BlackRock.

May 3, 2019

Submitted via electronic filing: www.sec.gov/rules/proposed.shtml

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

Re: Fund of Funds Arrangements, Release Nos. 33-10590; IC-33329; File Number S7-27-18

Dear Mr. Fields:

This letter responds to the request of the Securities and Exchange Commission (the "Commission" or the "SEC") for comment on proposed new rule 12d1-4 regarding fund of funds arrangements (the "Proposed Rule") and other matters discussed by the Commission in the above-referenced release (the "Release").[1] BlackRock, Inc. (together with its affiliates, "BlackRock")[2] is supportive of the Commission's focus on streamlining the regulatory framework applicable to funds of funds arrangements with respect to investment companies registered under the Investment Company Act of 1940, as amended (the "1940 Act") (such investment companies, "registered funds") and business development companies ("BDCs").

We agree with the Commission that the legal structure currently governing the circumstances under which registered funds and BDCs can invest in other registered funds and BDCs beyond the limits set out in Section 12(d)(1) of the 1940 Act has resulted in an inconsistent and inefficient regulatory framework where the relief on which a fund of funds arrangement is relying is not always clear to other funds, investors or regulators.[3] We commend the Commission's ongoing rulemaking agenda and are supportive overall of efforts to modernize and standardize the regulatory framework for registered funds and BDCs.

We are in favor of the Commission's proposed rescission of most exemptive orders granting relief from the limits of Sections 12(d)(1)(A), (B), (C) and (G) of the 1940 Act. As the Commission acknowledged in the Release, under the current regime, certain funds of funds may rely on Section 12(d)(1)(G) and Rule 12d1-2 as well as no-action guidance, while others rely on the relief provided by an exemptive order; this regime has resulted in substantially similar funds of funds arrangements being subject to different conditions.

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1 SEC, Fund of Funds Arrangements Proposed Rule, 84 Fed. Reg. 4614 (Feb. 15, 2019), available at https://www.federalregister.gov/documents/2019/02/01/2018-27924/fund of funds-arrangements.

2 BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world.

3 Release at p. 89.

Moreover, the various exemptive orders obtained by industry participants over time may have varying terms and conditions and may impose certain burdensome requirements. We are appreciative of the Commission's consideration in seeking to establish a comprehensive, uniform framework for funds of funds across the registered fund and BDC industries.

We appreciate the Commission's focus on codifying and streamlining the rules and guidance surrounding funds of funds arrangements to create a more consistent and efficient regulatory regime for their formation and oversight. We are generally supportive of the Proposed Rule, which would, under specified circumstances, permit a fund to acquire shares of another fund in excess of the limits of Section 12(d)(1) without obtaining an exemptive order from the Commission and as such, increase the efficiency and effectiveness of the existing regulatory regime around fund of funds structures, in line with the President's Executive Order on Core Principles for Regulating the United States Financial System.[4]

In this letter, we outline elements of the Proposed Rule that we support, and we provide recommendations to enhance certain aspects of the Proposed Rule with a view towards achieving the Commission's objective to streamline the regulatory framework for funds of funds arrangements while avoiding unintended consequences.

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I. Executive Summary

Following is a summary of our comments regarding recommended changes to the Proposed Rule. More detailed explanations supporting each point begin in Section II below.

- We understand the Commission's objective in proposing the 3% limit on redemptions in a 30-day period is intended to limit the power of an acquiring fund with a significant investment in an acquired fund. While we understand the intention of this provision, we believe the Commission's concerns are appropriately addressed by other aspects of the Proposed Rule and existing regulations. We are concerned that this provision will have unintended consequences, particularly for open-end funds of funds.[5] We therefore strongly recommend the proposed 3% limit on redemptions during any 30-day period be eliminated for open-end funds.

- If the Commission's position is that the Proposed Rule's 3% limit on redemptions should be maintained, and acknowledging the Commission's interest in not distinguishing between affiliated and unaffiliated funds of funds, we propose that the redemption condition be amended to: (1) provide for a shorter time period of seven days to address concerns regarding Rule 22e-4 under the 1940 Act (the "Liquidity Risk

[4] *See* Presidential Executive Order on Core Principles for Regulating the United States Financial System (Feb. 3, 2017), available at https://www.whitehouse.gov/presidential-actions/presidential-executive-order-core-principles-regulating-united-states-financial-system/ .

