PGIM INVESTMENTS
Bringing you the investment managers of Prudential Financial, Inc.

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May 2, 2019

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:

PGIM Investments LLC ("PGIM Investments") submits this letter in response to the request of the Securities and Exchange Commission (the "Commission" or "SEC") in Release IC-33329 (December 19, 2018) (the "Proposing Release") for comments on proposed Rule 12d1-4 under the Investment Company Act of 1940 (the "Investment Company Act" or the "1940 Act").

PGIM Investments and its predecessors have served as a manager or administrator to investment companies since 1987. As of March 31, 2019, PGIM Investments, a wholly-owned subsidiary of Prudential Financial, Inc., served as the investment manager to all of the PGIM Investments U.S. and offshore mutual funds, closed-end funds and exchange-traded funds, with aggregate assets of approximately $268 billion.

PGIM Investments appreciates the Securities and Exchange Commission's efforts to streamline and enhance the regulatory framework applicable to funds that invest in other funds ("funds of funds" arrangements).[1] Section 12(d) of the 1940 Act and the rules thereunder are critical in the operation of funds of funds, which we believe provide investors with a highly efficient and effective way of meeting their investment objectives and financial goals, including building and managing assets to and through retirement.

The SEC's new rule 12d1-4 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 Investment Company Act

[1] In 2008, the SEC proposed, but never adopted, a fund of funds rule for investment companies investing in exchange-traded funds. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008) ("2008 proposal").

without obtaining an exemptive order from the Commission. In connection with the proposed rule, the SEC proposes to rescind Rule 12d1-2 under the Investment Company Act and most exemptive orders granting relief from Sections 12(d)(1)(A), (B), (C), and (G) of the Investment Company Act. As discussed below, we have serious concerns with the SEC's proposed new regulatory regime for fund of funds arrangements because we believe it will be disruptive to certain funds we manage as well as many other fund structures common to our industry, and may deprive shareholders of an efficient means of meeting their goals.

As of March 31, 2019, PGIM Investments managed 33 mutual funds that operate as fund of funds, including target date funds, with approximately $46.84 billion in assets.

As a member of the Investment Company Institute (the "ICI") and the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG"), PGIM Investments participated in the preparation of the letters submitted by both trade organizations. PGIM Investments echoes the concerns expressed in both of those letters and we would like to emphasize our concurrence with the following views that were expressed therein.

COMMENTS

Our comments discuss our concerns with the following provisions of the proposed rule:

A. Redemption Limit for Affiliated Funds of Funds

B. Redemption Limit for Unaffiliated Funds of Funds

C. Rescission of Rule 12d1-2

D. Duplicative and Excessive Fees

E. Complex Structures and the Use of Cash Sweep Vehicles

F. Disclosure Amendments

A. Redemption Limit for Affiliated Funds of Funds

To address the concern that an acquiring fund could threaten an acquired fund with large-scale redemptions as a means of exerting control, proposed Rule 12d1-4 includes a condition that would prohibit an acquiring fund that acquires more than three percent of the outstanding voting securities of an acquired fund from redeeming, submitting for redemption or tendering for repurchase more than three percent of an acquired fund's total outstanding shares in any 30-day period.[2] This proposed limitation, which is not included in the statutory provisions, rules or existing exemptive orders, could have a significant deleterious effect on many fund of funds

[2] This limit would not prevent or otherwise limit an acquiring fund from selling acquired fund shares in secondary market transactions.

arrangements. This limit would present significant challenges for investments in acquired funds that are mutual funds, and is unfair to registered investment companies (and accordingly to their shareholders) since other investment vehicles (such as managed accounts) can redeem shares without restriction. In addition, we note that the sale of shares of an acquired fund on the secondary market (e.g., listed closed-end fund shares or ETF shares) would not be subject to the limitation, thereby granting such exchange traded funds a regulatorily imposed competitive advantage over mutual funds subject to proposed Rule 12d1-4.

