May 1, 2019

Filed Electronically

Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Fund of Funds Arrangements, File No. S7-27-18

Dear Ms. Countryman:

On behalf of Thrivent Financial for Lutherans ("Thrivent"), I would like to express our appreciation for the work of the Securities Exchange Commission (the "SEC") and its staff to streamline and enhance the regulatory framework applicable to funds that invest in other funds. While we believe that the SEC's proposal would meet its goal of streamlining regulation, we also believe that it would not meet its goal of enhancing the regulatory framework because certain aspects of the proposal would undo important regulatory progress that has been made in this area, unnecessarily constrain the ability of funds to invest in other funds in an efficient manner, and would ultimately harm shareholders.

I. Thrivent's Asset Allocation Funds

Thrivent and a wholly owned subsidiary of Thrivent serve as investment advisers to eight funds that invest significantly in other funds (together, the "Thrivent Asset Allocation Funds"). The Thrivent Asset Allocation Funds consist of four risk-based retail funds and four corresponding risk-based funds for variable insurance products. These funds enable shareholders in the retail funds and contractholders of the variable insurance products (hereinafter both are referred to as "shareholders") to pursue the benefits of asset allocation by investing in a single professionally managed investment vehicle that has specific risk tolerances and diversification goals.

Thrivent is a fraternal benefit society which offers insurance products to its members and, through its subsidiaries, also offers mutual funds and other products and services. Thrivent has approximately $134 billion in assets under management or advisement. Thrivent is unlike many financial services companies that only focus on serving high net-worth individuals and institutions. Our mission is not just to help rich people be wise with money or help mass-affluent people live generously. The average account size for our mutual fund complex is approximately

$20,000. While we do have some affluent clients, a typical Thrivent client is not affluent. Thrivent serves people with whom many broker-dealers and money management firms would not even be willing to work, due to their limited financial assets. The Thrivent Asset Allocation Funds are especially well-suited for those with modest amounts to invest who want access to a sophisticated asset allocation strategy through a single investment.

Thrivent's Asset Allocation Funds have evolved over time, partially due to regulatory changes, exemptive relief, and no-action relief from the SEC staff that have enabled them to operate more efficiently. They launched in 2005 and initially only invested in other Thrivent funds pursuant to Section 12(d)(1)(G) of the Investment Company Act of 1940 (the "Act"). The SEC's adoption of Rule 12d1-2 under the Act in 2006 enabled them to invest in securities other than securities issued by another fund. In 2008, the SEC staff issued an exemptive order that enabled the Thrivent Asset Allocation Funds to invest in certain other financial instruments, such as derivatives.[1] Then in 2016 the SEC staff issued a no-action letter that enables the Thrivent funds in which the Asset Allocation Funds invest to invest in third-tier Thrivent funds that are only offered to Thrivent entities and that do not charge an investment management fee (known as the Thrivent Core Funds).[2] With all of these developments, the SEC and its staff have included provisions that ensure that the policies that motivated Congress to enact Section 12(d)(1) continue to be met. As discussed further below, these regulatory developments are exactly what Congress intended for funds that invest in other funds. Today the Thrivent Asset Allocation Funds can gain exposure to a wide variety of asset classes through investments in other Thrivent funds that are offered to the public, investments in the Thrivent Core Funds, direct investments in non-fund securities, and through derivatives; the portfolio managers can select the most efficient instrument based on the market conditions for any particular asset class.

This evolution of the Thrivent Asset Allocation Funds has led to great success for these funds and benefits to their shareholders. The Thrivent Mutual Funds won the Lipper award for Best Mixed-Assets Small Fund Family in 2015, 2016, 2017, and 2019. In addition, Thrivent Aggressive Allocation Fund won the 2019 Lipper award for Best Mixed-Assets Target Allocation Aggressive Growth Fund for the 5-year period. The strong performance has led to significant inflows for Thrivent's Asset Allocation Funds. Thrivent's Asset Allocation Funds currently have approximately $30 billion in assets, which is 58% of the assets in the Thrivent funds complex. I have shared this information not to boast about our funds, but to demonstrate how the regulatory developments that have enabled Thrivent's Asset Allocation Funds to invest in a more efficient manner have greatly benefited their shareholders. If certain of these developments are rolled back and additional impediments are placed on Thrivent's Asset Allocation Funds per the SEC's proposal, we believe that shareholders will be harmed.