[5] References throughout this letter refer to open-end mutual funds and ETFs collectively as "open-end funds."

Management Rule") and (2) permit an acquired fund's investment adviser to waive the redemption limit, subject to policies and procedures.

- We alternatively propose that the redemption condition be modified to exempt affiliated funds of funds and to impose a seven calendar day period for unaffiliated funds of funds.

- We suggest that the redemption limitation be based on purchases of acquired fund shares, rather than on passive holdings that can fluctuate due to market movement.

- If the Commission is amenable to exempting affiliated funds of funds, we recommend that the Commission not rescind Rule 12d1-2 under the 1940 Act and subject only unaffiliated funds to the conditions of the Proposed Rule, as concerns regarding undue influence and control are not present with respect to affiliated funds of funds.

- The Commission should consider extending the availability of the Proposed Rule to private funds and foreign funds to invest in open-end funds and exchange-traded funds ("ETFs"). We alternatively suggest that the Commission clarify that open-end funds of funds may continue to rely on the existing no-action guidance with respect to investments involving foreign funds.

- Rule 12d1-4(b)(1)(i)'s prohibition on control of an acquired fund should be extended to provide that an acquiring fund cannot rely on the Proposed Rule if the acquiring fund and its advisory group are seeking to influence the management or policies of the acquired fund.

- The Proposed Rule's provision regarding a fund's disclosure in its registration statement that it may be an acquiring fund should be extended to permit closed-end funds and BDCs, which may not be subject to annual registration statement updates, to include such disclosure in other forms of periodic filings.

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II. Proposed Rule's Redemption Limitation

Proposed Rule 12d1-4(b)(2) provides that an acquiring fund that holds shares of an acquired fund in excess of the limits of Section 12(d)(1)(A)(i) of the 1940 Act may not redeem or submit for redemption, or tender for repurchase, any of those shares in an amount exceeding 3% of the acquired fund's total outstanding shares during any 30-day period in which the acquiring fund holds the acquired fund's shares in excess of that limit. We are concerned that this condition could have negative consequences that we do not believe were intended by the Commission. We therefore propose that the redemption condition be eliminated from the Proposed Rule. If the Commission is intent upon including a redemption limit, we propose several modifications, as discussed in Sections II.B-D below.

A. Elimination of Proposed Redemption Limitation for Open-End Funds

While we understand that the redemption limitation is based on concerns that an acquiring fund may threaten to quickly redeem a large volume of acquired fund shares as a means of exerting undue influence over an acquired fund, we believe the limit could have unintended consequences on an acquiring open-end fund's ability to achieve its investment strategy and on the liquidity of an acquiring open-end fund's portfolio. We recommend that the condition be eliminated from the Proposed Rule with respect to open-end funds for several reasons. We acknowledge that the following arguments would not apply with respect to tender offers of shares of listed closed-end funds or BDCs.

First, the redemption limitation could have a deleterious effect on an acquiring open-end fund's investment strategy by forcing it to continue to hold an acquired fund that may no longer be appropriate based on the acquiring fund's investment objective and strategy. For example, a significant market downturn in a particular asset class could prompt an acquiring fund's portfolio manager to change the acquiring fund's allocation to certain acquired funds. Acquiring fund portfolio managers, like portfolio managers of non-fund of funds products, need the ability to execute changes in strategy quickly and/or to rebalance their portfolios in light of changes in the market. As proposed, the redemption limits could restrict such necessary flexibility. In particular, "lifecycle" or "glidepath" funds are subject to periodic rebalancing as an integral part of their principal investment strategies. These strategies may require the acquiring fund to periodically make large-scale redemptions from an acquired fund that would exceed the proposed 3% limit.

Second, the redemption limitation, as proposed, may result in investment advisers directing acquiring fund assets only to larger acquired funds, and limiting investments in smaller funds that may be preferable from a portfolio management perspective, because the ownership level would exceed 3%.

Third, under the Liquidity Risk Management Rule, the inability of an acquiring open-end fund to sell more than 3% of an acquired fund's shares within 30 days would cause acquired fund shares held in excess of the 3% limit to be classified as "illiquid."[6] As the Commission is aware, open-end funds are subject to a 15% limit on illiquid investments under the Liquidity Risk Management Rule, and we are concerned that the redemption limitation could create the unintended consequence of causing an open-end fund of funds structure to approach or breach this limit.

