GUGGENHEIM INVESTMENTS

May 2, 2019

VIA ELECTRONIC DELIVERY

Vanessa Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

Guggenheim Investments[1] ("Guggenheim" or "we") appreciates the opportunity to respond to the request by the U.S. Securities and Exchange Commission ("SEC" or "Commission") for comments regarding the above-referenced release (the "Proposing Release").[2]

We appreciate the Commission's desire to create a more consistent and efficient regulatory framework for fund of funds arrangements and the objective of creating a comprehensive, streamlined framework that would reduce confusion and enhance investor protection, while also providing funds with investment flexibility to meet their investment objectives in an efficient manner. We note the Commission's acknowledgement that fund of funds arrangements offer a range of benefits to acquiring funds and investors. In the Proposing Release, the SEC noted potential benefits for acquiring funds, such as using investments in other funds to gain exposure to a particular market or asset class in an efficient manner or to equitize cash, engage in hedging transactions, or manage risk, and the convenience offered by fund of funds arrangements to investors. We also have found the benefits offered by fund of funds arrangements to be substantial, and not surprisingly, those arrangements are in widespread use within the fund industry. As stated in the Proposing Release, the SEC staff estimates that almost one-half of registered funds hold investments in other funds.[3]

As noted above, many funds, including the Guggenheim Funds, invest in other registered funds, both within and outside of the same "group of investment companies," for a variety of reasons, and such fund of funds arrangements have become an important tool for efficient and timely portfolio management decisions intended to, among other things, gain exposures, hedge risk and manage cash, alongside other investments that may be used to accomplish similar objectives. For example, investing in other funds to gain desired exposure to a particular market would be evaluated by a fund's portfolio manager relative to direct investments and swaps or other derivatives and financial instruments, on the merits of the cost of the investment and related transaction expenses, specific exposures available, liquidity, diversification and other considerations deemed relevant to prudent portfolio management under the circumstances and

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[1] Guggenheim Investments represents the investment management business of Guggenheim Partners, LLC, which includes Guggenheim Partners Investment Management, LLC, Security Investors, LLC and Guggenheim Funds Investment Advisors, LLC. We refer to the funds under Guggenheim's management as "Guggenheim Funds" or "Funds."

[2] Fund of Funds Arrangements, 84 Fed. Reg. 1286 (Feb. 1, 2019).

[3] Id. at 1287.

particular investment objective and strategies of the fund. It is also a way to obtain exposure to a specialized asset class or strategy and expert portfolio management teams for these specialized investments.

Accordingly, in evaluating a purchase of fund shares relative to other investment options to achieve the same objective, the portfolio manager's considerations would go beyond solely the relative cost of the various investment options. For example, a portfolio manager might seek to obtain a small exposure to a specific type of debt investment for a fund and could choose to achieve that goal either by investing directly in the specialized debt, in a swap on a particular index or in another financial instrument, or purchasing shares of a fund to gain that exposure indirectly. Based on this type of evaluation, the portfolio manager may have a comfort level with the portfolio of debt in an underlying fund or the quality of its management team and, on the basis of these and other considerations deemed relevant, he or she might believe that the fund would be the better investment option under the circumstances.

We believe that it is important to preserve the flexibility to make that investment through the purchase of fund shares. We have concerns, however, that the rule as proposed in many instances would foreclose that investment option by limiting flexibility available under the current regime, or submitting the decision to undue burdens or limitations.

In our experience, the evolution toward the use of fund of funds arrangements has been positive for funds and their shareholders. Investments in other funds obviously have costs associated with them (as do all investments) and it is important to have a regulatory regime that protects against potentially duplicative and excessive fees and other possible abuses. However, our experience has been that the fund of funds arrangements offer substantial benefits that should be preserved, and care should be taken in crafting the new rule to avoid unintentional harm to funds and their shareholders by limiting the flexibility that has evolved under the current regime. As discussed below, the Guggenheim Funds could be meaningfully adversely affected by the conditions of the proposed rule and the overall rulemaking package as the proposal would significantly curtail the flexibility currently available to our portfolio managers. We respectfully submit that the Commission carefully listen to concerns of the industry prior to adopting final rules.

