

# SEC Division of Investment Management Releases Fund of Funds Rule FAQs

March 9, 2026

On March 5, 2026, the SEC's Division of Investment Management [released new FAQ responses](#) related to the SEC's October 2020 amendments to rule 12d1-4 under the 1940 Act, also known as the "Fund of Funds Rule."

Section 12(d)(1) of the 1940 Act sets forth a range of restrictions on the ability of registered funds or BDCs to invest in other investment companies (as defined in the 1940 Act) and to sell their funds to other investment companies. Section 12(d)(1)(A) prohibits a registered fund or BDC (or companies they control) from:

- acquiring more than 3% of another investment company's outstanding voting securities;
- investing more than 5% of its total assets in any one investment company; or
- investing more than 10% of its total assets in investment companies generally.

Section 12(d)(1)(B) similarly restricts a registered fund or BDC from selling the securities they issue to any investment company (or companies it controls) if it would result in the acquiring company (and companies it controls) owning more than 3% of the registered fund's or BDC's outstanding voting securities, or in investment companies (and companies they control) owning more than 10% of the registered fund's or BDC's outstanding voting securities. Where the acquired company is a registered closed-end fund, Section 12(d)(1)(C) prohibits the acquiring investment company, together with other investment companies having the same investment adviser, and companies controlled by such investment companies, owning more than 10% of the total outstanding voting stock of the closed-end company.

The Fund of Funds Rule created a streamlined framework to permit registered funds and BDCs to invest in underlying registered funds and BDCs in excess of the investment restrictions set forth by Section 12(d)(1)(A), (B) and (C). In order to rely on the Fund of Funds Rule, fund-of-funds arrangements must satisfy a number of conditions, such as limits on control, mirror voting requirements, limits on complex structures, as well as

---

requirements that the acquiring and acquired funds make certain findings and enter into fund of funds investment agreements. Private funds and foreign investment companies may not rely on the Fund of Funds Rule in order to acquire securities of registered investment companies (although a registered fund relying on the Fund of Funds Rule may still invest in private funds and foreign investment companies).

The new FAQ responses provide operational clarity about the requirement that both acquiring and acquired funds, prior to reliance on the Fund of Funds Rule, enter into an agreement memorializing the terms of the arrangement (unless both funds share same adviser). In these FAQs, the staff clarified that:

- an acquiring fund would be required to enter into a fund of funds investment agreement with an acquired fund if its acquisition of the acquired fund would exceed the 5% or 10% limits of Section 12(d)(1)(A) but not the 3% limit (assuming that the two funds do not share the same investment adviser).
- the above requirement applies even when the acquiring fund is a unit investment trust.
- an acquiring fund is not required to enter into any fund of funds investment agreements with registered funds it acquired prior to relying on the Fund of Funds Rule. However, an agreement would be necessary before the acquiring fund purchases additional shares of such acquired fund in reliance on the Fund of Funds Rule.

The FAQs also address a key point about the Fund of Funds Rule's prohibition on complex structures and its application to investments in collateralized loan obligations ("CLOs"). Under the Fund of Funds Rule, an acquiring fund generally cannot invest in any acquired fund that, in turn, invests more than 10% of its assets in other funds, registered or private, with certain limited exceptions. For purposes of determining what types of investments count towards this "10% bucket", the Fund of Funds Rule defines "private fund" as issuers that rely on the Section 3(c)(1) or Section 3(c)(7) exclusions from "investment company" status. Many CLOs, which can issue both equity and debt securities, rely on these exclusions and fall within the definition of "private fund" for purposes of the Fund of Funds Rule. In its FAQ response, the staff observed that CLO debt securities are not the type of "fund-like" investment contemplated under the Fund of Funds Rule's complex structure prohibition and that an acquired fund would not need to count CLO debt securities towards its 10% bucket.

On March 6, 2026, the ICI released a [statement](#) commending the FAQ on CLOs and stated that the FAQ "will allow funds that hold debt securities issued by CLOs to be

---

included in target-date funds without artificial restrictions that funds holding similar securities, such as mortgage-backed securities, are not subject to.”

\* \* \*

Please do not hesitate to contact us with any questions.



**Vadim Avdeychik**  
Partner, New York  
Tel: +1 212 909 6867  
vavdeychik@debevoise.com



**Marc Ponchione**  
Partner, Washington, D.C.  
Tel: +1 202 383 8290  
mponchione@debevoise.com



**Andrew Friedman**  
Associate, New York  
Tel: +1 212 909 6857  
amfriedman@debevoise.com



**Sam Scarritt-Selman**  
Associate, New York  
Tel: +1 212 909 6931  
shscarritt@debevoise.com

*This publication is for general information purposes only. It is not intended to provide, nor is it to be used as, a substitute for legal advice. In some jurisdictions it may be considered attorney advertising.*