

May 2, 2019

Submitted 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:

Voya Investment Management (“Voya IM”), the asset management business of Voya Financial, Inc. (“Voya”),¹ is the investment adviser to 150 mutual funds with assets under management of approximately \$90 billion. We appreciate the opportunity to comment on the Securities and Exchange Commission’s (the “SEC” or the “Commission”) proposals (the “Proposals”) related to streamlining and improving the regulatory framework applicable to funds that invest in other funds (each, a “FoF,” and collectively, “FoFs”).

Voya’s primary goal is to help Americans plan, invest and protect their savings in order to retire better. Our vision is to serve as “America’s Retirement Company™.” Consistent with this objective, we offer suites of fund of funds (the “Voya FoFs”) that are designed for investors seeking an investment that provides total returns consistent with an asset allocation mix targeted at retirement in a particular retirement year (“Target Date Funds”). Investors in Voya’s Target Date Funds include, among others, individuals saving for retirement in qualified retirement plans including, but not limited to, 401(a) plans, 401(k) plans, 457 plans, employer sponsored 403(b)

¹ Voya Financial, Inc. (NYSE: VOYA) is composed of retirement, investment and insurance companies serving the financial needs of approximately 13 million individual and institutional customers in the United States. A *Fortune 500* company, Voya’s vision is to be America’s Retirement Company™ and its guiding principle is centered on solving the most daunting financial challenge facing Americans today — retirement readiness. Working directly with clients and through a broad group of financial intermediaries, independent producers, affiliated advisers and dedicated sales specialists, Voya provides a comprehensive portfolio of asset accumulation, asset protection and asset distribution products and services. With a dedicated workforce of approximately 6,500 employees and an independent sales force of approximately 2,200 registered representatives, Voya is grounded in a clear mission to make a secure financial future possible — one person, one family, one institution at a time.

plans, individual retirement accounts and Simplified Employee Pension Plans (“Retirement Plans”), institutional investors, such as insurance companies and foundations investing for their own account, and wrap programs offered by broker-dealers and financial institutions.

Voya is supportive of the SEC’s efforts to enhance the efficiency of the regulatory regime governing FoFs. However, we believe that certain aspects of the SEC’s FoFs rule proposal will result in significant disruption to the operations of many mutual funds in the industry, particularly Target Date Funds, and ultimately harm shareholders in many of these funds. In this letter we provide examples to illustrate these effects on the Voya funds.

We find particularly concerning the proposed restriction on the ability of acquiring funds to redeem shares of acquired funds which, if adopted as proposed, would significantly disrupt FoFs arrangements. We believe that this restriction could harm investors in FoFs by, among other things, manufacturing artificial liquidity constraints on investments in acquired funds that otherwise offer daily redemptions to all other types of investors. We therefore recommend that, as discussed below, the SEC adopt modified rules that will address the SEC’s goal of streamlining the regulatory framework governing FoFs, without engendering the unintended, negative consequences that we believe would result if the Commission’s FoFs rules are adopted as proposed.

Overview of the SEC’s Fund of Funds Rulemaking

As outlined in the SEC’s proposed rule-making release (the “Release”),² the SEC is proposing a comprehensive FoFs regulatory framework by proposing Rule 12d1-4 (the “Rule”) under the Investment Company Act of 1940 (the “1940 Act”). The Rule would, under specified circumstances, permit a fund to acquire shares of another fund in excess of the limits of Section 12(d)(1) of the 1940 Act without obtaining an exemptive order from the Commission. In connection with the implementation of the Rule, the SEC proposes to rescind Rule 12d1-2 under the 1940 Act and most exemptive orders (“FoF Orders”) granting relief from Sections 12(d)(1)(A), (B), (C), and (G) of the 1940 Act. The Commission also is proposing related amendments to Rule 12d1-1 under the 1940 Act and Form N-CEN. The stated intent of this rulemaking effort is to create a more consistent and efficient regulatory framework for FoFs arrangements.

Scope of Proposed Rule

With respect to the scope of the relief being proposed as part of the Commission’s FoFs rulemaking, Voya supports, as proposed, expanding the relief to include all types of registered investment companies and business development companies as either acquiring funds or acquired funds.