For PGIM Investments mutual funds, the proposed restriction on the ability of acquiring funds to redeem shares of acquired funds represents the most disruptive and problematic aspect of the proposed rule. For instance, for the PGIM Investments fund of funds that would be required to rely on proposed Rule 12d1-4, redemptions of more than three percent from funds within the same investment group occurred frequently in 2018, for reallocation and other purposes. We are therefore concerned that the proposal would unreasonably prevent or limit ordinary course of business activity that is in the best interest of our fund of fund investors. We also believe that this part of the proposal is the least consistent with prior regulation of fund of funds arrangements[3] as well as Rule 22e-4 under the Investment Company Act (the new liquidity risk management rule).[4]

The redemption restriction is not consistent with the modern regulation of funds of funds.

With respect to acquiring funds that invest in funds within the same group of investment companies, Congress enacted Section 12(d)(1)(G) in 1996 to permit such arrangements without any limits on redemptions by the acquiring funds. Section 12(d)(1)(G) codified the framework that the SEC itself had adopted in similar exemptive orders issued before 1996.[5] This approach

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[3] When Congress enacted Section 12(d)(1)(G), it also empowered the SEC with explicit authority to permit additional types of fund of funds arrangements as structures evolved. Specifically, Section 12(d)(1)(J) of the Act allows the Commission 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. This is notable direction from Congress, given that the Commission already had extensive exemptive authority under Section 6(c). Indeed, recognizing that fund of funds arrangements would continue to evolve over time, Congress urged the Commission to use this exemptive authority in a "progressive way," particularly noting that the Commission should use its exemptive authority under appropriate circumstances so that "the benefits of [funds of] funds … are available to investors through a variety of different types and sizes of investment company complexes." On Commerce, Securities Amendments of 1996, H.R. Rep. No. 104-662 (1996), 104th Cong., 2nd Sess., at 43-45.

[4] *See* Investment Company Liquidity Risk Management Program Rules: A Small Entity Compliance Guide, https://www.sec.gov/divisions/investment/guidance/secg-liquidity.htm. The redemption restriction seems to ignore the responsibilities and obligations of registered investment companies regarding their management of a fund's liquidity, especially the Commission's own recent work on liquidity management. It was only in 2016 that the Commission adopted new Rule 22e-4, the liquidity risk management rule. The Commission spent many years on this rule in an effort to promote effective liquidity risk management. Funds, advisers, and boards of directors have dedicated substantial time and resources to the implementation of Rule 22e-4. As such, the proposed redemption restriction is not consistent with the modern regulation of fund of funds, including the liquidity risk management rule.

[5] In a few of the first SEC exemptive orders to permit funds to invest in other funds within the same group of investment companies, the SEC granted the relief subject to a condition that limited the ability of the acquiring fund

reflects that where the 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. Since the enactment of Section 12(d)(1)(G), the SEC has issued many exemptive orders that provide exemptions for same group fund of funds arrangements without requiring any redemption limits. Similarly, when the SEC adopted Rule 12d1-2 in 2006 to permit funds relying on Section 12(d)(1)(G) to invest in additional types of securities, the SEC did not impose redemption restrictions.

We do not believe that any limit should be imposed on same group fund of funds arrangements. In dealing with affiliated funds of funds arrangements, because the adviser owes fiduciary duties to both the acquiring fund and the acquired fund, there is little risk of overreach or undue influence, and therefore there isn't any need to "protect" acquired funds and their investors by limiting redemptions. In fact, the Proposing Release itself acknowledges the policy basis for not imposing a redemption restriction when it excludes same group fund of funds arrangements from the voting and control provisions in proposed Rule 12d1-4 in light of the minimal risk of undue influence by an acquiring fund over an acquired fund within the same group of investment companies. This argument is further strengthened to the extent that funds in a fund of funds structure share the same board of directors.

The redemption restriction would be highly disruptive to current funds of funds structures and could harm investors in funds of funds.

As noted in the Proposing Release, funds of funds have become a popular and efficient means for investors to obtain exposure to various asset classes and investment strategies through investment in a single fund that invests in other investment companies. Investors in funds of funds that are management companies rely on the investment adviser to the funds of funds to exercise its investment discretion, consistent with its fiduciary obligations and subject to board oversight, in furtherance of the best interests of the fund and its shareholders.

