are below certain creditworthiness standards (traditionally measured by certain credit ratings). Based on this view, a fund with the term “high-yield” in its name therefore generally would need to adopt an 80% investment policy under rule 35d-1(a)(2).</u></p> <p>The term “high-yield” is generally understood in the financial and investment community to describe corporate bonds that are below investment grade, commonly defined as bonds receiving a Standard & Poor’s rating below BBB or a Moody’s rating below Baa.⁹ Therefore, a fund using the term “high-yield” in its name generally must have a policy to invest at least 80% of its assets in bonds that are below investment grade.</p> <p>However, a fund that uses<u>In contrast, in the staff’s view, funds that use</u> the term “high-yield” in conjunction with <u>at the</u> term such as “municipal or,” “tax-exempt” that suggests that the fund invests in tax-exempt bonds would not be required to invest, or similar in <u>their names have not historically invested</u> at least 80% of <u>its</u>their assets in bonds that meet these<u>the funds’ high-yield</u> rating criteria. <u>Because</u><u>Staff understands</u></p> |

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| | <p>the value of its assets in bonds that meet the fund’s high-yield rating criteria. Such a fund would, however, continue to be subject to the prohibition on materially deceptive or misleading names under section 35(d) of the Investment Company Act, and likewise would continue to be subject to the anti-fraud provisions of the Federal securities laws regarding disclosures to investors. This response is consistent with the staff’s long-standing view regarding names that use the term “high-yield” in conjunction with terms such as “municipal” or “tax-exempt,” as reflected in a prior staff FAQ.</p> | <p><u>that</u> the market for below investment grade municipal bonds is smaller and relatively less liquid than its taxable counterpart, <u>and therefore</u> tax-free high-yield bond funds have historically invested to a greater degree in higher grade bonds than taxable high-yield funds. As a result, the use of <u>Although a fund that uses</u> the term “high-yield” together with a term suggesting that the fund invests in tax-exempt bonds suggests that the fund has an investment strategy of pursuing a higher yield than other municipal or tax-exempt bond funds.” <u>in conjunction with the term “municipal,” “tax-exempt,” or similar in its name would need to adopt an 80% policy to invest in “municipal” or “tax-exempt” securities, the staff would not object if, in light of this specific historical practice for high-yield municipal funds, such a fund were to invest less than 80% of the value of its assets in bonds that meet the fund’s high-yield rating criteria. Such a fund would, however, continue to be subject to the prohibition on materially deceptive or misleading names under section 35(d) of the Investment Company Act, and likewise would continue to be subject to the anti-fraud provisions of the Federal securities laws regarding disclosures to investors. This response is consistent with the staff’s long-standing view regarding names that use the term “high-yield” in conjunction with terms such as “municipal” or “tax-exempt,” as reflected in a prior staff FAQ.</u></p> |

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| <p>Does rule 35d-1 apply to a fund that uses the term "tax-sensitive" (or a similar term) in its name?</p> | <p>No. In the staff's view, the term "tax-sensitive" references overall characteristics of the fund's portfolio (as do similar terms such as "tax-efficient," "tax-advantaged," "tax-managed," and "tax aware"), and therefore indicates the fund's objectives without communicating to investors the particular characteristics of the investments that will make up the fund's portfolio. See 2023 Adopting Release at paragraph accompanying nn.127-129. Therefore, in the staff's view, the use of the term "tax-sensitive" (or a similar term) in a fund's name would not require the fund to adopt an 80% investment policy.</p> <p>We remind funds, however, that names with terms that do not communicate the particular characteristics of investments composing the fund's portfolio will continue to be subject to section 35(d)'s prohibition on materially misleading or deceptive names. Funds with these names likewise will continue to be subject to the anti-fraud provisions of the Federal securities laws regarding disclosures to investors.</p> | <p>No. The<u>In the staff's view, the</u> term "tax-sensitive" connotes a type of investment strategy rather than a focus on a particular type of investment <u>references overall characteristics of the fund's portfolio (as do similar terms such as "tax-efficient," "tax-advantaged," "tax-managed," and "tax aware"), and therefore indicates the fund's objectives without communicating to investors the particular characteristics of the investments that will make up the fund's portfolio. See 2023 Adopting Release at paragraph accompanying nn.127-129.</u> Therefore, <u>in the staff's view, the</u> use of the term "tax-sensitive" (<u>or a similar term</u>) in a fund's name will<u>would</u> not require the fund to comply with the<u>adopt an</u> 80% investment requirement of rule 35d-1<u>policy.</u></p> <p>We remind funds, however, that a particular fund name may be misleading under the antifraud<u>names with terms that do not communicate the particular characteristics of investments composing the fund's portfolio will continue to be subject to section 35(d)'s prohibition on materially misleading or deceptive names. Funds with these names likewise will continue to be subject to the anti-fraud</u> provisions of the federal<u>Federal</u> securities laws, even if it is not covered by rule 35d-1. In determining whether a particular name is misleading, the Division considers whether the name would lead a reasonable investor to conclude that the fund invests in a manner that is</p> |