The Thrivent Asset Allocation Funds offer investors with as little as $2,000 to invest (or no minimum with an automatic monthly investment of as little as $50 per month) access to a sophisticated, diversified and risk-based asset allocation product. These Funds have had success in part due to their evolution with regulatory developments that have enabled them to gain

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[1] Thrivent Mutual Funds, et al., Exchange Act Release No. IC-28252, (Notice) (Apr. 24, 2008) and Exchange Act Release No. IC-28267, (Order) (May 20, 2008).

[2] Thrivent Financial for Lutherans and Thrivent Asset Management LLC, Staff No-Action Letter (pub. avail. Sep. 27, 2016).

exposure to asset classes in various forms depending on what is best for the Funds. Any changes to the regulation of funds that invest in other funds should not constrain the efficiencies that have been gained by Thrivent's Asset Allocation Funds and other funds that invest in other funds.

II. The Evolution of Fund of Funds Should Not Be Rolled Back

Funds that invest in other funds – including risk-based funds like the Thrivent Asset Allocation Funds and target date funds – have experienced significant growth for good reasons. They provide many investors who have modest amounts to invest with similar benefits to separate direct investments in several underlying funds (e.g., through managed accounts) without the increased monitoring and recordkeeping of investing in each underlying fund. Investors can pursue their risk-based or target date investment goals without having to monitor and reallocate assets on their own. In addition, a risk-based or target date fund can provide to their shareholders exposure to asset classes that may not otherwise be available to those shareholders.

The growth of fund of funds has been aided by regulatory developments that have encouraged innovation while protecting investors. In particular, Section 12(d)(1)(J) of the Act allows the SEC to exempt any person, security, or transaction, or any class or classes of transactions from Section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. As noted in current proposing release for fund of funds arrangements (the "Proposing Release"), the House of Representatives encouraged the SEC to use this exemptive authority "in a progressive way as the fund of funds concept continues to evolve over time."[3] The SEC and its staff have used this authority in adopting progressive rules and issuing progressive exemptive orders and no-action relief. Unfortunately, the current proposal would eliminate some of these important developments in a regressive manner.

One important recent development for the Thrivent Asset Allocation Funds was a no-action letter that the Funds received in September 2016.[4] Building on a no-action letter issued to Franklin Templeton Investments[5] (the "Franklin Templeton Letter"), the letter issued to the Thrivent funds states that the SEC's staff will not recommend enforcement action to the SEC if the Funds utilize a three-tier arrangement involving solely Thrivent funds. In particular, the letter addresses the Thrivent Asset Allocation Funds investing in other publicly offered Thrivent funds, which in turn invest in other Thrivent funds that are only offered to Thrivent entities and that do not charge an investment management fee (known as the Thrivent Core Funds and referred to as "central funds" in the no-action letter and in the Proposing Release[6]). The concern about funds of funds arrangements having duplicative and excessive fees is addressed because the Thrivent Core Funds do not charge an investment management fee. Our letter to the staff requesting no-action relief explained that the Thrivent Core Funds provide the Thrivent Asset Allocation Funds and other Thrivent funds with important investment options for efficient portfolio management. For example, the Thrivent Core Funds provide exposure to certain asset classes in a manner that reduces trading and settlement costs compared with investing directly in securities of those asset classes. As further explained in our incoming request letter, the no-

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[3] Investment Company Act Release No. 33329 (December 19, 2018) at 11 (citing H.R. Rep. No. 622).

[4] *Infra* note 2.