The proposed redemption limit would frustrate and interfere arbitrarily with the managerial discretion of an acquiring fund's investment adviser, thereby preventing the fund from investing in a manner that its portfolio manager deems necessary and appropriate. For example, a redemption limit could prevent the portfolio manager from promptly replacing an acquired fund with a different acquired fund or another investment if the portfolio manager believes it is in the best interest of the acquiring fund and its shareholders (i.e., in circumstances where the acquired fund is performing poorly, turnover in a key portfolio manager, or significant market downturn

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to redeem shares of the acquired fund. Later, the SEC issued orders superseding those original orders and eliminating the redemption restrictions before the enactment of Section 12(d)(1)(G). *See* T. Rowe Price Spectrum Fund, Inc., Investment Company Act Release No. 21424 (October 18, 1995) (order superseding a prior order from 1989, as amended in 1992); Norwest Bank Minnesota, N.A., Investment Company Act Release No. 22120 (August 6, 1996) (order superseding a prior order from 1994).

in an asset class, or in the event that an acquired fund becomes an acquiring fund).[6] Likewise, the proposed rule would prevent the prompt execution of investment mandates authorized by fund shareholders (i.e., a fund reorganization or liquidation). Furthermore, investors investing in fund of funds arrangements may be disadvantaged because their investment in acquired funds will be subject to the three percent redemption limit, while other investors who come in directly to an acquired fund will not be so limited and will be able to access liquidity with priority over acquiring funds.

The ability of an acquiring fund that is subject to the proposed three percent redemption limit (*e.g.*, an affiliated fund of funds under the proposed rule) to meet shareholder redemptions may be impacted by a large redemption of its shares. For example, if an acquiring fund holds more than three percent of an acquired fund's shares, a large redemption at the acquiring fund level could cause it to seek to redeem more than three percent of that acquired fund's shares, thus subjecting it to the three percent redemption limit under Rule 12d1-4. Moreover, to the extent other investors are able to redeem acquired fund shares ahead of fund of funds investors, the fund of funds may hold an increasingly large (and illiquid) position in an acquired fund, especially in circumstances where an event causes other investors to rush to redeem an acquired fund's shares, while the fund of funds must continue to hold an increasingly illiquid asset.

Indeed, the proposal notes that if an acquiring fund holds 25 percent of the outstanding shares of the acquired fund, it could take the acquiring fund 10 months to fully unwind its investment in the acquired fund.[7] In contrast, while every other type of investor in the mutual fund would be free to redeem shares, the proposed rule would discriminate against investors in a fund of funds by preventing it from making a similar necessary investment change.[8] In addition, if other investors were leaving the underlying fund for similar reasons (thereby reducing the number of outstanding shares), the acquiring fund's percentage ownership of the acquired fund could increase notwithstanding the acquiring fund's efforts to redeem shares. Under this scenario, an acquiring fund may never be able to exit the underlying mutual fund due to the redemption restriction. If an acquiring fund became a holder of more than three percent of an acquired fund's shares "passively" (*e.g.*, as a result of redemptions by other shareholders of the acquired fund), the proposed rule would automatically restrict the acquiring fund's ability to redeem, even though the acquiring fund had no intent to control the acquired fund. We believe that this result is unfair in circumstances where an acquiring fund passively becomes holder of more than three

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[6] The redemption limits also fail to take into account the ability of an acquired mutual fund to redeem in kind to avoid potential disruption from large-scale redemptions. *See, e.g.*, Signature Financial Group, SEC Staff No-Action Letter (December 22, 1999).

[7] *See* Release at note 260. This 10 month redemption stands in stark contrast to the fact that an underlying mutual fund otherwise stands ready to provide daily redemptions.

[8] Such a scenario highlights the highly discriminatory nature of the redemption restriction on acquiring funds (and therefore on the shareholders of the acquiring funds) as compared to other shareholders in the acquired fund. In this regard, the redemption restriction seems contrary to the public policy behind provisions of the Investment Company Act that are designed to ensure that open-end mutual funds issue redeemable securities and that shareholders of an open-end mutual fund should have equal economic rights.

percent of the shares of an acquired fund, rather than as a result of action taken by the acquiring fund.