We are supportive of the Commission's elimination of the requirement for acquired and acquiring funds to enter into participation agreements. We do not recommend that any modifications to the Proposed Rule incorporate the entering into of a participation

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6 Under the Liquidity Risk Management Rule, an "illiquid investment" is defined as "any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section."

agreement, as in our view this would weigh against the benefits of reliance on the Proposed Rule, which include eschewing the procedures and board findings required by the current exemptive orders.

We believe that the concerns behind proposing the redemption limitation – *i.e.*, that an acquiring fund could threaten an acquired fund with large-scale redemptions as a means of exerting control, are better addressed through other aspects of the Proposed Rule and existing regulations. As the Commission acknowledged in the Release, and as we discuss in Section II.C below, concerns regarding undue influence are not raised when acquiring and acquired funds are in the same group of investment companies.[7] Further, unaffiliated funds of funds would remain subject to the conditions of the Proposed Rule prohibiting control and requiring pass-through or mirror voting.

If the Commission rejects our recommendation to eliminate the redemption limitation with respect to open-end funds, we alternatively propose several modifications to the condition below.

B. Modifications to Redemption Limitation for Affiliated and Unaffiliated Funds of Funds

We acknowledge the Commission's interest in employing a consistent framework across fund structures. If the Commission's preference is not to distinguish affiliated from unaffiliated funds of funds, we note that eliminating the redemption limit, as discussed above, would achieve this result. If the Commission's position is that the redemption limitation should remain in place for both affiliated and unaffiliated funds of funds, we propose several conditions.

First, we propose that the limit be amended to provide for a shorter time period. We believe that limiting redemptions over a 30-day period is unnecessarily restrictive. We recommend that funds of funds be limited from redeeming more than 3% of an acquired fund's shares during any seven calendar day period, rather than the 30-day period proposed. This would enable an acquiring fund to make relatively timely changes to its holdings where acquired funds change their investment strategies, or to reallocate based on a targeted rebalancing. We believe this modification to the Proposed Rule would alleviate certain concerns discussed above with respect to the Liquidity Risk Management Rule, as it would avoid the unintended result of an acquiring fund's holdings in an acquired fund in excess of 3% of the acquired fund's outstanding shares being deemed an "illiquid investment."

Second, we recommend that an investment advisor to an acquired fund be permitted to make a determination to waive the redemption limitation. We propose that acquired funds be required to adopt policies and procedures governing circumstances under which they may waive the limitation. We note that this flexibility would be consistent with Section 12(d)(1)(F) of the 1940 Act, which provides that an acquired fund

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[7] Release at p. 38.

is not obligated to redeem shares purchased by an acquiring fund beyond specified limits (in that case, in amounts exceeding 1% in any period of less than 30 days).

C. <u>Exclusion from Redemption Limitation for Affiliated Funds of Funds and Shorter Redemption Time Constraint for Unaffiliated Funds of Funds</u>

We note that the adoption by Congress of Section 12(d)(1)(G) was predicated on a differentiation between affiliated and unaffiliated funds of funds. If the Commission views the redemption limitation as necessary to obtain its objectives, and subject to our recommendation regarding the maintenance of Rule 12d1-2 discussed below, we suggest that the Proposed Rule be amended to exempt affiliated funds of funds from this limitation. We do not see a policy reason for subjecting affiliated funds of funds to redemption limitations.

Affiliated funds are by definition managed by the same or affiliated investment advisers, each of which has a fiduciary duty to each fund. Because affiliated investment advisers are required to act in each fund's best interests, the Commission's concerns regarding control and undue influence are not applicable. Accordingly, an acquiring fund's investment adviser would not seek to benefit the acquiring fund at the expense of an acquired fund, or to seek to influence the acquired fund through its ownership interest in the acquired fund.

We note that the Commission excluded affiliated funds of funds from the provisions of the Proposed Rule related to voting and control for these reasons,[8] and it would therefore be consistent to also exclude affiliated fund of funds from any redemption limitation.