² See Investment Company Act Release No. 33329 (December 19, 2018).

Voya Supports Various Aspects of the Proposed Fund of Funds Rulemaking

A. Duplicative and Excessive Fees

To address concerns regarding duplicative and excessive fees in FoFs arrangements, the Rule would require investment advisers to evaluate the appropriateness of such arrangements. In particular, the Rule would require that advisers of an acquiring fund to: (1) evaluate the complexity of the structure of, and the aggregate fees associated with, the acquiring fund's investment in an acquired fund; (2) find that it is in the best interest of the acquiring fund to invest in the acquired fund; and (3) report to the acquiring fund's board its finding and the basis for the finding before investing in the acquired fund.

We support the proposed approach to assuring that FoF shareholders are not disadvantaged and the aggregate fees payable under a FoFs arrangement are not excessive. In this regard, we believe that the Rule appropriately shifts the duty of evaluating FoFs fee arrangements and making findings from mutual fund boards, as has been required under the conditions of FoF Orders, to FoF advisers.³ The new methodology is consistent with the SEC staff's recent guidance with respect to the review of affiliated fund transactions, which permit funds to shift certain compliance review responsibilities and determinations from fund boards to fund chief compliance officers.⁴ Further, this approach recognizes that, under the 1940 Act and pursuant to their fiduciary obligations to the funds they oversee, mutual fund boards already have a duty to evaluate the terms of advisory agreements, including the fees payable under these contracts.

B. Complex Structures

Proposed Rule 12d1-4 includes conditions that would limit the ability of a mutual fund to invest in a FoF that relies on the Rule and the ability of an acquired fund to itself invest in other funds, except in limited circumstances. An example of such an arrangement, often referred to as

³ Current conditions of FoF Orders require, among other things, that an acquiring fund's board make a specific finding that the fund's advisory fees are for services that are in addition to, rather than duplicative of, the services provided by the adviser to the acquired fund.

⁴ The Commission recently issued a No-Action Letter permitting a mutual fund's board to rely on a "written representation" from the fund's chief compliance officer that the fund's transactions effected in reliance on Rules 10f-3, 17a-7 or 17e-1 under the 1940 Act complied with the procedures adopted by the board pursuant to the relevant exemptive rule, instead of the board itself determining such compliance. *See* Investment Company Act of 1940 - Sections 10(f), 17(a) and 17(e) and Rules 10f-3, 17a-7 and 17e-1, Independent Directors Council, SEC Staff No-Action Letter (October 12, 2018).

a “multi-tiered” FoFs structure, would be a paradigm that involves a master-feeder fund that invests in FoFs.

Voya does not currently have multi-tiered FoFs structures. However, we appreciate the proposed exceptions, under the Rule, that would permit: (1) multi-tiered arrangements that allow master-feeder funds to invest in FoFs; (2) arrangements for short-term cash management purposes; (3) certain interfund lending or borrowing transactions; or (4) investments in funds that are wholly-owned and controlled subsidiaries. These exceptions would allow the creation of multi-tiered structures, consistent with the Rule, which can benefit FoFs and their shareholders. As such, we may create such structures in the future if we determine that a multi-tiered arrangement is appropriate for a Voya FoF and its investors.

We encourage the SEC to consider views of the Investment Company Institute (the “ICI”), discussed in its comment letter to the Commission with respect to the SEC’s proposed FoFs rulemaking (the “ICI Comment Letter”),⁵ that the Commission consider expanding the list of permitted multi-tiered FoFs arrangements under the Rule. We believe that the arrangements outlined in the ICI Comment Letter could afford Fund shareholders additional benefits, do not implicate the policy concerns that underlie Section 12(d)(1) of the 1940 Act and would preserve no-action relief granted by the SEC for the reasons set out in the relevant no-action letters.⁶

C. Control Provision

The Rule would prohibit an acquiring fund and its “advisory group”⁷ from controlling, individually or in the aggregate, an acquired fund. Beneficial ownership of more than 25 percent of the outstanding voting securities of the acquired fund is presumed to constitute “control.” This requirement does not apply when the acquiring fund is within the same group of investment companies as the acquired fund.