As yet another example of the difficulties created by a redemption restriction, to the extent that an acquiring fund must satisfy large redemptions (*e.g.*, if a retirement plan, an insurance company separate account or other institutional investor redeems a high percentage of an acquiring fund's outstanding shares with little advance notice, or an acquiring fund is removed from a retail or retirement platform), the redemption limit could prevent the acquiring fund from maintaining the adviser's intended allocation among the various acquired funds. Such a situation could occur if the investor's redemption required the acquiring fund to redeem more than three percent of the shares of one particular acquired fund. In that case, the acquiring fund would begin to experience an over-allocation to one acquired fund (from which it could not fully exit), and an under-allocation to the remaining acquired funds, contrary to the portfolio manager's investment intent and the expectations of investors in the acquiring fund.[9]

For funds that invest in funds within the same group of investment companies, the fact that the funds are in the same group has been a satisfactory means of addressing undue influence concerns. We would suggest the same approach under the proposed rule. This approach would mean that a fund of funds that is relying on Section 12(d)(1)(G) without any redemption restriction could continue to invest in funds within its same group without a redemption restriction if the fund of funds begins to rely on Rule 12d1-4. For example, if a fund of funds decides to invest in a financial instrument in addition to other funds within its same group, the fund of funds would need to rely on Rule 12d1-4. The relationship between the fund of funds and its underlying same group funds would not have changed as a result of the investment in the financial instrument, and such an investment would not introduce any new risk of undue influence by the acquiring fund over the underlying same group funds. By not imposing a new redemption restriction as part of the rule, the SEC would allow for a consistent and appropriate regulatory framework that would avoid subjecting substantially similar fund of funds arrangements to different conditions, which is one of the stated goals of the proposed rule. As described above, this approach would be consistent with the now tested approach that the SEC adopted in Rule 12d1-2 in 2006 and its prior exemptive orders. The Proposing Release also gives no indication that the existing approach has failed to address the policy concerns underlying Section 12(d)(1).

The proposed redemption limits also may pose challenges under the SEC's new liquidity risk management rule. Rule 22e-4 requires open-end funds to treat securities that cannot be sold or disposed of in seven calendar days or less as "illiquid." Since proposed Rule 12d1-4 would restrict the redemption of holdings above three percent of the acquired fund's shares within a 30-

[9] We note that the redemption limits also fail to take into account the ability of an acquired mutual fund to redeem in kind to avoid potential disruption from large-scale redemptions. *See, e.g.*, Signature Financial Group, SEC Staff No-Action Letter (December 22, 1999).

day period, an acquiring fund might consider such holdings to be illiquid. Under Rule 22e-4, an open-end fund (including a fund of funds) is not permitted to invest in excess of 15 percent of its net assets in illiquid securities. An open-end acquired fund is itself subject to the liquidity risk management provisions of Rule 22e-4. We do not believe that it is necessary or appropriate for the SEC to adopt a new approach to fund of funds regulation that could potentially create liquidity issues for acquiring funds and their shareholders, particularly when the underlying fund shares are redeemable securities by operation of law.

B. Redemption Limit for Unaffiliated Funds of Funds

With respect to investments by an acquiring fund in funds from different groups of investment companies, the SEC suggests that the redemption restriction replaces various conditions to the exemptive orders permitting such investments. These conditions normally require certain procedures and board findings to prevent undue influence by the acquiring fund and its affiliates over the underlying other group fund. The conditions have been standard in hundreds of orders issued by the SEC since the SEC first granted this relief in 1999, including the use of participation agreements.

While we also do not believe that any limit should be imposed on redemptions of an acquiring fund from an unaffiliated acquired fund, we would support the continued use of participation agreements. We believe that the current participation agreement regime utilized by most fund of funds is functioning well and effectively addresses the Commission's concerns regarding the potential for overreach, undue influence and other concerns. Such participation agreements have been an accepted element of hundreds of existing exemptive orders. The agreements have been a successful mechanism for ensuring that underlying funds are willing to accept large investments from acquiring funds and that the respective acquiring funds and acquired funds have appropriate compliance measures in place. In addition, to our knowledge, no one has offered any evidence that this method, used by hundreds of funds of funds, has given rise to problems or is inconsistent with the public interest and the protection of investors. Accordingly, we agree with the ICI and SIFMA AMG that rather than impose a three percent redemption limit on unaffiliated fund of funds arrangements, the Commission should continue the use of participation agreements (or a rule-based equivalent as suggested by SIFMA AMG).