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| | | inconsistent with the fund's intended investments or the risks of those investments. regarding disclosures to investors. |
| How does rule 35d-1 apply to a fund that uses the term "income" in its name? | In the staff's view, when the term "income" does not refer to "fixed income" securities, the term "income" in a fund's name generally suggests that the fund emphasizes the achievement of current income as a portfolio-wide result, and in these circumstances would not, alone, require the fund to adopt an 80% investment policy. | <p><u>In the staff's view, when the term "income" does not refer to "fixed income" securities, the term "income" in a fund's name generally suggests that the fund emphasizes the achievement of current income as a portfolio-wide result, and in these circumstances would not, alone, require the fund to adopt an 80% investment policy.</u></p> <p>Rule 35d-1 would not apply to the use of the term "income" where that term suggests an investment objective or strategy rather than a type of investment. When used by itself, the term "income" in a fund's name generally suggests that the fund emphasizes the achievement of current income and does not suggest a type of investment. For example, fund companies offering a group of "life cycle" funds, each of which invests in stocks, bonds, and cash in a ratio considered appropriate for investors with a particular age and risk tolerance, sometimes use the term "income" to describe the fund that places the greatest emphasis on achieving current income. Similarly, the term "growth and income" does not suggest that a fund focuses its investments in a particular type of investment, but rather suggests that a fund invests its assets in order to achieve both growth of capital and current income. Likewise, the term "equity income" suggests that a fund focuses its investments in equities</p> |

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| | | <p>and has an investment objective or strategy of achieving current income. By contrast, a term such as "fixed income" suggests investment in a particular type of investment and would be covered by rule 35d-1.</p> |
| <p>A fund that uses the term "money market" in its name must invest solely in eligible securities and meet other investment requirements under rule 2a-7, in order for its name not to be deemed materially deceptive or misleading within the meaning of Section 35(d) of the Investment Company Act. Is a fund that uses the term "money market" in its name also required to comply with rule 35d-1?</p> | <p>In the staff's view, a fund using the term "money market" in its name would need to adopt a policy to invest at least 80% of the value of its assets in the type of money market instruments suggested by its name. For example, a fund calling itself the "XYZ U.S. Treasury Money Market Fund" would, in the staff's view, need to adopt a policy to invest at least 80% of the value of its assets in U.S. Treasury securities. However, in the staff's view, a generic money market fund, <i>i.e.</i>, a money market fund that has a name suggesting that it invests in money market instruments generally (e.g., the "XYZ Money Market Fund"), would not need to specifically adopt a policy to invest at least 80% of the value of its assets in eligible securities since rule 2a-7, in any event, requires the fund to invest solely in eligible securities. <u>See also 2014 Money Market Fund Reform Frequently Asked Questions, FAQs #53 and #54</u> (addressing particular requirements for a money market fund that includes the term "government" in its name).</p> | <p>Rule 35d-1 would require<u>In the staff's view,</u> a fund using the term "money market" in its name <u>would need</u> to adopt a policy to invest at least 80% of <u>the value of</u> its assets in the type of money market instruments suggested by its name. For example, a fund calling itself "The the "XYZ U.S. Treasury Money Market Fund" would be required, in the staff's view, need to adopt a policy to invest at least 80% of <u>the value of</u> its assets in U.S. Treasury securities. However, <u>in the staff's view,</u> a generic money market fund, <i>i.e.</i>, a money market fund that has a name suggesting that it invests in money market instruments generally (e.g., "The the "XYZ Money Market Fund"), would not be required<u>need</u> to specifically adopt a policy to invest at least 80% of <u>the value of</u> its assets in eligible securities since rule 2a-7, in any event, requires the fund to invest solely in eligible securities. <u>See also 2014 Money Market Fund Reform Frequently Asked Questions, FAQs #53 and #54</u> (addressing particular requirements for a money market fund that includes the term <u>"government" in its name</u>).</p> |