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July 21, 2020

Via Electronic Filing

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Good Faith Determinations of Fair Value, Securities and Exchange Commission Release No. IC-33845 (April 21, 2020); File No. S7-07-20

Dear Ms. Countryman,

Baillie Gifford Overseas Ltd ("BGO") welcomes the opportunity to provide comments on the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rule 2a-5 (the "proposal") under the Investment Company Act of 1940 ("1940 Act"), addressing valuation practices by registered investment companies. We believe the proposal's basic framework is sensible and will provide welcome clarity to investors, funds, boards, pricing services and investment advisers in this important area. We provide below a few suggestions as to how specific elements of the proposal might be enhanced to provide further clarity to industry participants and avoid imposing unnecessary burdens on funds, their boards and their service providers.

A. Background on Baillie Gifford

BGO is a wholly owned subsidiary of Baillie Gifford & Co, a privately-owned UK investment management firm based in Edinburgh, Scotland. Founded in 1908, the Baillie Gifford firm has a long history focused on active investment management. Our client base is predominantly institutional in nature and located globally. Assets under management as at June 30th, 2020 were $324bn and clients based in the United States ("U.S.") represent approximately 40% of client AUM.

BGO is a limited liability company established in Scotland in 1983, with approximately $126 bn under management or advice for its U.S. clients. BGO is authorized and regulated by the Financial Conduct Authority ("FCA") in the United Kingdom ("UK") and is registered as an investment adviser with the SEC in the U.S. BGO manages global, regional, and international equities, multi asset portfolios, and fixed income securities for clients. Our investment philosophy is to identify quality investments with the potential to grow over the long term.

In addition to having a large separate account client base, BGO manages several pooled investment vehicles in a range of jurisdictions, including registered investment companies, Irish UCITS funds and unregistered private funds. Further, Baillie Gifford & Co manage (through

a subsidiary) UK based Open Ended Investment Companies and Closed Ended Investment Trust Companies. BGO serves as investment adviser to Baillie Gifford Funds, an investment company registered under the 1940 Act since 2000 and serves as sub-adviser to a number of other registered funds.

As a firm, Baillie Gifford manages strategies similarly across vehicles and establishes daily NAVs for the same securities held by funds under different regulatory frameworks, pricing at different times of day and in different currencies. When performing fair valuation determinations, Baillie Gifford gives due consideration to the differing rules and regulations in applicable jurisdictions but where possible we look to take a similar approach across fund types. It is our experience that other regulators, such as the FCA, do not currently impose prescriptive rules on valuation.[1]

B. Specific Comments on the Proposal

We are pleased that the Commission has proposed to codify fair valuation requirements for funds registered under the 1940 Act. We support the flexibility the proposal would provide to fund boards in assigning fair value responsibilities. Specifically, the recognition that a fund board's role with respect to valuation is typically one of oversight, with the investment adviser assigned principal responsibility for doing the day-to-day work, is welcome.[2]

There are a few areas of the proposal that we would like to comment on. In some cases, we feel a change in approach or further clarification would help to ensure that the rule does not impose unduly burdensome operational and compliance processes on registered funds, fund boards, advisers or other stakeholders.

We would like to provide comment on the following specific areas:

1. **Prescriptive Requirements**

We support the proposal's general approach of avoiding prescriptive requirements in favor of principles-based guidelines to be implemented by boards and advisers in a manner appropriate to the specific portfolio position and investment strategy of a particular fund. As an example, we

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[1] FCA rules on valuation can be found in the FCA COLL Sourcebook section 6.3. COLL 6.3.6(5) states the following:
Where the authorised fund manager *has reasonable grounds to believe that:*

- *no reliable price exists for a* security *at a* valuation point*; or*
- *the most recent price available does not reflect the* authorised fund manager's *best estimate of the value of a* security *at the* valuation point

it should value an investment *at a price which, in its opinion, reflects a fair and reasonable price for that* investment *(the fair value price);*

[2] The proposal helpfully recognizes this reality and expressly states that it is consistent with the 1940 Act: "We understand that, for practical reasons, few boards today are directly involved in the performance of the day-to-day valuation tasks required to determine fair value. Instead they enlist the fund's investment adviser to perform certain of these functions, subject to their supervision and oversight. . . . We continue to believe that allocating day-to-day responsibilities to an investment adviser, subject to robust board oversight, is appropriate and consistent with the requirements of [the 1940] Act."

support the proposal's approach to requirements related to testing the appropriateness and accuracy of the fair value methodologies. We believe the final rule should not be prescriptive on the type or frequency of testing carried out to oversee the valuation of fund portfolio instruments, since advisers and fund boards will be in the best position to determine what makes sense for the individual funds under their management and oversight. Informal guidance on testing may be helpful here, but the final rule (or at least the adopting release) should be clear that the fund or adviser can apply testing techniques in any reasonable manner appropriate to discharge their oversight responsibilities.

2. **Binary Approach to Fair Value**

The proposal takes a binary approach to fair value, splitting investments between those that have a "readily available" market quotation and those that do not. In this way, the proposal lumps together in the latter category Level 2 and Level 3 securities as defined under Accounting Standards Codification ("ASC") 820. While we understand that the proposed rule operates within the statutory definition on "value" and other terms, we believe it is important for the regulatory framework to recognize that the risks and challenges for Level 2 securities vary greatly from the risks and challenges for Level 3 securities.