For purposes of excluding "affiliated funds of funds" from the limitation on redemption in the Proposed Rule, we recommend that an "affiliated fund of funds" be defined as follows:

> "an acquiring fund that is a registered investment company or business development company that purchases or holds shares of an acquired fund that is a registered investment company or business development company in reliance upon Rule 12d1-4, when the acquiring fund and the acquired fund are part of the same *group of investment companies*,[9] as defined by Rule 12d1-4(d)."

We note that this definition would align with the condition applicable to affiliated funds of funds that rely on Section 12(d)(1)(G) under the existing framework.

If the proposed redemption limitation is adopted and the Commission agrees with our recommendation to exempt affiliated funds of funds, we recommend that the limit be amended for unaffiliated funds of funds to restrict acquiring funds from redeeming more

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[8] Release at pp. 38-41.

[9] Rule 12d1-4(d) provides that, for purposes of the section, a "*group of investment companies* means any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for purposes of investment and investor services."

than 3% of an acquired fund's shares during any seven calendar day period, for the reasons discussed in Section II.B above.

D. <u>Time of Purchase Modification to Redemption Limitation</u>

If the Commission adopts the Proposed Rule's redemption condition, we recommend amending the condition such that it is triggered by *purchases* by an acquiring fund that result in its ownership of more than 3% of an acquired fund's total outstanding shares, rather than by holdings of more than 3%. Without such a change, a fund that is managed to stay beneath the 3% limit may, due to reasons beyond its control such as passive market movement or a large redemption by another acquired fund investor, be forced to classify its holdings in excess of 3% as an illiquid investment.

As an illustration, if an acquiring fund purchases 2.9% of an acquired fund, it would not be within scope of the Proposed Rule and would be able to freely redeem out of the acquired fund. However, if that ownership level increases to 3.1% due to market shifts or redemptions by other investors, the acquiring fund would be pulled into the scope of Rule 12d1-4 and the redemption condition without notice. To avoid this result, we recommend that an acquiring fund's *holdings* above 3%, to the extent they are not a result of a purchase or acquisition, be excluded from the redemption limitation. In our example, under the Proposed Rule as it currently stands, the acquiring fund would face redemption limits with respect to the excess over a 30-day period. The modification we recommend would alternatively permit the acquiring fund to redeem (or tender for repurchase) the 0.1% excess, in addition to the allotted 3%, of acquired fund shares during the period.

We do not believe an acquiring fund should be penalized where it has not taken affirmative steps to purchase shares of an acquired fund in excess of 3%. We note that this recommended approach is consistent with Section 12(d)(1)(A), which prohibits an acquiring fund from *purchasing* or *otherwise acquiring* an acquired fund in excess of the stated limits, but does not prohibit a passive breach of the limits.

E. <u>Secondary Market Trades</u>

As the Commission has noted, acquiring funds that rely on the Proposed Rule may sell acquired funds that are ETFs, listed closed-end funds, and/or exchange-listed BDCs in secondary market transactions without regard to the proposed volume limit.[10] We are supportive of this exclusion, as there is no policy reason for restricting such trades.

III. Rescission of Rule 12d1-2

We respectfully disagree with the Commission's proposed rescission of Rule 12d1-2 under the 1940 Act and propose that the rule be kept in place, if the Commission is amenable to excluding affiliated funds of funds from the Proposed Rule. Under the existing regime, affiliated funds of funds relying on Section 12(d)(1)(G) may also acquire securities of unaffiliated funds, other securities and money market funds pursuant to Rule

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[10] Release at p. 50.

12d1-2.[11] In addition, many funds further rely on Commission no-action guidance to invest in non-securities, including derivatives, as discussed below.

The rescission of Rule 12d1-2 would mean that funds of funds that invest only in affiliated acquired funds in reliance on Section 12(d)(1)(G) would be outside the scope of the Proposed Rule, while funds of funds that invest in affiliated acquired funds and go on to purchase even a single additional security or derivative would be brought immediately into the scope of the Proposed Rule. The former would not be subject to any of Rule 12d1-4's conditions with respect to voting, control, or redemption limits, while the latter would be faced with all such requirements.