[5] Franklin Templeton Investments, Staff No-Action Letter (pub. avail. April 3, 2015).

[6] *Infra* note 3 at 86.

action relief is dependent on important conditions that protect against the abuses that Section 12(d)(1) are meant to prevent, including concerns about complex structures. Disclosure provided to shareholders of funds that invest in other funds – both in prospectuses and annual reports – can clearly and simply explain to shareholders that a fund is utilizing a three-tier structure and disclose the holdings of the central fund. In sum, the no-action relief benefits shareholders by enabling a more efficient way for the Thrivent funds to invest subject to conditions that protect them from the potential abuses that led Congress to enact Section 12(d)(1).

Another important development for the Thrivent Asset Allocation Funds was the adoption of Rule 12d1-2, which the Proposing Release proposes rescinding. As described above, Thrivent's Asset Allocation Funds and their shareholders have greatly benefited from the Funds' ability to invest both in other funds and in non-fund securities. Curtailing this ability would not only be harmful to shareholders of the funds that invest in other funds (i.e., acquiring funds), but it would also be harmful to shareholders of the funds in which those funds invest (i.e., acquired funds). As proposed, Rule 12d1-4 would likely lead to funds that invest in other funds from selling some of those positions – especially if positions above 3% of the funds' assets are considered illiquid, as discussed further below. Acquired funds that experience redemptions because of this would lose economies of scale and as a result would likely experience increases in expense ratios, which would harm their shareholders as well as shareholders of the acquiring funds. We believe that the SEC should seek to minimize the impact on both existing acquired funds and acquiring funds. It could do so by (i) leaving Rule 12d1-2 in place, (ii) grandfathering the funds that currently rely on Rule 12d1-2, or (iii) structuring Rule 12d1-4 so that it enables funds to invest in other funds, non-fund securities, and derivatives as they do today.

If the SEC wants to create a more consistent regulatory framework for fund of funds arrangements, it should do so by making the progressive developments in its rulemaking, exemptive orders and no-action letters applicable to the entire industry, not by regressively eliminating certain developments that have improved the efficiency and flexibility of funds while protecting investors. One way in which it can do so is by continuing to allow for three-tier structures like those addressed in our no-action letter and the Franklin Templeton Letter, subject to the conditions described in those letters.

III. Redemption Limits Are Not Needed, Especially Not for Affiliated Funds

As proposed, Rule 12d1-4 would prohibit an acquiring fund that acquires more than 3% of an acquired fund's outstanding shares from redeeming more than 3% of an acquired fund's total outstanding shares in any 30-day period. The Proposing Release states that the purpose of this redemption limit is "to reduce the threat of large-scale redemptions" and is "designed to prevent an acquiring fund from unduly influencing the acquired fund with the board oversight and monitoring conditions imposed by our orders."[7] We believe that if the SEC wants to address the potential for undue influence through the threat of large-scale redemptions, it would be best to do so through the methods utilized in current exemptive orders and not through an entirely new redemption limit. We also believe that if the SEC decides to include a new redemption limit in its rule, it should not apply to investments made by funds in the same fund complex.

[7] *Infra* note 3 at 49.

The Proposing Release notes that current exemptive orders applicable to fund of funds arrangements distinguish between acquired funds that are part of the same group of investment companies and "unaffiliated acquired funds."[8] These exemptive orders recognize the important differences between affiliated and unaffiliated acquired funds including that affiliated acquired funds often have the same or affiliated investment advisers making investment decisions for them, the same board overseeing them, and the same compliance programs applicable to them. Similarly, the Proposing Release provides an exception from the control and voting conditions of Rule 12d1-4 for an acquiring fund within the same group of investment companies as an acquired fund. The Proposing Release notes that when "the acquiring fund and acquired fund share the same adviser, the adviser would owe a fiduciary duty to both funds" and that for advisers that are control affiliates "we do not believe that the acquiring fund adviser generally would seek to benefit the acquiring fund at the expense of the acquired fund." Just as the common fiduciary duties of the advisers and having the same board would help protect against undue influence through voting, they would also protect against undue influence through redemptions.