C. Rescission of Rule 12d1-2

To create a more consistent and efficient regulatory framework for fund of funds arrangements, the proposal includes a comprehensive fund of funds framework via new proposed Rule 12d1-4 and the rescission of existing Rule 12d1-2[10] and the rescission of existing exemptive relief. Although we commend the SEC for its efforts to streamline this complicated framework, we believe that the proposed approach will disrupt a significant number of such arrangements and

[10] Rule 12d1-2 provides funds relying on section 12(d)(1)(G) with greater flexibility to invest in other types of securities.

deprive investors of investment opportunities that have served investors both efficiently and successfully for many years. Indeed, because the basis of this rulemaking does not appear related to any specific issue raised by investors in funds of funds, we are concerned that investors will look for other ways to meet their investment objectives through products such as collective investment trusts or other asset allocation arrangements.

Within the PGIM Investments mutual fund family, we have several open-end funds that operate as 12(d)(1)(G) fund of funds. Certain of those funds also rely on exemptive orders, SEC no-action letters[11] and Rule 12d1-2, which provides affiliated 12(d)(1)(G) funds of funds with flexibility to invest in unaffiliated funds, securities and money market funds. These funds should be permitted to continue to operate within the existing framework that has been developed under 12(d)(1)(G), Rule 12d1-2, and existing no-action letters. We would urge the SEC not to rescind Rule 12d1-2, but rather to amend Rule 12d1-2 to incorporate certain concepts from existing no-action letters that would in effect permit grandfathering and continued offering of funds of funds that we believe offer valuable investment opportunities to our current fund shareholders.

The 2008 proposal included proposed amendments to Rule 12d1-2 that would have permitted 12(d)(1)(G) funds to invest in non-securities, including derivatives, and received positive industry feedback. Rather than rescinding Rule 12d1-2, the SEC should amend the Rule 12d1-2 to give 12(d)(1)(G) funds the ability to invest in non-securities and derivatives consistent with the *Northern Lights* no-action letter.

D. <u>Duplicative and Excessive Fees</u>

To address concerns regarding duplicative and excessive fees in fund of funds arrangements, the proposed rule would require the acquiring fund's investment adviser to evaluate the fee structure, which would vary depending on the type of acquiring fund. For example, investment advisers to management companies would be required to evaluate the complexity of the structure and the aggregate fees associated with the acquiring fund's investment in the acquired fund, and to find that it is in the best interest of the acquiring fund to invest in the acquired fund. The acquiring fund's investment adviser would need to report to the acquiring fund's board its finding and the basis for the finding before investing in any acquired fund.

We generally support this approach and agree that it is unnecessary to impose the conditions from existing exemptive orders. Specifically, current conditions require the acquiring fund adviser to waive the part of its fee equal to any compensation received from the acquired fund in connection with its investment in that fund, and require the acquiring fund board to make a specific finding that its advisory fees are for services that are in addition to, rather than duplicative of, the services provided by the adviser to the acquired fund. Fund boards are already obligated to evaluate the terms of advisory agreements, which should encompass these

[11] *See* Northern Lights Fund Trust, SEC Staff No-Action Letter (June 29, 2015).

findings. In addition, because acquiring funds calculate their performance results net of acquired fund fees, as well as other operating expenses, investors receive sufficient information to assess whether the fund's overall performance, taking such fees and expenses into account, is consistent with their investment objectives.