This result would create disparate treatment among structures that may in practicality be substantially identical. Today, affiliated funds of funds operate under a well-functioning and consistent regulatory framework. The rescission of Rule 12d1-2, as proposed by the Commission, would create an unbalanced outcome and inconsistent regulatory framework, which is contradictory to the Commission's stated objectives with respect to the Proposed Rule. We believe the Commission's objectives could be achieved by continuing to permit affiliated funds of funds to rely on Section 12(d)(1)(G) and Rule 12d1-2, while requiring unaffiliated funds of funds to rely on the Proposed Rule, with modifications as discussed herein.

Further, we recommend that the Commission amend Rule 12d1-2 to codify the existing Commission no-action guidance permitting affiliated funds of funds to invest in non-securities, including derivatives. Specifically, we recommend that the Commission incorporate into the Proposed Rule its position in the *Northern Lights* no-action letter, which permits an affiliated fund of funds relying on Section 12(d)(1)(G) and Rule 12d1-2 to invest a portion of its assets in other financial instruments (*e.g.*, derivatives that are not securities under the 1940 Act), consistent with its investment objectives, policies and restrictions.[12]

We believe that this approach would better achieve the Commission's goal of creating a streamlined, consistent regulatory framework.

IV. Considerations Regarding Private and Foreign Funds

The scope of the Proposed Rule contemplates acquiring and acquired funds that are registered funds or BDCs. We urge the Commission to extend the scope of acquiring funds under the Proposed Rule to include "private funds" (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) and "foreign funds" (funds domiciled outside of the United States) to invest in registered open-end funds if certain conditions are satisfied. Bringing these entities within the scope of the Proposed Rule alongside registered funds and BDCs as acquiring funds would better

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[11] We note that the Proposed Rule included an amendment to Rule 12d1-1 to provide an exemption from Section 12(d)(1)(G) for investments in acquired funds that are money market funds. We are supportive of this amendment to Rule 12d1-1.

[12] *See* Northern Lights Fund Trust, SEC Staff No-Action Letter (June 29, 2015), available at https://www.sec.gov/divisions/investment/noaction/2015/northern-lights-fund-trust-063015.htm ("Northern Lights Letter").

achieve the Commission's objective of creating a consistent regulatory framework, subject to the options described below. We suggest that permissible "acquired funds" for this purpose include only registered open-end funds, given concerns that private fund investors in closed-end funds may seek to force corporate actions or liquidity events.[13]

If the Commission agrees with our recommendation to permit private and foreign funds to invest in open-end funds in reliance on the Proposed Rule, we offer several potential conditions below, which are based on the registration status of the acquiring fund's investment adviser. We further recommend that the Commission codify certain existing Commission no-action guidance with respect to investments by and in foreign funds. These enhancements would provide a streamlined regulatory landscape and avoid disruption to current arrangements.

A. Use of ETFs by Private Funds

Under the current framework, private acquiring funds are limited to holding 3% of an acquired registered fund under Section 12(d)(1)(A)(i). We believe that eliminating the 3% investment limit for private funds would benefit the entire registered fund industry.[14] In particular, increasing the ability of private funds to invest in ETFs would provide significant benefits for investors and fund managers. As of the second quarter of 2018, there were 30,491 private funds in existence globally, with a total net asset value of $8.53 trillion and an average fund size of $279.6 million.[15] There are approximately 3,300 private funds in the U.S., representing $4.4 trillion in AUM.[16] In the U.S., private funds owned $48 billion, or 1.4%, of ETF assets as of December 2017.[17]

Private funds, much like other types of acquiring funds, frequently use ETFs as investment vehicles to gain exposure to certain markets or asset classes. For example, private funds use ETFs to achieve long and/or short beta exposure in a quick and efficient manner. ETFs are also frequently used as an alternative to futures and other market beta instruments such as forwards and swaps, especially in markets where derivatives may be less liquid or nonexistent, because ETFs offer intraday liquidity. ETFs are also used by private funds as a liquidity tool, as they offer the ability to use or raise cash quickly and efficiently to adjust the acquiring fund's overall risk position at a tight bid-ask spread, and support the implementation of a liquid portfolio that can reduce cash drag during capital calls, maturity and liquidity events.

The 3% investment limit imposed on private funds significantly diminishes the potential benefits that registered funds can offer to private funds, particularly with respect

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[13] *See, e.g.,* Rose DiMartino, Protecting Closed-End Fund Investors: A Call to Amend 1940 Act Section 12(d)(1)(A), 26 The Investment Lawyer 1 (January 2019).