Voya is generally comfortable with this control provision. However, given that Voya is a large enterprise with a number of affiliates that operate independently from one another, we encourage the Commission to consider the ICI’s proposal that the SEC adopt a more narrow

⁵ See Comment Letter of Investment Company Institute (April 30, 2019) (providing the ICI’s views of various aspects of the Commission’s FoFs proposals).

⁶ See Thrivent Financial for Lutherans and Thrivent Asset Management, LLC, SEC Staff No-Action Letter (September 27, 2016) and Franklin Templeton Investments, SEC Staff No-Action Letter (April 3, 2015).

⁷ Proposed Rule 12d1-4(d) defines “advisory group,” to mean 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.

definition of “advisory group” that defines this term to include only: (1) an acquiring fund’s investment adviser or depositor and any person controlled by the investment adviser or depositor; or (2) an acquiring fund’s investment sub-adviser and any person controlled by the investment sub-adviser.⁸

D. Exemptive Relief From Section 17(a) of the 1940 Act

Voya supports the proposed relief from restrictions on transactions between acquiring funds and affiliated acquired funds.⁹ We also support the ICI’s suggestion, set out in the ICI Comment Letter, that the SEC: (1) clarify that the Section 17(a) relief described in the ICI Comment Letter covers corresponding in-kind transactions when an acquiring fund purchases and redeems shares of an acquired exchange-traded fund; and (2) provide relief, or clarify that relief is not necessary, from Section 17(a) when funds invest in affiliated funds within the statutory limits of Section 12(d)(1)(A) or in reliance on Section 12(d)(1)(F) of the 1940 Act.¹⁰

E. Amendments to Form N-CEN

Item C.7. of Form N-CEN requires management companies to report whether they relied on certain rules under the 1940 Act during the relevant reporting period. Voya supports the SEC’s proposal to add to Form N-CEN a requirement that funds report if they are relying on Rule 12d1-4 or Section 12(d)(1)(G).

Redemption Restriction under Proposed Rule 12d1-4

A. Issues Arising under the Rule

The Voya FoFs may invest in financial instruments, in addition to acquired fund securities, including certain financial instruments that were the subject of an order permitting such investment (the “Voya FI Order”).¹¹ In addition, in reliance on an order permitting the Voya funds to acquire shares of other open-end investment companies or unit investment trusts,

⁸ See the ICI Comment Letter at pages 16-17.

⁹ In this letter, “affiliated” FoFs and acquired funds refer to funds that are part of the “same group” of investment companies under Section 12(d)(1)(G) of the 1940 Act, and “unaffiliated” FoFs and acquired funds refer to funds that are not part of the “same group.”

¹⁰ See the ICI Comment Letter at page 25.

¹¹ See *In re* ING Investments, LLC, *et al.*, Investment Company Act Release Nos. 28650 (Mar. 17, 2009) (Notice) and 28693 (Apr. 14, 2009) (Order) (Order under Section 6(c) of the 1940 Act granting an exemption from Section 12(d)(1)(G) to permit FoFs relying on Section 12(d)(1)(G) of and Rule 12d1-2 under the 1940 Act to invest in certain financial instruments that may not be securities within the meaning of Section 2(a)(36).)

either within or outside the Voya funds complex (the “Voya FoF Order”),¹² and exemptive orders obtained by other fund groups, certain of the Voya FoFs may invest in excess of the limits in Section 12(d)(1) in funds outside of the Voya family of funds as well as in funds in the Voya fund complex. Therefore, to continue to manage the FoFs in a manner consistent with the FoFs’ current investment programs, Voya IM would wish to rely on the Rule, rather than Section 12(d)(1)(G) of the 1940 Act.

To address the concern that an acquiring fund could threaten an acquired fund with large-scale redemptions as a means of exerting control over the acquired fund, the Rule includes a condition that would prohibit an acquiring fund that acquires more than 3 percent of the outstanding voting securities of an acquired fund from redeeming, submitting for redemption or tendering for repurchase more than 3 percent of the acquired fund’s total outstanding shares in any 30-day period (the “Redemption Restriction”). While we are sympathetic to the SEC’s concerns regarding an acquiring fund’s possible overreach of an acquired fund, if the Redemption Restriction is adopted as proposed, it would result in significant disruption of the operation of the Voya FoFs and would ultimately harm the investors in these Funds.