PGIM Investments is investment manager to 15 funds of funds that are used exclusively for investment by insurance company separate accounts with aggregate assets of approximately $45.7 billion. We strongly recommend that the SEC not adopt the proposed provision that would require an acquiring fund to obtain a certification from an insurance company offering a separate account that invests in the acquiring fund stating that the insurance company has determined that the aggregate fees borne by the separate account, acquiring fund, and acquired fund are consistent with Section 26(f)(2)(A) of the 1940 Act. The proposed condition would require (i) acquiring funds to obtain this certification from insurance companies and (ii) insurance companies to make the requisite determination. Although this condition is based on a condition of current exemptive relief for certain fund of funds arrangements, the scope of acquiring funds subject to proposed Rule 12d1-4 will undoubtedly be broader than the scope of those funds that rely on the current orders.

Many insurance products funds, including those managed by PGIM Investments, rely on Rule 12d1-2 and exemptions other than the exemptive orders imposing the conditions. As a result, the frequency with which certifications need to be sought will increase and insurance companies will be required to make the requisite determination for more funds. Including this requirement in the proposed rule would undermine the efficiency of the current structure and potentially be unduly burdensome with respect to funds of funds that offer insurance company products.

Most importantly, we believe that obtaining a certification from an insurance company is unnecessary in light of independent fee and expense processes applicable to the variable insurance contracts (including the representation required by Section 26(f) of the 1940 Act in the separate account registration statement that fees and charges in the aggregate are reasonable), the expense and performance review of the acquiring funds by the fund board (under Section 15(c) of the 1940 Act), the possibility of court review of fund fees (under Section 36(b) of the 1940 Act), and the requirement under the proposed rule that an acquiring fund's investment adviser must: (i) evaluate the aggregate fees associated with the acquired fund investment and the complexity of the fund of funds arrangement; and (ii) determine that the acquired fund investment is in the best interests of the acquiring fund. In short, we do not believe that the certification "will better protect investors from duplicative or excessive fees,"[12] as suggested by the Proposing Release.

[12] Proposing Release at text accompanying note 174.

E. Complex Structures and the Use of Cash Sweep Vehicles

We strongly encourage the Commission to consider expanding the list of permitted multi-tier fund of fund arrangements to structures that could be beneficial to shareholders and that do not implicate the policy concerns that underlie Section 12(d)(1). Specifically, we would ask that the Commission preserve the ability of an acquired fund to itself invest in other funds, including private mutual funds[13], for short-term cash management purposes, subject to certain conditions. For example, the PGIM Investments mutual funds currently rely upon an exemptive order (which is common in the industry) that permits acquired funds (and acquiring funds) to invest in a public or private short-term bond fund advised by PGIM Investments or its affiliates solely for the management of uninvested cash (including cash generated from normal business operations as well as securities lending activities), provided that the arrangement does not result in any layering of fees.[14] This exemptive relief permits a PGIM Investments acquired fund to invest up to 25% of its total assets in a short-term bond fund within the same group of investment companies for cash management purposes. We would urge the Commission not to rescind this type of relief.

In the Proposing Release, the SEC states its intention to rescind all orders granting relief from Sections 12(d)(1)(A), (B), (C), and (G) of the Investment Company Act, with the exception of interfund lending orders. As noted in the Proposing Release, "[p]roposed rule 12d1-4 would restrict funds' investment flexibility because: (i) it would limit funds' ability to acquire shares of acquiring funds beyond the limits of Section 12(d)(1) and (ii) it would prohibit funds acquired by 12(d)(1)(G) funds from relying on exemptive orders to invest in other funds beyond the limits of section 12(d)(1)." However, proposed Rule 12d1-4(iii) provides that an acquired fund may acquire the securities of another investment company in excess of the limits in Section 12(d)(1)(A) of the 1940 Act, "for short-term cash management purposes pursuant to [Section] 270.12d1-1 *or exemptive relief from the Commission*" (emphasis added). We ask that the Commission clarify that this reference to exemptive relief means that the SEC will not rescind exemptive orders permitting arrangements that allow funds to invest cash in public or private money market funds and/or short-term bond funds that have a dollar-weighted average portfolio maturity of no more than 3 years, for cash management purposes.[15]

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[13] For these purposes, "private mutual funds" refer to funds that are open-end management investment companies registered under the 1940 Act, but whose shares are not registered for sale under the Securities Act of 1933 (the "1933 Act"), and whose shares are offered and sold solely in private placement transactions exempt from the registration requirements of the 1933 Act.

