

MEMO# 33394

March 26, 2021

Form of Fund of Funds Agreement for Compliance with Rule 12d1-4

[33394]

March 26, 2021 TO: ICI Members
Chief Compliance Officer Committee
Compliance Advisory Committee
ETF (Exchange-Traded Funds) Committee
SEC Rules Committee
Small Funds Committee
Variable Insurance Products Advisory Committee SUBJECTS: Compliance
Exchange-Traded Funds (ETFs) RE: Form of Fund of Funds Agreement for Compliance with Rule 12d1-4

To assist funds in implementing new Rule 12d1-4 under the Investment Company Act of 1940, attached are two sample form of Fund of Funds Investment Agreements that can be used between acquiring funds and acquired funds. One version of the form contains footnotes while the other version contains endnotes—they are otherwise identical. The forms are intentionally simple and streamlined and include just a handful of basic terms. The footnotes/endnotes are included to highlight certain issues for fund firms seeking to customize a form Agreement for Rule 12d1-4 and are not intended to be included as part of the Agreement.

For example, some parties may wish to consider adding additional detail, such as “generic” contract terms (e.g., choice of law, indemnification) and/or customized terms specific to this Agreement (e.g., more granular undertakings to comply with the Rule’s requirements, consent to electronic delivery provisions, notification if an acquiring fund exceeds (or falls below) the thresholds necessitating reliance on the Rule, acknowledgement that it is the acquiring fund’s responsibility to select the appropriate share class of the acquired fund for its investment and other needs).

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