Among those investors are individuals who invest in the Target Date Funds in order to meet retirement goals. Given Voya’s focus on retirement readiness, our Target Date Fund investors are a key constituency, and we anticipate that the Redemption Requirement will negatively affect the asset allocation mix, and likely the return on investment, that we provide to these investors.

More particularly, in seeking to achieve the investment objectives of the Voya FoFs, including the Target Date Funds, the portfolio management team managing the Voya FoFs often must redeem more than 3 percent of the outstanding shares of the funds (the “Underlying Funds”) in which the Voya FoFs invest within a 30-day period. By way of example, during the past three calendar years (2016, 2017 and 2018) on 64 occasions, involving 13 Voya FoFs and 21 Underlying Funds, a Voya FoF redeemed more than 3 percent of the shares of an Underlying Fund within a 30-day period. None of these redemptions involved an attempt, on the part of a Voya FoF, to exert undue control over the Underlying Fund. Rather, such redemptions were attributed to reallocations among Underlying Funds to achieve a desirable mix of exposures (29 times) and portfolio rebalancings (35 times). If the portfolio management team had not had the latitude to effect these redemptions, Voya IM would have been unable to exercise its investment discretion to execute the Voya FoFs’ investment strategies, consistent with Voya IM’s fiduciary obligations and in furtherance of the best interests of the Voya FoFs and their shareholders.

¹² See ING Partners Inc., *et al.*, Investment Company Release Nos. IC-27116, Oct. 12, 2005 (Notice) and IC-27142, Nov. 8, 2005 (Order) granting relief under Sections 6(c) and 17(b) of the 1940 Act exempting applicants from Section 17(a) of the 1940 Act and under Section 12(d)(1)(J) of the 1940 Act exempting applicants from Sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act.

Based on Voya IM's experience managing the Voya FoFs, we have concluded that the Redemption Restriction would severely hamper Voya IM's ability to implement, on a timely basis, new asset allocation positions, changes to exposures to Underlying Funds, or the firm's rebalancing policies for the Voya FoFs. To begin, the restriction would constrain our ability to divest a Voya FoF's assets from an underperforming Underlying Fund that is experiencing significant outflows. Exacerbating this problem is that, if other investors are redeeming from an Underlying Fund, a Voya FoF's ownership of the Underlying Fund, in terms of a percentage, would increase, notwithstanding the Voya FoF's efforts to redeem shares. In this situation, the Voya FoF may never be able to exit the Underlying Fund.

Further, Voya employs a multi-manager approach to managing the majority of the Voya FoFs that involves investing in Underlying Funds managed by third-party money management firms as well as by Voya IM. The implementation of the Redemption Restriction would effectively limit our universe of available Underlying Fund options. More particularly, in an effort to meet the liquidity requirements under the 1940 Act, including those promulgated under Rule 22e-4 under the 1940 Act, the new liquidity risk management rule (the "Liquidity Rule"), the portfolio management team would generally be limited to investing in only the largest acquired funds, in terms of asset size, within the industry. This would prevent Voya IM from investing in certain Underlying Funds due to the Underlying Funds' smaller asset size. The Redemption Restriction would ultimately have the unintended consequence of reducing Voya FoF investments in, for example, funds sponsored by small- and mid-size investment firms that do not have the same distribution capabilities as larger firms within the industry and strategies that may have a smaller asset base due to a limited track record.

In a similar vein, the Redemption Restriction would limit Voya IM's ability to make rebalancing and asset class adjustments due to strategic or tactical asset allocations, particularly in non-traditional or alternative asset classes where there may be only one Underlying Fund option. Underlying Funds that provide exposure to non-traditional asset classes often have more volatile in- and out-flows and smaller asset bases. The Redemption Restriction may cause Voya IM to limit the Voya FoFs' exposure to such asset classes, resulting in a less desirable mix of assets being made available to our investors.

We also share the concerns of the ICI, discussed in the ICI Comment Letter, that the Redemption Restriction will pose challenges under the Liquidity Rule.¹³ As the ICI notes, since the Rule would restrict the redemption of holdings above 3 percent of an acquired fund's shares within a 30-day period, depending on facts and circumstances, an acquiring fund might consider such holdings to be wholly or partially illiquid. Thus, the Commission's proposed new approach to FoFs regulation could potentially create liquidity issues for the Voya FoFs and shareholders, including within the ambit of the Liquidity Rule, notwithstanding that the Underlying Fund shares are, in practice, highly liquid.