The proposed redemption limit would also unnecessarily create issues under the SEC's new liquidity risk management rule. Rule 22e-4 under the Act requires open-end funds to treat securities that cannot be sold or disposed of in seven calendar days or less as illiquid. As proposed, Rule 12d1-4's restriction on an acquiring fund redeeming more than 3% of an acquired fund's shares within 30 days would cause holdings above 3% to be considered illiquid. This would likely cause problems for many funds of funds because Rule 22e-4 prohibits a fund from holding more than 15 percent of its net assets in illiquid holdings. Holdings of open-end funds have – with very few exceptions – proven to be extremely liquid over the past 80 years, and now have a further safeguard against liquidity issues with the implementation of Rule 22e-4. Moreover, funds that are part of the same group of investment companies often have the same investment advisers who manage both funds and have fiduciary duties to both the acquiring and acquired funds to manage any liquidity issues.

If the SEC does decide to impose a redemption limit on fund of funds arrangements, there should be an exception from the limit for redemptions in kind. Redemptions in kind are less disruptive to portfolio management than redemptions for cash and thus seem less likely to be used for undue influence.

IV. "Short-Term Cash Management Purposes" Should Not Be Limited to Money Market Funds and Funds that Receive Exemptive Orders

Proposed Rule 12d1-4 would permit three-tier arrangements in excess of the Section 12(d)(1)(A) limits for "short-term cash management purposes pursuant to [Rule 12d1-1] or exemptive relief from the Commission."[9] We agree that allowing acquired funds to invest in other funds in excess of the Section 12(d)(1)(A) limits is prudent. However, we believe that limiting such investments to money market funds and pursuant to exemptive relief is not the best approach. If one of the goals of this proposal is to eliminate many of the exemptive orders applicable to fund of funds arrangements, it seems strange to include a reference to exemptive

[8] *Infra* note 3 at 48.

[9] Proposed Rule 12d1-4(b)(4)(iii)(B).

relief in Rule 12d1-4. A better approach would be to incorporate existing applicable exemptive and no-action relief into what acquired funds can utilize for short-term cash management purposes. The no-action relief issued to us in 2016 and that is discussed above provides an important framework that the SEC could use. Consistent with that relief and past relief cited in the no-action letter,[10] an acquired fund could invest in a central fund that is a fixed-income fund with a dollar-weighted average portfolio maturity of up to 3 years, provided that the acquired fund invests no more than 25% of its total assets in one or more of such funds. This would benefit shareholders by permitting funds to use more than just money market funds for short-term cash management.

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We appreciate the opportunity to comment on the proposal for the regulatory framework applicable to funds that invest in other funds. We believe that if the SEC would like to streamline the regulation of funds that invest in other funds, it should do so in a way that does not disrupt current fund of funds arrangements – which have been very beneficial to shareholders – by maintaining the concepts contained in current rules, exemptive orders and no-action letters and not introducing new concepts that will be harmful to shareholders (specifically, the redemption limit). We welcome the opportunity to discuss with you further the concerns and suggestions we have presented.

Sincerely,

Michael Kremenak
Vice President, Chief Legal Officer of the Thrivent Funds

[10] *See, e.g.*, American Funds Insurance Series, *et al.*, Investment Company Act Release Nos. 31677 (June 17, 2015) (notice) and 31715 (July 14, 2015) (order); The Dreyfus Corporation, Investment Company Act Release Nos. 30137 (July 12, 2012) (notice) and 30163 (Aug. 7, 2012) (order); Massachusetts Financial Services Company, *et al.*, Investment Company Act Release Nos. 28649 (Mar. 17, 2009) (notice) and 28694 (Apr. 14, 2009) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 26406 (Mar. 29, 2004) (notice) and 26436 (Apr. 23, 2004) (order).