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By Electronic Submission

Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments to Proposed Rule 12d1-4, File Number S7-27-18

Dear Mr. Fields:

Gabelli Funds, LLC (“Gabelli Funds”) is responding to the Investment Company Act Release Nos. 33-10590 and IC-33329, which propose new Rule 12d1-4 (the “Proposed Rule”) pursuant to the Investment Company Act of 1940, as amended (the “1940 Act”), to streamline and enhance the regulatory framework applicable to funds that invest in other funds, often structured as “fund of funds.”

We believe the Proposed Rule overlooks closed-end funds by failing to impose limitations on ownership by private investment companies, hedge funds, and their affiliated entities. The Proposed Rule jeopardizes closed-end funds and their many long term investors already under attack from activist entities. Our closed-end funds appeal to many retail investors, including retirees. We urge the Commission to review Section 12(d)(1) of the 1940 Act with a focus on the 3% limitation in Section 12(d)(1)(A)(i) and afford closed-end funds and Main Street shareholders the protections this section was designed to provide.



Background

- Gabelli Funds, LLC is the investment adviser to fourteen U.S. registered closed-end funds and two closed-end funds listed on the London Stock Exchange. Gabelli Funds is strongly committed to closed-end funds, launching our first closed-end fund in 1986. As of December 31, 2018, there are 180 U.S. equity closed-end funds, of which Gabelli's fourteen U.S. funds had total assets of approximately \$7 billion.

Current Closed-End Fund Environment

- The entrance of private fund managers, as well as managers of separate accounts ("Managers"), into the closed-end fund investing universe has had a disruptive effect on the industry.
- By using multiple vehicles and separate accounts, Managers have the ability to exceed the 3% ownership limit of Section 12(d)(1)(A)(i) and technically meet its requirements, thereby circumventing the intent of the rule. These loopholes allow an activist entity like City of London to own over 40% of a closed-end fund, The Taiwan Fund, Inc., with no regulatory or legal ramifications.
- The Manager may use its aggregate voting control to take actions likely to have a harmful impact on the fund, its long term shareholders, and the overall market, leaving other shareholders of the fund without control over their own investment.
- For example, tender offers disadvantage small shareholders. The Managers have flexibility to sell into the offer but individuals may not be as nimble. Tender offers shrink the size of a portfolio and increase the expense ratio, reducing the benefits of



scale to the point at which the fund is often forced to either convert to an open-end fund or liquidate.

- Shareholders desiring the long term periodic income from a closed-end fund investment are forced to find another option with potential negative tax consequences.
- Closed-end funds are unable to withstand these attacks without regulatory or legal support, as is clearly evidenced by the decline in U.S. equity closed-end funds:

U. S. EQUITY CLOSED-END FUNDS

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Total Assets (billions of dollars)	145	72	87	97	96	101	114	119	100	102	109	91
Total Funds	228	221	208	204	212	211	216	210	206	200	197	180

Source: Investment Company Institute

Suggested Changes to the Proposed Rule

The 3% Limit and Aggregation

- The 3% limit of Section 12(d)(1)(A)(i) should be made applicable to all accounts for which a Manager has sole or shared voting or dispositive authority including all funds or separate accounts managed by the same advisory group and affiliates under common control.
- If a Manager has already exceeded the 3% limit, they should be prohibited from voting above that limit.

Section 48(a) of the 1940 Act

- Section 48(a) of the 1940 Act prohibits a person from doing indirectly any activity that could not be done directly. Investment managers using the 3% limitation as a means to evade the ownership requirements should be found in violation of this section.

What About Preferred Shares?

- SEC Schedules 13D, 13G, and 13F require periodic disclosure of securities holdings. All preferred shares of closed-end funds should be “Reportable Securities” and required to be included in reported ownership because they have the characteristics of other Reportable Securities including availability on an exchange and voting rights.

Enforcement

- Enforcement resources should be devoted to rooting out and holding accountable investment managers who, in fact, operate in tandem with other unaffiliated managers without acknowledging their status as a single “group.”
- We request that the Commission seek legislative action from Congress to create a private right of action to enforce these rules, providing recourse to closed-end funds and their shareholders in defense against activists.



Conclusion

- The Proposed Rule will only accelerate the devolution of closed-end funds by activists.
- The ability of activists to extract value from this investment structure is contrary to the original intentions of Section 12(d)(1), one of which was to prevent overreaching in closed-end funds through excessive voting clout. This section, a milestone of the 1940 Act, is in need of fixing to avoid further harm to Main Street investors.
- While closed-end funds appeal to many types of investors, retirees and other retail investors who rely on their periodic distributions represent a significant portion of the closed-end fund shareholder base. We ask the Commission to take this opportunity to revise the Proposed Rule in order to incorporate protections for individual shareholders of closed-end funds.
- Closed-end funds are a vital part of the capital markets system, providing a permanent, stable pool of capital.
- In times of market stress, closed-end funds act as a buffer because they have a long term investment horizon, can add to portfolio positions, and are not required to sell securities at disadvantageous prices to satisfy redemptions.
- The actions set out in this letter would benefit the overall market system, as well as Main Street investors, and strengthen the rules by which investment advisers invest in other funds.



We value the trust our shareholders have placed in us and believe the Proposed Rule does not provide enough relief to protect them.

We thank you for the opportunity to comment on the Proposed Rule. We are available to answer any questions you may have about our comments.

Sincerely,

GABELLI FUNDS, LLC

Bruce N. Alpert
Executive Vice President

Andrea R. Mango
Secretary

Agnes Mullady
President