¹³ See the ICI Comment Letter at pages 11-12.

In short, it is our view that, due to the liquidity issues that would arise if the Rule is adopted as proposed, the Voya FoFs' would become unable to take advantage of attractive Underlying Fund options, notwithstanding that Voya IM has confidence in these investment options and the asset classes they represent. This would harm both the Voya FoFs and the Underlying Funds, as they would lose assets for reasons beyond their control that are not related to these funds' fees or performance. Such a result would significantly curtail Voya IM's investment discretion, a constraint that would likely prevent Voya IM from investing the Voya FoFs' assets in a manner that the firm deems necessary, appropriate and in the best interests of Voya FoF shareholders.

Moreover, if the Redemption Restriction results in the Voya FoFs ceasing to invest in an Underlying Fund, the Underlying Fund's asset base will shrink, diminishing or eliminating the benefits of potential economies of scale and operational efficiency. Ultimately an Underlying Fund may not be viable. This in turn would harm the remaining shareholders in the Underlying Fund. In addition, an attractive investment option would no longer be available for investment more generally, reducing investor choice in an industry that already is experiencing fund consolidation and a shrinking universe of investment options, particularly fund options offering exposure to non-traditional asset classes.

Finally a Voya FoF may, from time to time, be asked to satisfy a large-scale redemption request (*e.g.*, if a retirement plan or other institutional investor redeems a high percentage of a Voya FoF's outstanding shares). In such a case, the Redemption Restriction could cause the Voya FoF to deviate from Voya IM's intended allocation among Underlying Funds for that Voya FoF. Such a situation could occur if an investor's redemption required the Voya FoF to redeem more than 3 percent of the shares of one particular Underlying Fund, and the Voya FoF could begin to experience an over-allocation to one Underlying Fund (from which it could not fully exit), and an under-allocation to the remaining Underlying Funds, contrary to Voya IM's investment intent.

B. Possible Alternatives to the Redemption Restriction

In light of the negative, and likely unintended, consequences commented on above, Voya recommends that the Redemption Requirement not be included as a condition of the Rule. We believe that an alternative approach could be used to deter an acquiring fund from exerting undue and harmful control over the acquired fund.

Further, if the Redemption Restriction were to be included as a condition of the Rule, it is our view that, similar to the proposed voting and control requirements under the Rule, which we address below, the Redemption Restriction should not apply to a FoF's acquisitions of an acquired fund in the same family of funds. This view is consistent with the regulation of FoFs under Section 12(d)(1)(G) of the 1940 Act, which Congress enacted in 1996 and which permits such arrangements without any limits on redemptions by acquiring funds. Where an acquired fund is part of the same group of investment companies as the acquiring fund and generally advised by the same investment adviser, the risk of undue influence through the threat of large-

scale redemptions is mitigated by the investment adviser's fiduciary obligations to both the acquiring fund and the acquired fund as well as by board oversight.

We note that this approach also solves a disconnect between the manner in which FoFs would be regulated under Section 12(d)(1)(G), as compared to their regulation under the Rule. Section 12(d)(1)(G) would permit a FoF to invest in other funds in the same complex in excess of the Section 12(d)(1) limitations, with no restriction on redemptions. The FoF becomes subject to the Redemption Restriction if its portfolio manager determines that it is in the best interest of the FoF to invest in a financial instrument in addition to other funds within its same group. As the ICI has noted, the relationship between the FoF and its underlying affiliated funds would be exactly the same after investment in the financial instrument, and such an investment would not introduce any new potential for undue influence by the acquiring fund over the acquired fund.¹⁴ Not imposing the Redemption Restriction as part of the Rule (or limiting the restriction to investments in non-affiliated acquired funds) would avoid subjecting substantially similar FoFs arrangements to different conditions.

Further, there is a long-standing regime in place that protects acquired funds and their investors from an acquiring fund's overreach, namely, the processes established pursuant to the conditions of FoF Orders permitting FoF investments in funds both within and outside of a fund complex. The conditions include requirements intended to prevent undue influence by the acquiring fund and its affiliates over the underlying fund.

