

October 14, 2020

### Rule 12d1-4, as Adopted, Marked to Show Changes from the Proposing Release

#### Exemptions for investments in certain investment companies.

(a) Exemptions for acquisition and sale of acquired fund shares.

If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(C), 17(a), 57(a)(1)-(2), and 57(d)(1)-(2) of the Act (15 U.S.C. 80a-a 12(d)(1)(A), 80a-12(d)(1)(C), 80a-a 17(a), 80a-56(a)(1)-(2), and 80a-56(d)(1)-(2)):

(1) A registered investment company (other than a face-amount certificate company) or business development company (an “acquiring fund”) may purchase or otherwise acquire the securities issued by another registered investment company (other than a face-amount certificate company) or business development company (an “acquired fund”); ~~and~~

(2) An acquired fund, any principal underwriter thereof, and any broker or dealer registered under the Securities Exchange Act of 1934 may sell or otherwise dispose of the securities issued by the acquired fund to any acquiring fund and any acquired fund may redeem or repurchase any securities issued by the acquired fund from any acquiring fund; ~~and~~ and

(3) An acquiring fund that is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a fund) solely by reason of the circumstances described in § 270.6c-11(b)(3)(i) and (ii), may deposit and receive the exchange-traded fund’s baskets, provided that the acquired exchange-traded fund is not otherwise an affiliated person (or affiliated person of an affiliated person) of the acquiring fund.

(b) Conditions.

(1) Control.

(i) The acquiring fund and its advisory group will not control (individually or in the aggregate) an acquired fund; ~~and~~

(ii) If the acquiring fund and its advisory group, in the aggregate, (A) hold more than 325% of the outstanding voting securities of an acquired fund that is a registered open-end management investment company or registered unit investment trust as a result of a decrease in the outstanding voting securities of the acquired fund, or (B) hold more than 10% of the outstanding voting securities of an acquired fund that is a registered closed-end management investment company or business development company, each of those holders will vote its securities in the ~~manner prescribed by~~ same proportion as the vote of all other holders of such securities; provided, however, that in circumstances where all holders of the outstanding voting securities of the acquired fund are required by this section or otherwise under section 12(d)(1)~~(E)(iii)(aa) of the Act (15 U.S.C. 80a-12(d)(1)(E)(iii)(aa)); to vote securities of the acquired fund in the same proportion as the vote of all other holders of such securities, the acquiring fund will seek instructions from its security holders with regard to the voting of all proxies with respect to such acquired fund securities and vote such proxies only in accordance with such instructions; and~~

(iii) The conditions in paragraphs (b)(1)(i) ~~and~~ (ii) of this section do not apply ~~when~~ if:

(A) The acquiring fund is in the same group of investment companies as an acquired fund; or

(B) The acquiring fund’s investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as an acquired fund’s investment adviser or depositor.

(2) Findings and Agreements.

(i) Management companies.

~~(2A) Limited redemption. An~~ If the acquiring fund ~~that holds shares~~ is a management company, prior to the initial acquisition of an acquired fund in excess of the limits ~~of~~ in section 12(d)(1)(A)(i) of the Act (15 U.S.C. 80a-12(d)(1)(A)(i)) ~~does not redeem or submit for redemption, or tender for repurchase, any of those shares in an amount exceeding 3% of the acquired fund's total outstanding shares during any thirty-day period in which the acquiring fund holds,~~ the acquiring fund's investment adviser must evaluate the complexity of the structure and fees and expenses associated with the acquiring fund's investment in the acquired fund, and find that the acquiring fund's fees and expenses do not duplicate the fees and expenses of the acquired ~~fund's shares in excess of that limit.~~ fund;

~~(3) Fees and other considerations.~~

~~(iB) Management companies.~~ If the ~~acquiring fund~~ acquired fund is a management company, ~~before investing in~~ prior to the initial acquisition of an acquired fund in ~~reliance on this section, and with such frequency as the acquiring fund's board of directors deems reasonable and appropriate thereafter, but in any case, no less frequently than annually,~~ the acquiring ~~excess of the limits in section 12(d)(1)(A)(i) of the Act (15 U.S.C. 80a-12(d)(1)(A)(i)),~~ the acquired fund's investment adviser must ~~evaluate the complexity of the structure and aggregate fees~~ find that any undue influence concerns associated with the acquiring fund's investment in the acquired fund, ~~and find that it is in the best interest of the acquiring fund to invest in the acquired fund.~~ are reasonably addressed and, as part of this finding, the investment adviser must consider at a minimum the following items:

- (1) The scale of contemplated investments by the acquiring fund and any maximum investment limits;
- (2) The anticipated timing of redemption requests by the acquiring fund;
- (3) Whether and under what circumstances the acquiring fund will provide advance notification of investments and redemptions; and
- (4) The circumstances under which the acquired fund may elect to satisfy redemption requests in kind rather than in cash and the terms of any such redemptions in kind; and

~~(C) The acquiring fund's~~ investment adviser to each acquiring or acquired management company must report its ~~finding~~ evaluation, finding, and the basis for ~~the finding to the acquiring~~ its evaluations or findings required by paragraphs (b)(2)(i)(A) or (B), as applicable, to the fund's board of directors, no later than the next regularly scheduled board of directors meeting.