[14] In addition, increased ETF ownership across a diverse investor base and the resulting increase in ETF trading activity could also have a positive impact on the broader market, as increased liquidity can lead to narrower bid-ask spreads and lower costs for all ETF investors.

[15] Private Fund Statistics, SEC Division of Investment Management (January 2019), available at: https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2018-q2.pdf.

[16] Source: Prequin, as of October 2018.

[17] Deutsche Bank, "Who Uses ETFs & Why: The DB Institutional ETF Ownership Guide," at p. 36.

to certain ETFs with targeted exposures desired by private funds that may have low assets under management, which would make investment prohibitive for even the smallest private funds.[18]

B. U.S. Registered Advisers

If the Commission is amenable to extending the availability to rely on the Proposed Rule to private and foreign acquiring funds, we suggest that one condition be that the adviser to the acquiring fund is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), or, in the case of a foreign fund, is an investment adviser that is either registered under the Advisers Act or is a control affiliate of such a registered investment adviser. This would address the Commission's concerns about acquiring funds not being subject to certain reporting and recordkeeping requirements,[19] and would ensure that the investment advisers to such entities are subject to the jurisdiction of the Commission.

C. Reporting Regime

In the case of unregistered investment advisers, we suggest that, as a condition to permitting private and foreign funds to rely on the Proposed Rule, such acquiring funds' investments be subject to a specified disclosure regime. The unregistered investment advisers to private and foreign funds could be required to periodically report an acquiring fund's holdings in registered funds to the Commission. This would provide the Commission with transparency into positions held by private and foreign funds, enhancing oversight. We recommend that the disclosure of portfolio holdings information be non-public, or to the extent it is public, be reportable on a delayed basis.

D. Foreign Acquiring Funds

If the Commission declines to adopt our recommendations for investments by foreign funds described above, we request that the Commission clarify that open-end funds can continue to rely on current Commission no-action guidance with respect to investments involving foreign funds. We do not believe there is any policy reason to disallow investments by or in foreign funds under the scenarios set forth in these no-action letters and subject to the enumerated conditions. Further, disallowing such arrangements could prove disruptive. In our view, as with codifying the Northern Lights Letter discussed above, the Commission should take this opportunity to provide a fulsome regulatory landscape that codifies its existing guidance.

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18 83% of private fund assets are managed by funds with an AUM greater than $2 billion. For these funds, a trade of $10 million in any instrument would represent a 50 basis point position, which is insignificant for a private fund. Source: Prequin, as of October 2018.

As an example, as of April 24, 2019, iShares MSCI China A ETF, which seeks to access the China A-share stock market, had net assets of $135.5 million. Under the current rules, a private fund of average size (*i.e.*, $279.6 million) allocating $10 million to China A-share exposure would be unable to invest in this ETF, as the investment would result in a 7.38% ownership position of the acquired fund. Instead, the private fund may utilize a futures contract or enter into a swap contract to obtain China A-share exposure, adding an additional cost and layer of risk to the portfolio. Source: iShares, available at: https://www.ishares.com/us/products/273318/ishares-msci-china-a-etf.

19 Release at pp. 19-20.

We propose that the Commission codify the guidance provided in the *Dechert* line of letters, which permit a foreign investment company to acquire shares of a U.S. registered investment company in excess of the 5% and 10% limits of Sections 12(d)(1)(A)(ii) and (iii) of the 1940 Act, respectively.[20] We suggest the same approach with respect to the Commission guidance permitting a foreign feeder fund to acquire securities of a registered master fund in excess of the limits of Section 12(d)(1)(A).[21] Similarly, the Commission should codify the no-action letters permitting U.S. registered funds to invest in foreign funds in excess of the limits of Section 12(d)(1)(A).[22]

V. Considerations Regarding Closed-End Funds

A. Control and Influence

We are supportive of the Proposed Rule's prohibition on control of an acquired fund. To further address the Commission's concerns regarding undue influence and control, the Proposed Rule should provide that an acquiring fund cannot rely on the rule if the acquiring fund and its advisory group, individually or in the aggregate, are seeking to influence the management or policies of an acquired closed-end fund.