Such conditions are part of the Voya FoF Order. Voya has long-established policies and procedures in place to assure compliance with these conditions, and we have found them substantially similar to the conditions imposed on other investment companies.¹⁵ Voya is comfortable with these conditions. Given these considerations, in lieu of the Redemption Restriction, the conditions of the FoF Orders, which we believe adequately address the policy concern of an acquiring fund exerting undue influence on an acquired fund, could be codified as part of the Rule.

We also support the ICI's suggestions regarding a framework, that could be codified as part of the Rule, requiring that: (1) an acquiring fund's adviser make representations to the acquiring fund's board of directors to the effect that the adviser would not cause the acquiring fund's existing or potential investment in the acquired fund to influence the terms of any services or transactions between the acquiring fund (or certain affiliates) and the acquired fund (or certain

¹⁴ See the ICI Comment Letter at page 13.

¹⁵ The Voya funds have: (1) sold shares to FoFs outside of the Voya funds complex, in excess of the limits of Section 12(d)(1)(B) of the 1940 Act, in reliance on these non-affiliated FoFs' exemptive relief; and (2) invested in non-affiliated exchange-traded funds in excess of the limits under Section 12(d)(1)(A) of the 1940 Act, in reliance on the exchange-traded funds' exemptive relief. The conditions of these non-affiliated funds' relief aligned closely with the conditions of the Voya FoF Order.

affiliates); (2) such representations be included in initial and periodic reports to the acquiring fund's board of directors; and (3) before an acquired fund knowingly accepts an initial investment from an acquiring fund in reliance on the Rule, the investment adviser to the acquired fund could evaluate the potential benefits and risks of such an investment, and find that accepting the investment is in the best interest of the acquired fund, and report its finding and the basis for the finding to the acquired fund's board of directors.¹⁶

Voya believes that the alternative approaches suggested above will address the SEC's concerns regarding an acquiring fund's exerting undue influence over an acquired fund, without causing the harms to investors that are outlined in this comment letter. Further, these approaches are consistent with the current and long-standing regulation of FoFs arrangements and will provide the same level of investor protections that have been in place historically.

Voting Condition under Proposed Rule 12d1-4

The Rule would require an acquiring fund that holds more than 3 percent of an acquired fund's outstanding voting securities to vote those securities in the manner prescribed by Section 12(d)(1)(E) of the 1940 Act. Under Section 12(d)(1)(E), an acquiring fund must either: (1) seek instructions from its shareholders as to the voting of all proxies with respect to the acquired fund shares and vote such proxies only in accordance with their instructions ("pass-through" voting); or (2) vote the shares held by the acquiring fund in the same proportion as the vote of all other shareholders ("mirror" voting). This voting requirement would not apply when the acquired fund is within the same group of investment companies as the acquiring fund.

Voya supports the 3 percent threshold for closed-end funds that trade in the secondary market (*i.e.*, closed-end funds listed on an exchange). We agree with the SEC's position, stated in the Release, that a 3 percent threshold is important for closed-end funds because historically these funds have been the targets of proxy contests. Of note, a closed-end fund trading at a discount may attract activist investors, including other funds, seeking to take advantage of arbitrage opportunities, at the expense of long-term investors.¹⁷ The FoF Orders that facilitated investment in closed-end funds have customarily contained a condition that essentially requires an acquiring fund that acquires more than 3 percent of a closed-end fund to vote the acquiring fund's interest in the manner described in Section 12(d)(1)(E). This condition was designed to

¹⁶ See the ICI Comment Letter at pages 15-16.

¹⁷ Shares of closed-end funds typically trade on a stock exchange at prices that can change throughout the market day. When a closed-end fund's shares trade at a significant discount to net asset value, an activist manager may acquire the closed-end fund's shares on an exchange at the discount. The activist manager may then seek to cause the fund to take actions that provide liquidity to all the fund shareholders, such as tender offers (where the fund purchases its shares at or close to its net asset value), liquidations, or open-ending of the closed-end fund.

limit an acquiring fund from influencing the underlying closed-end fund through voting power, and we believe it can help to protect closed-end fund investors from coercive behavior.¹⁸

In the case of open-end funds, our view is that the 3 percent threshold would be unduly burdensome, without a corresponding benefit to such funds. To begin, open-end funds that do not trade in the secondary market are not subject to the same arbitrage risk as listed closed-end funds. Thus the lower threshold for triggering the pass-through/mirror voting requirement that has utility in protecting listed closed-end funds and their investors would not appear to be warranted in the case of open-end funds.