Redemption Restriction

The proposed condition that would prohibit an acquiring fund that holds more than 3% of an acquired fund's total outstanding shares from redeeming, submitting for redemption or tendering for repurchase, more than 3% of the acquired fund's total outstanding shares in any 30-day period would require substantial adjustments in certain of our Funds' holdings and strategies (and we understand those of other industry participants).[4] This proposed condition would also limit investment options currently available to portfolio management teams when making prudent investment management decisions. For example, many of our Funds use other Guggenheim Funds that are ultra short-term debt funds (but not money market funds pursuant to Rule 2a-7 under the 1940 Act, as defined below) as cash management vehicles (the "cash management funds"). These cash management funds, most of which have no management fee, are designed primarily to provide an alternative to investing directly and separately in various short-term debt securities. The Funds may use the cash management funds for various portfolio management purposes, including for cash management and liquidity management purposes, or to seek to obtain exposure with a higher level of return on investments used to collateralize derivatives (or other) positions and achieve greater

[4] We recognize that, as proposed, acquiring funds that rely on Rule 12d1-4 to invest in funds that are listed on an exchange would be permitted to continue to sell shares in the secondary market without regard to the volume limit. Thus, an acquiring fund's investments in ETFs or listed closed-end funds would not be affected by the redemption restrictions as they trade in the secondary market, such that this condition would disproportionately affect investments in mutual funds, which is contrary to the sentiment of consistency and leveling of playing fields articulated in the Proposing Release.

diversification and trading efficiency than would usually be experienced by investing directly and separately in debt securities.

Rule 12d1-4, as proposed, would frustrate the utility and benefits of the cash management funds to the other Guggenheim Funds, as the redemption limitation would become a gating factor for the portfolio management teams to take into account. Without the ability to invest desired amounts in the cash management funds, the Funds' separate portfolio management teams would likely invest more of their own cash independently, without the benefit of the expert short-term debt management, diversification, flexibility and liquidity offered by the cash management funds, and potentially via the use of less efficient and/or more expensive instruments and sometimes less efficient transaction terms. Portfolio management cost may substantially increase for the acquiring funds as a result, and quality of execution may decrease. We believe that this outcome would be detrimental to our Funds and their shareholders.

The redemption restriction would also discourage investment in other funds, not just cash management funds, including investments by larger funds in funds that are smaller in asset size. For example, if a large fund sought to invest in a strategy offered by a relatively small fund with a niche investment strategy, a 1% allocation of the large acquiring fund's assets might exceed 3% of the outstanding shares of the acquired fund, rendering the investment less attractive and potentially unfeasible due to the impact of the redemption restriction. For the larger fund, in order to make an investment of a size that is meaningful with regard to its portfolio could require an investment in excess of 3% of the outstanding shares of the smaller acquired fund, such that a large portion of the acquiring fund's investment in the acquired fund would introduce logistical and other challenges to the liquidity classification process and could be deemed illiquid solely as a result of the redemption restriction.[5] As a result, the larger fund may be foreclosed from access to an attractive strategy, and the smaller fund would lose access to assets that could be beneficial to its other shareholders with respect to potential economies of scale and/or portfolio management (*e.g.*, diversification, liquidity and investment opportunities).

Even if an acquiring fund is not subject to this sizing risk, it may still be disincentivized to invest in another fund to the extent that the proposed redemption restriction threatens to hold the acquiring fund "hostage" in circumstances where investors of the acquired fund find it prudent to exit the fund. Whereas other investors (including non-acquiring fund investors with large investments in the acquired fund) will be free to redeem, the acquiring fund may be prohibited from redeeming all or a portion of its investment – and, in fact, its ownership percentage could increase further as a result of fellow-investor redemptions.