The proposal's binary approach does not fully reflect the differences in fair value practices, risks and challenges across all asset types. Considering this, we recommend that the Commission consider an approach closer to that of ASC 820, which classifies assets into three levels, or even to allow explicitly for deference to existing accounting standard such as ASC 820. ASC 820 is a long-standing, well-understood framework within the industry, it is aligned with International Accounting Standards (such as International Financial Reporting Standard 13) and it has, over the years, proven to be highly effective.

3. **Role of Pricing Services**

We have concerns that the proposal introduces unnecessary burdens considering the practical nature of the relationship between advisers and pricing services. For example, the recordkeeping provision would require funds to maintain "*[a]ppropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations….*"[3] The proposal goes on to describe the level of documentation required as that which "*would be sufficient for a third party to verify the fair value determination*."[4]

For the global and international equity portfolios that constitute in excess of 99% of the assets BGO manages for US registered investment companies, most securities are valued using a pricing service's fair value overlay with a 0% trigger, meaning that on any given day most of the securities held by those funds are designated as Level 2. For these Level 2 securities utilising a fair value overlay, Baillie Gifford has access to a significant volume of information from pricing services. However, as the fair value overlay is calculated based on multiple factors (typically around five per security) with different weightings applied to each, we feel this would place a significant recordkeeping burden on advisers to receive and maintain the necessary data for a third party to verify the determination and this data would not be otherwise utilized on a day to day basis.

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[3] Proposed rule 2a-5(a)(6).

[4] Proposal at 30.

As an alternative to the recordkeeping provision, we suggest the final rule require advisers to perform adequate diligence and assessment of the process and keep records to demonstrate that such diligence and assessment is appropriate. This procedural safeguard would allow advisers to get assurances on third-party services, while allowing them focus on specific securities, extraordinary situations or other higher risk areas.

4. Frequency of Periodic Board Reporting

The proposal includes the requirement that the fund board must assess the adequacy and effectiveness of the adviser's fair value process at least quarterly. The proposal goes on to list some of the required reporting items that must be included in this quarterly assessment. However, many of these items will not change quarter over quarter, making the frequency of preparing such an assessment unduly onerous on advisers and fund boards.

Specifically, we recommend that items such as the assessment of valuation risks and adequacy of resources should be done at least annually, with more regular reporting if merited. To the extent quarterly reporting is mandated, we would request that the final rule be flexible enough to allow such interim reports to focus on exceptions or material changes, such as using a highly abbreviated dashboard-style presentation.

5. Requirement to report on adequacy of resources assigned to the valuation process

We would like to further comment on one of the reporting items the proposal includes as part of the quarterly assessment requirements discussed in number four above.

The Commission proposes that the adequacy of resources allocated to the adviser's fair valuation process, including material changes to the roles or functions of personnel responsible for determining fair value should be included among the other items making up the quarterly assessment for the board. However, we do not believe the Commission recognizes that these resources are often shared across several different funds within an adviser's business, especially in the case of global asset management firms offering pooled vehicles in multiple jurisdictions. Approximating the resources specifically allocated to one subset of funds subject to oversight by a particular board would be difficult, subject to imprecision and unnecessarily burdensome for funds, fund boards and advisers.

6. Prompt Reporting Requirement

The proposal includes a requirement for advisers to report to the board in writing regarding any matters associated with the adviser's fair valuation process that materially affect, or could have materially affected, the fair value of the assigned portfolio of investments. This written report generally would have to be provided to the board within three business days after the adviser becomes aware of the matter, or, if the adviser needs additional time to verify and determine the materiality of a matter, at most six business days after becoming aware of a matter.

It is our opinion that the proposed timeframe is overly prescriptive and would, in many cases, be impracticable. Three business days, and even six business days (as contemplated by the proposal), will often be insufficient time to fully investigate many matters that arise. While we agree that it would not always be appropriate to wait until the next periodic report to inform the board, we believe that a written report to the board requires a thorough and thoughtful internal investigation which may not be possible to produce in three business days. There is no value in hastily drafting a

report within the suggested timescale, particularly for matters that could have materially affected fair value.

Further, we feel that the scope of this 'prompt' reporting requirement is too broad and potentially vague. Determining what could have materially affected fair value could lead cautious advisers to broaden their interpretation significantly, resulting in counterproductively expansive reporting to boards outside of the structure of regular reviews and meetings. In our experience, off-cycle reporting to mutual fund boards tends to result in less dynamic discussion, which means that overbroad or overly frequent interim reporting may have the perverse effect of dulling the effectiveness of board oversight. Similarly, the suggestion that 'material changes in the fund's valuation risks' ought to trigger prompt board reporting could be overly onerous, particularly if interpreted broadly. This would be the case particularly if the SEC believes a significant increase in price challenges or overrides would indicate a change in the fund's valuation risks. In stressed market conditions, price challenges are likely to increase, and the proposed requirement could lead to a significant volume of reporting to a fund board on matters that may not reflect material fair valuation concerns. While we agree that periods of stressed markets may result in greater engagement with fund boards on a range of topics, including but not limited to valuation, we do not believe that he mechanical reporting requirement on valuation following a prescribed timeline is a necessary or ideal solution.

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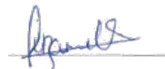
We appreciate the Commission's consideration of our comments on this important proposal and would be happy to provide any additional information that may be helpful. Please contact the undersigned by email in the first instance if we can be of further assistance.

Yours sincerely,



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