At the same time, there are drawbacks to requiring an acquiring fund that holds more than 3 percent of an open-end fund's outstanding voting securities to vote those securities in the manner prescribed by Section 12(d)(1)(E) of the 1940 Act. As noted in the ICI Comment Letter, a FoF's adviser must vote an acquired fund's proxies in the best interest of the acquiring fund and its shareholders, and in certain circumstances it may not be in the FoF's best interest to split the FoF's vote to proportionally mirror the votes of other shareholders in the underlying fund.¹⁹

Moreover, the use of pass-through voting would increase the costs and logistical challenges of proxy solicitations. In this regard, certain Voya funds sell to mutual funds outside of the Voya funds complex in reliance on these non-affiliated funds' FoF Orders. If these acquiring funds determine to implement pass-through voting, the costs of obtaining approvals of shareholder proposals could increase significantly, without a corresponding benefit to a Voya fund's shareholders.

In light of the foregoing, we recommend that an acquiring fund be required to mirror or echo vote an acquired, open-end fund's shares only when the acquiring fund controls the underlying open-end fund. As noted above, an acquiring fund's beneficial ownership of more than 25 percent of the voting securities of an acquired fund is presumed to constitute "control."²⁰ At this level of ownership, there is a greater risk that an acquiring fund can exert undue influence on the acquired fund, and thus the burdens and/or expenses of mirror or echo voting acquired fund shares is a reasonable trade-off.

¹⁸ More particularly, these FoF Orders have required that when an acquiring fund invests in a closed-end fund in reliance on a FoF Order, the acquiring fund must vote shares of the closed-end fund in the manner prescribed by Section 12(d)(1)(E) of the 1940 Act, while non-fund entities within the advisory group are required to use mirror voting.

¹⁹ See the ICI Comment Letter at page 18.

²⁰ This threshold would be consistent with the conditions of the FoF Orders, which historically have required that an acquiring fund and its advisory group to mirror vote shares only when the acquiring fund and its advisory group become holders of more than 25 percent of the outstanding voting securities of an acquired open-end fund (or unit investment trust) due to a decrease in the outstanding securities of the acquired fund.

Voya also disagrees with the requirement, proposed under the Rule, which mandates mirror or pass through voting for all the members of an advisory group, rather than just for the acquiring fund. Voya is an enterprise with various business lines that manage a range of investment products, including mutual funds, collective investment trusts, and managed accounts, that are intended to serve the needs of a diverse array of investors, including retail investors, institutions, 529 plan investors, Retirement Plans and employee benefit plans. If the voting requirements under the Rule are adopted as proposed, they could supersede arrangements that may be in place for Voya's non-fund clients.²¹ It is therefore our view that the Rule's voting condition apply only to the Voya FoFs, and not all Voya entities that would be swept up by the Rule's broad definition of advisory group.

Additional Closed-End Fund Considerations

As Voya offers a line-up of closed-end Funds, we wished to weigh in on aspects of the Rule that are relevant to these products. First, as noted above, we support codifying, as part of the Rule, a provision that would require a non-affiliated fund that intends to invest in a Voya closed-end Fund in excess of the 3 percent limit in Section 12(d)(1)(A)(i) to enter into a participation agreement with the closed-end Fund. This would allow Voya's closed-end Fund to weigh the potential benefits and risks of the investment before executing the participation agreement and agreeing to the investment. Voya's closed-end Funds may at some point be at risk from activist shareholders that may wish to influence our Funds' operations, to the detriment of these Funds' long-term investors. We believe that it is in Voya's closed-end Funds' best interest to continue to have in their arsenal this tool for protecting the interests of their shareholders.