(ii) Unit investment trusts. If the acquiring fund is a unit investment trust (“UIT”) and the date of initial deposit of portfolio securities into ~~a registered~~ the UIT occurs after the effective date of this section, the UIT's principal underwriter or depositor must evaluate the complexity of the structure ~~and the aggregate fees~~ associated with the UIT's investment in acquired funds and, on or before such date of initial deposit, find that the UIT's fees and expenses do not duplicate the fees and expenses of the acquired funds that the UIT holds or will hold at the date of deposit.

(iii) Separate ~~account~~ accounts funding variable insurance contracts. With respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the acquiring fund must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees and expenses borne by the separate account, acquiring fund, and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act (15 U.S.C. 80a-26(f)(2)(A)).

(iv) Fund of funds investment agreement. Unless the acquiring fund's investment adviser acts as the acquired

fund's investment adviser and such adviser is not acting as the sub-adviser to either fund, the acquiring fund must enter into an agreement with the acquired fund effective for the duration of the funds' reliance on this section, which must include the following:

(A) Any material terms regarding the acquiring fund's investment in the acquired fund necessary to make the finding required under paragraph (b)(2)(i)-(ii) of this section;

(B) A termination provision whereby either the acquiring fund or acquired fund may terminate the agreement subject to advance written notice no longer than 60 days; and

(C) A requirement that the acquired fund provide the acquiring fund with information on the fees and expenses of the acquired fund reasonably requested by the acquiring fund.

(43) Complex fund structures.

~~(i) An investment company must disclose in its registration statement that it is (or at times may be) an acquiring fund for purposes of this section;~~

~~(ii) No investment company may rely on section 12(d)(1)(G) of the Act (15 U.S.C. 80a-12(d)(1)(G)) or this section to purchase or otherwise acquire, in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)), the outstanding voting securities of another investment company that discloses in its most recent registration statement that it may be an acquiring fund under (a "second-tier fund") that relies on this section to acquire the securities of an acquired fund, unless the second-tier fund makes investments permitted by paragraph (b)(3)(ii) of this section; and~~

~~(iii) An~~ No acquired fund ~~must not~~ may purchase or otherwise acquire the securities of ~~another~~ an investment company ~~(or companies that would be private fund if immediately after such purchase or acquisition, the securities of investment companies under section 3(a) of the Act but for the exclusions from that definition provided for in section 3(e)(1) or section 3(e)(7) of the Act (15 U.S.C. 80a-3(e)(1) or 80a-3(e)(7)) in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)) unless the acquired fund's investment is; and private funds owned by the acquired fund have an aggregate value in excess of 10 percent of the value of the total assets of the acquired fund; provided, however, that the 10 percent limitation of this paragraph shall not apply to investments by the acquired fund in:~~

~~(A) In reliance~~ Reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E));

~~(B) For short term cash management purposes pursuant to~~ Reliance on § 270.12d1-1 ~~or exemptive relief from the Commission;~~

~~(C) In a~~ A subsidiary that is wholly-owned and controlled by the acquired fund;

~~(D) The receipt of securities~~ Securities received as a dividend or as a result of a plan of reorganization of a company; or

~~(E) The acquisition of securities~~ Securities of another investment company received pursuant to exemptive relief from the Commission to engage in interfund borrowing and lending transactions.

(c) Recordkeeping. The acquiring ~~fund and acquired funds relying upon this section~~ must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place, ~~a written record of~~ as applicable:

~~(1) The finding required by paragraph (b)(3)(i) of this section and the basis for such finding, and the reports provided to the board of directors pursuant to paragraph (b)(3)(i) of this section;~~

(1) A copy of each fund of funds investment agreement that is in effect, or at anytime within the past five years was in effect, and any amendments thereto;

(2) A written record of the evaluations and findings required by paragraph (b)(2)(i) of this section, and the basis therefor

within the past five years;

~~(23) The~~ A written record of the finding required by paragraph (b)(~~32~~)(ii) of this section and the basis for such finding; and

~~(34)~~ The certification from each insurance company required by paragraph (b)(~~32~~)(iii) of this section.

(d) Definitions. For purposes of this section:

*Advisory group* means either:

- (1) An acquiring fund's investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor; or
- (2) An acquiring fund's investment sub-adviser and any person controlling, controlled by, or under common control with such investment sub-adviser.

Baskets has the same meaning as in § 6c-11(a)(1).

Exchange-traded fund means a fund or class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates in reliance on § 6c-11 or under an exemptive order granted by the Commission.

*Group of investment companies* means any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for purposes of investment and investor services.

Private fund means an issuer that would be an investment company under section 3(a) of the Act but for the exclusions from that definition provided for in section 3(c)(1) or section 3(c)(7) of the Act (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7)).