We find the redemption restriction unnecessary and respectfully note that mandatory redemption limits are not part of the current regulatory framework and introduce significant negative effects on fund of funds arrangements, as discussed herein. In addition, the proposed redemption restriction appears to ignore the existence of the new liquidity rule, Rule 22e-4 under the Investment Company Act of 1940 ("1940 Act"), which requires funds to develop a written liquidity risk management program that is reasonably designed to assess and manage liquidity risk. As part of that program, funds would be aware of large shareholder positions and would take those positions into account in managing liquidity risk, which is present whether the large shareholder is a fund or another type of investor. We note that the redemption risk is much lower if the large shareholder is a fund in the same group of investment companies versus a large institutional investor or other large shareholder and if the large investor is a fund outside the same group of investment companies, the risk is no different than that posed by any other large investor. Accordingly, we do not believe that introduction of the redemption restriction is necessary or appropriate and in fact, will do harm

[5] We also note that the restriction would apply even if the acquired fund invested primarily in highly liquid investments and could easily and willingly accommodate the redemption request. As a result, the investment in the otherwise primarily highly liquid acquired fund could be classified as an "illiquid investment" solely as a result of the imposition of the restrictions on redemption.

to beneficial fund of funds arrangements that have come into being under the current regulatory framework to the benefit of funds and their shareholders.[6]

Issues with Limitations on Investments in 3(c)(1)/3(c)(7) Vehicles

As discussed above, many of our Funds invest in the cash management funds or other debt funds for various portfolio management purposes. Guggenheim created the cash management funds to allow other funds in the complex to pool their cash investments in centrally managed short-term investment vehicles that would allow acquiring funds to take advantage of Guggenheim's expertise in managing such assets. In our experience, the cash management funds have worked as designed, and investing in the cash management funds has benefited many of the funds in our complex by enhancing returns on the Funds' allocations to cash or cash-equivalent investments.

As proposed, acquired funds under Rule 12d1-4, such as the cash management funds, must not acquire the securities of another investment company (or companies that would be investment companies under Section 3(a) of the 1940 Act but for the exclusions from that definition provided for in Section 3(c)(1) or Section 3(c)(7) of the 1940 Act) in excess of the limits in Section 12(d)(1)(A) of the 1940 Act, subject to limited exceptions. As explained below, because the cash management funds may invest in asset-backed securities and other structured finance vehicles, which may technically be Section 3(c)(1) or 3(c)(7) vehicles,[7] this condition would result in meaningful adverse impacts on debt (acquired) funds and funds of funds that invest in debt funds.

As a result of the proposed conditions on acquired fund investments, many debt funds that serve as acquired funds under the proposed rule would no longer be allowed to be managed as they are currently as their investments in Section 3(c)(1) and 3(c)(7) vehicles, particularly structured finance vehicles (ABS, etc.), would be limited. We believe that the narrow scope of the exceptions to the limitations placed on acquired funds' ability to invest in other funds in excess of the statutory limits could substantially constrain debt funds, such as our cash management funds, notably the lack of an explicit exclusion for investments in structured finance vehicles that may rely on the exceptions to the definition of "investment company" provided in Sections 3(c)(1) and 3(c)(7), and we do not believe that this is consistent with Congressional intent in adopting Section 12(d)(1) or the Commission's intent in proposing Rule 12d1-4.[8]

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[6] As discussed above, we are concerned by the lack of sufficient exceptions to the proposed redemption limitation, including when acquired funds otherwise believe that they have sufficient liquidity to meet an acquiring fund's redemption request in excess of 3% of the acquired fund's outstanding shares. If deemed necessary by the Commission to retain such a limit (which we believe should be eliminated), we would propose consideration of an exception from the limitation for investments in funds within the same group of investment companies or a provision allowing for acquired funds to enter into participation agreements with prospective acquiring funds to address the concerns raised in the Proposing Release. The fund industry has experience in dealing with participation agreements, and we believe that this would be a much less disruptive approach than the proposal to limit redemptions as a condition to reliance on Rule 12d1-4. We believe that the redemption limit would in effect terminate certain existing fund of funds arrangements to the detriment of the participating funds and their shareholders.