[14] Specifically, the short-term bond fund does not impose any sales load, redemption fee, asset-based distribution fee, or other service fee, and the manager will waive advisory fees paid to it by the short-term bond fund, or alternatively, the acquiring fund will receive a credit or other offset against its management fee in an amount equal to its proportionate share of the management fees paid by the short-term bond fund in which it invests, to the extent necessary to avoid duplication of advisory fees for the acquiring fund as a result of investing in the short-term bond fund.

[15] *See, e.g.*, Putnam American Government Income Fund, Investment Company Act Release Nos. 26200 (October 1, 2003) (notice) and 26414 (April 9, 2004) (order). When the SEC adopted Rule 12d1-1 in 2006, the SEC did not rescind such orders.

The Thrivent Letter[16] also provides no-action relief that permits investment of cash by an acquired fund in a short-term bond fund. We note that the SEC also has not offered any reason for not allowing these types of investments. We believe that permitting the continued investment in short-term bond funds for cash management purposes, in reliance on exemptive relief from the Commission (or if permitted as part of Rule 12d1-4), would benefit investors in the acquired funds by giving those funds access to the same type of cash management that is available to acquiring funds and other mutual funds. These types of structures provide efficiency and innovation that is consistent with the legislative intent of Section 12(d)(1)(J) of the Act when adopted.[17] Accordingly, the SEC should ensure that investments by acquired funds in short-term bond funds, as well as money market funds, for short term cash management purposes will be permitted to continue, either as part of exemptive relief granted by the Commission or as part of new Rule 12d1-4.

F. Disclosure Amendments

The proposal includes a number of new disclosure requirements in fund prospectuses, including the requirement that a fund that relies on Rule 12d1-4 (or wants to preserve investment flexibility to rely on the rule) to disclose in its registration statement that it is (or may be) an acquiring fund for purposes of Rule 12d1-4. We are concerned that potential acquired funds will prophylactically indicate that they intend to rely upon the rule in order to preserve their flexibility, which will limit the investable universe of funds, reduce investor choice and create administrative burdens.

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We appreciate the SEC's consideration of our comments. If you have any questions or need additional information, please contact the undersigned (973-367-2147 or stuart.parker@pgim.com), Diana Huffman (973-367-8982 or diana.huffman@pgim.com) or Kathleen DeNicholas (973-367-1495 or kathleen.denicholas@pgim.com).

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[16] *See* Thrivent Financial for Lutherans and Thrivent Asset Management, LLC, SEC Staff No-Action Letter (September 27, 2016), available at https://www.sec.gov/divisions/investment/noaction/2016/thrivent-092716-12d1.htm (the "Thrivent Letter") and Franklin Templeton Investments, SEC Staff No-Action Letter (April 3, 2015), available at https://www.sec.gov/divisions/investment/noaction/2015/franklin-templeton-investments040315-12d1.htm (the "Franklin Letter").

[17] In adopting Section 12(d)(1)(J), Congress noted that the new subparagraph (J) authorizes "the Commission to grant exemptions for funds of funds that might not meet the conditions of new subparagraph 12(d)(1)(G)[. . . .] [M]any investment company fund complexes may not include a sufficient number or variety of fund types to permit the creation of a workable affiliated fund of funds. [Congress] intends the rulemaking and exemptive authority in new Section 12(d)(1)(J) to be used by the Commission so that the benefits of funds are not limited only to investors in the largest fund complexes, but, in appropriate circumstances, are available to investors through a variety of different types and sizes of investment company complexes. The Committee expects that the Commission will use this authority to adopt rules and process exemptive applications in the fund of funds area in a progressive way as the fund of funds concept continues to evolve over time." On Commerce, Securities Amendments of 1996, H.R. Rep. No. 104-662 (1996), 104th Cong., 2nd Sess., at 43-45.

Sincerely,

/s/ Stuart S. Parker
Stuart S. Parker
President
PGIM Investments LLC

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman

Dalia Blass
Director, Division of Investment Management