In addition, in the ICI Comment Letter, the ICI urged the SEC to work with Congress to introduce legislation that would better address the goals of Section 12(d)(1) of the 1940 Act in the context of private fund investment in closed-end funds. We agree with the ICI's observation that currently private funds may be able to exert undue influence over closed-end fund operations to the detriment of long-term shareholders. We therefore join the ICI in recommending that the SEC recommend amending Sections 3(c)(1) and 3(c)(7) to deem a private fund investing in a registered fund and any other private funds controlled by the private fund's manager to be an "investment company" for purposes of Section 12(d)(1)(C) of the 1940 Act.²²

²¹ The ICI Comment Letter provides an example of an unintended consequence of extending the Rule's voting requirement to all members of an advisory group that is relevant to Voya's retirement-focused business. In the letter, the ICI observes that this requirement could cause an affiliate of a fund that is a trustee or other fiduciary of an employee benefit plan to be in violation of its fiduciary duties under Sections 404(a)(1)(A) and (B) of the Employee Retirement Income Security Act of 1974 if forced to adhere to the Rule's voting conventions, citing to 29 U.S.C. §1104(a)(1)(A) – (B). See the ICI Comment Letter at page 19.

²² *Id.* at pages 29-31.

Changes to Existing Regulatory Regime

As part of its FoFs rulemaking, in an effort to create a more consistent framework for the regulation of FoFs arrangements, the SEC is proposing to:

- (1) Rescind Rule 12d1-2 under the 1940 Act;
- (2) Amend Rule 12d1-1 under the 1940 Act to provide funds relying on Section 12(d)(1)(G) of the 1940 Act with continued flexibility to invest in money market funds outside of the same group of investment companies if they rely on Section 12(d)(1)(G); and
- (3) Rescind (one year following the effective date of any final rule) the exemptive orders permitting FoFs arrangements, including all orders granting relief from Sections 12(d)(1)(A), (B), (C), and (G) of the 1940 Act (other than exemptive relief related to interfund lending arrangements).

Subject to our proposed recommendations discussed above, Voya does not object to the SEC's proposed streamlining of the FoFs regulatory regime. However, the Voya FoF Order contains relief from Section 17(a) of the 1940 Act that permits the Voya funds to invest in a guaranteed rate investment contract (a "Voya Guaranteed Contract") issued by an affiliated insurance company.²³ We therefore request that the Commission clarify that the rescission of the FoF Orders would be limited to orders or portions of exemptive orders that permit funds to invest in same group of funds and/or non-affiliated funds as described in the Release. Without such clarification, we would be unsure as to whether the Voya funds would continue to be able to invest in a Voya Guaranteed Contract and other financial instruments in reliance on the Voya FoF Order and/or the Voya FI Order.

The Release also indicates that the SEC's Division of Investment Management is reviewing staff no-action and interpretive letters relating to Section 12(d)(1) to determine whether any such letters should be withdrawn in connection with any adoption of the Proposals. There is an extensive amount of SEC staff guidance and no-action relief relating to Section 12(d)(1) that has been provided over many years, and it is not clear which letters might be withdrawn based on the statements in the Release. We are concerned that no-action letters relating to Section 12(d)(1) that serve as valuable guidance, or no-action relief for that would continue to provide constructive relief benefiting funds, would not be preserved. We therefore ask that the SEC staff publicly indicate which specific letters could be withdrawn so that Voya

²³ If an insurance company that is deemed to be an affiliated person of a Voya fund issues a Voya Guaranteed Contract to the Fund, the Voya fund's purchase of the Voya Guaranteed Contract would be prohibited by Section 17(a) under the 1940 Act. The Voya FoF Order contains conditions that protect Fund investors, while at the same time allowing the a Voya funds the ability to invest in Voya Guaranteed Contracts, consistent with its investment strategies, when Voya IM deems such an investment to be in the interests of the Fund and its shareholders.

Ms. Vanessa Countryman
May 2, 2019
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and other fund groups would have an opportunity to comment and address possible SEC staff concerns.

Conclusion

We appreciate this opportunity to comment on the Proposals. We would be happy to answer any questions regarding these comments.

Sincerely,

A handwritten signature in blue ink that reads "Huey Falgout, Jr." with a stylized flourish at the end.

Huey Falgout, Jr.
Managing Director and Chief Counsel
Voya Investment Management LLC