[7] The acquiring Funds have invested in the cash management funds in reliance on Section 12(d)(1)(G) of the 1940 Act and accordingly, the cash management funds have not invested in other funds in reliance on Section 12(d)(1)(F) or 12(d)(1)(G) of the 1940 Act in order to be eligible for purchase by the acquiring funds in excess of the statutory limits on investments in other funds.

[8] We further believe that acquired funds should have the same ability as other registered funds to invest in private funds without regard to the limits of Section 12(d)(1).

We would propose that the limits on investments in such vehicles beyond those currently in effect should not be imposed as part of any final rulemaking. We note that such vehicles were not the types of investment companies that Congress had in mind when it adopted and subsequently amended Section 12 of the 1940 Act, and we are not aware of abuses or significant potential for abuses with respect to funds investing in structured finance vehicles that are Section 3(c)(1) or 3(c)(7) funds. As a result, we propose that the condition be amended to exclude the reference to Section 3(c)(1) and 3(c)(7) funds and revert to the current regulatory framework. If deemed necessary by the Commission to retain such a limit, we submit that the Commission provide an exception for structured finance vehicles that are Section 3(c)(1) or 3(c)(7) funds. Otherwise, there may be meaningful negative consequences on fund investors (and even underlying debt markets).

Expand Relief Beyond Rule 12d1-1 for Cash Management Purposes

We note that there is a carve-out for acquired fund investments in other funds for short-term cash management purposes pursuant to Rule 12d1-1 or exemptive relief from the Commission. However, funds such as our cash management funds that implement an ultra short-term debt strategy (and are not Rule 2a-7 funds) would not be eligible for investment in reliance on Rule 12d1-1. We submit that the Commission consider expanding this carve-out to include short-term bond funds that have a dollar-weighted average portfolio duration of no more than three years, or similar private funds.

We believe that it is important to preserve the ability to invest in cash management vehicles other than Rule 2a-7 compliant vehicles and preserve their ability to invest in structured finance vehicles organized as Section 3(c)(1) and 3(c)(7) funds so that the funds can continue to operate as they do currently, which is essential to meeting the cash management funds' investment objectives and providing enhanced returns for our Funds and their shareholders.

Administrative Costs and Burdens

We are also concerned that the rulemaking, if adopted as proposed, would likely result in significant additional compliance, investment and practical costs and burdens that ultimately may result in increased fund expenses. We note that the proposed conditions would necessitate meaningful investments in technology, personnel, training and other compliance-related resources to monitor holdings of acquired funds, particularly when such "advisory groups" involve large diversified financial services institutions. We also note that, given the components of the overall rulemaking, particularly the proposed rescission of Rule 12d1-2, it is likely that many more funds and fund complexes would need to rely on Rule 12d1-4 than the number that currently rely on fund of funds exemptive orders. Therefore, many fund complexes will be required to build new systems for monitoring across applicable affiliates (specifically, the acquiring fund's investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor), which include entities that while technically potentially controlling or under common control, operate as completely separate businesses, following separate proxy voting policies and principles, and maintained on completely separate systems.[9]

We would propose that the SEC consider subjecting this requirement to a "knowingly" qualifier or permitting the use of information barriers or other similar separations to limit the scope of the advisory group for purposes of the proposed rule.

[9] The notion of "control" under the circumstances may also be very difficult to apprehend in automated compliance systems.