We propose that the standard for determining whether an acquiring fund or its advisory group is seeking to influence the management or policies of an acquired fund be similar to the standard underlying Schedule 13D (commonly known as a "beneficial ownership report"). Certainly, if an acquiring fund or its advisory group were to file a Schedule 13D with the Commission indicating that the purpose of its purchase of acquired fund shares is to influence the management or policies of the acquired fund, then the acquiring fund would not be permitted to rely on the Proposed Rule. This standard should apply regardless of whether the acquiring fund or its advisory group has actually filed Schedule 13D. Because the obligation to file Schedule 13D arises where a person owns beneficially more than 5% of a class of securities, our proposed standard would cover circumstances where an acquiring fund or its advisory group is not required to file Schedule 13D (*i.e.*, owns more than 3% but less than 5% of an acquired fund), but is seeking to exert a controlling influence.

This modification to the Proposed Rule would effectively address the Commission's concerns regarding undue influence by addressing situations where an acquiring fund is seeking to exercise control directly through the voting power of a controlling interest. As the Commission noted in the Release, if "facts and circumstances existed that gave an

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20 *See* Dechert LLP, SEC Staff No-Action Letter (August 24, 2009), available at https://www.sec.gov/divisions/investment/noaction/2009/dechert082409.htm.

21 *See* Dechert LLP, SEC Staff No-Action Letter (March 8, 2017), available at https://www.sec.gov/divisions/investment/noaction/2017/dechert-030817-12d1.htm; PIMCO Funds, SEC Staff No-Action Letter (July 9, 2002), available at https://www.sec.gov/divisions/investment/noaction/pimco070902.htm.

22 *See* Red Rocks Capital, LLC, SEC Staff No-Action Letter (June 3, 2011), available at https://www.sec.gov/divisions/investment/noaction/2011/redrocks060311.htm; The France Growth Fund, Inc., SEC Staff No-Action Letter (July 15, 2003), available at https://www.sec.gov/divisions/investment/noaction/francegf071503.htm; Templeton Vietnam Opportunities Fund, Inc., SEC Staff No-Action Letter (Sept. 6, 1996), available at https://www.sec.gov/divisions/investment/noaction/1996/templetonvietnam090696.pdf.

acquiring fund and its advisory group the power to exercise a controlling influence over the acquired fund's management or policies [...], that fund would not be able to rely on the proposed rule even if the fund and its advisory group owned 25% or less of the acquired fund's voting securities."[23] Our recommendation to use the standard for Schedule 13D as a reference point would provide additional clarity to fund groups seeking to rely on the Proposed Rule.

B. Disclosure

We are supportive of the Commission's position in requiring a fund that relies, or wishes to preserve the flexibility to rely, on the Proposed Rule to disclose in its registration statement that it is, or may be, an acquiring fund for purposes of Rule 12d1-4. We agree that it is important that other funds seeking to rely on the Proposed Rule to be put on notice that a fund they may be seeking to acquire is itself an acquiring fund.

We propose expanding this provision of the Proposed Rule to cover other applicable regulatory filings with respect to those acquiring funds that are not required to update their registration statements, such as certain types of closed-end funds and BDCs. With respect to such acquiring funds, the relevant disclosure could be included in a shareholder report or Form 10-Q, as applicable.

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In its totality, we believe that the Proposed Rule will serve to streamline the regulatory landscape and create a consistent set of rules for funds of funds arrangements. The recommendations made throughout this letter are intended to help the Commission achieve its objectives, while limiting potential unintended consequences.

We thank the Commission for providing BlackRock the opportunity to express our support for your efforts and to provide our comments and suggestions on the Proposed Rule. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Alexis Rosenblum
Director
Global Public Policy Group

Deepa Damre
Managing Director
Legal & Compliance

Aaron Wasserman
Managing Director
Legal & Compliance

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[23] Release at pp. 32-33.

cc:

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission

The Honorable Robert J. Jackson Jr.
Commissioner
Securities and Exchange Commission

The Honorable Hester M. Peirce
Commissioner
Securities and Exchange Commission

The Honorable Elad L. Roisman
Commissioner
Securities and Exchange Commission

Dalia Blass
Director
Division of Investment Management
Securities and Exchange Commission