Similarly, with respect to the condition requiring investment advisers to (i) evaluate the complexity of the structure and the aggregate fees associated with the acquiring fund's investment in the acquired fund, (ii) find that it is in the best interest of the acquiring fund to invest in the acquired fund prior to making the investment, and (iii) then report to the acquiring fund's board its finding and the basis for the finding, we have considered whether this process is additive. We view the decision to make an investment in an acquired fund as an investment decision like any other. In fact, the Commission stated that the decision "whether to invest in an acquired fund to achieve a fund's investment objective, rather than other types of assets, is a question of portfolio management."[10] As discussed earlier, a portfolio manager will evaluate the investment taking into account other investment options that would accomplish the fund's investment objective, relative costs, risks, and liquidity, among other factors, and how best to meet the acquiring fund's objective, consistent with his or her fiduciary obligations. This decision-making process is an exercise of the adviser's fiduciary duty, and the cost and complexity of the fund of funds structure would be factors along with many others that would drive the investment decision. The guidance provided by the Commission in this area in the Proposing Release seems to be largely based on accounting modeling considerations and seems to dictate a specific approach to portfolio managers. Further, we expect that this analysis would give rise to the need to incorporate attorneys and accounting staff to assist in documenting the cost of the fund investment and the complexity of the structure prior to making the investment and in preparing a document for review by the board. We believe that this approach adds complexity, cost and additional time to the investment process without adding significant value to the process. We suggest that the Commission simply reiterate the guidance it provided in this area in its 2006 release adopting Rule 12d1-1 and defer to the fiduciary judgment of advisers and fund boards.[11]

With respect to the proposed one-year implementation period, we are concerned that certain of our acquired Funds would be forced to sell assets at an inopportune time in the markets to meet redemption requests from our acquiring Funds that want to sell their acquired Fund shares prior to the implementation date to avoid having those shares potentially become illiquid or otherwise subject to the redemption restriction. We are also concerned that the one-year date could result in negative market impact if enough acquired funds are selling securities just prior to the implementation date to meet acquiring funds' redemption requests.

Legislative Changes

We support the recommendation in the comment letter submitted by the Investment Company Institute ("ICI") that the Commission work with Congress to introduce legislation amending Sections 3(c)(1) and 3(c)(7) to deem any private fund investing in a registered fund to be an "investment company" for purposes of the limitation set forth in Section 12(d)(1)(C). Currently, a private fund relying on Section 3(c)(1) or Section 3(c)(7) is excluded from the definition of "investment company," except for purposes of the limitations in Sections 12(d)(1)(A)(i) and (B)(i). Section 12(d)(1)(A)(i) prohibits a registered fund from acquiring voting securities issued by another registered fund if immediately after the acquiring fund would own more than 3% of the registered fund's voting securities. Section 12(d)(1)(B)(i) covers the other side of the transaction where the acquired fund is an open-end fund by prohibiting the acquired fund from selling its shares to an acquiring fund if immediately after that sale the acquiring fund would own more than 3% of the acquired fund's voting securities. The ICI amendment would prohibit a private fund from acquiring any voting securities issued by a registered fund if immediately after that acquisition if the private fund, together with other private or registered funds having the same investment adviser (and companies controlled by them), would own more than 10% of the registered fund's outstanding voting securities.

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[10] Proposing Release at 1302.

[11] Fund of Funds Arrangements, SEC Release No. IC-27399, 71 Fed. Reg. 36640 (June 20, 2006) at n. 52.

Section 12(d)(1) is intended, among other things, to address concerns that an acquiring fund might use its control over an acquired fund to benefit its investors at the expense of other shareholders in the acquired fund. To this end, registered funds are subject to the limitations on acquiring interests in other registered funds in subparagraphs (A)(i), (B)(i) and (C) of Section 12(d)(1). Private funds, however, are not subject to Section 12(d)(1)(C). The 3% limit in subparagraph (A)(i) is applied on a fund-by-fund basis. An investment adviser to multiple private funds can circumvent this restriction by allocating 3% or less of the outstanding voting securities issued by a targeted registered fund to each advised private fund. Because a private fund is not subject to the 10% limit in Section 12(d)(1)(C), an investment adviser that controls multiple private funds can avoid this limitation. We believe that the ICI's proposed amendment to Sections 3(c)(1) and 3(c)(7) would close this loophole with little disruption to current business practices in the fund industry.

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If it would be helpful to discuss our specific or general views on the Proposing Release, please contact Amy J. Lee at [redacted]. We appreciate your consideration and look forward to working with you on this important matter.

Sincerely,

/s/ Brian E. Binder

Brian E. Binder
Chief Administrative Officer
Guggenheim Investments