VOYA INVESTMENT MANAGEMENT
230 PARK AVENUE
NEW YORK, NY 10169

JEFFREY T. BECKER, CHIEF EXECUTIVE OFFICER
PHONE: [redacted] | EMAIL: [redacted]

January 12, 2016

Submitted electronically

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release (File No. S7-16-15)**

Dear Mr. Fields:

Voya Investment Management (Voya), the asset management arm of Voya Financial, Inc.,[1] is the investment adviser to 150 mutual funds with assets of approximately $90 billion. We appreciate the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposal that would: (1) require open-end funds, including exchange-traded funds ("ETFs") but not including money market funds, to establish a liquidity risk management program; (2) permit open-end funds, but not ETFs or money market funds, to use "swing pricing"; and (3) require certain increased disclosure and reporting related to a fund's liquidity and/or adoption of "swing pricing."[2]

---

1 Voya Financial, Inc. (NYSE: VOYA) is composed of premier retirement, investment and insurance companies serving the financial needs of approximately 13 million individual and institutional customers in the United States. A *Fortune 500* company, Voya's vision is to be America's Retirement Company™ and its guiding principle is centered on solving the most daunting financial challenge facing Americans today — retirement readiness. Working directly with clients and through a broad group of financial intermediaries, independent producers, affiliated advisers and dedicated sales specialists, Voya provides a comprehensive portfolio of asset accumulation, asset protection and asset distribution products and services. With a dedicated workforce of approximately 6,500 employees and an independent sales force of approximately 2,200 registered representatives, Voya is grounded in a clear mission to make a secure financial future possible — one person, one family, one institution at a time.

2 Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Rel. No. 31835, 80 Fed. Reg. 62274 (proposed Oct. 15, 2015), available at https://www.gpo.gov/fdsys/pkg/FR-2015-10-15/pdf/2015-24507.pdf ("Proposal").

Generally speaking, we support the need for funds to adopt a liquidity risk management program, notwithstanding the extraordinary effort, cost, and burdens involved in implementing such a program. The SEC states that it is "proposing a multi-layered set of reforms designed to promote effective liquidity risk management throughout the open-end fund industry and thereby reduce the risk that funds will not be able to meet redemption obligations and mitigate potential dilution of the interests of fund shareholders."[3] Voya believes that the liquidity classifications, an element of the proposed liquidity risk management program, require a level of precision that is not practical or useful and will lead to investor confusion. We recommend, as described below, that the SEC adopt modified rules that will still address the SEC's goal of reducing the risk that funds will be unable to meet redemption requests but will be more manageable for funds to implement and not lead to investor confusion.

Voya also recommends that the SEC not adopt the proposed amendments to Rule 22c-1 under the Investment Company Act of 1940 (the "1940 Act") and not permit "swing pricing." As described below, "swing pricing" is operationally challenging to apply accurately and there are several unintended negative consequences that outweigh the benefit of potentially protecting existing shareholders from dilution associated with large redemption or purchase activity.

We Agree With the Scope of Proposed Rule 22e-4

Voya agrees with the types of funds that are within the scope of proposed Rule 22e-4. We agree, for the following reasons, that money market funds, closed-end funds, and closed-end interval funds should not be required to comply with proposed Rule 22e-4. Money market funds should be excluded from proposed Rule 22e-4 as these funds are already subject to extensive requirements concerning the liquidity of their portfolio assets set forth in Rule 2a-7 under the 1940 Act. Closed-end funds should not be within the scope of proposed Rule 22e-4 as they do not issue redeemable securities and are not subject to Section 22(e) of the 1940 Act. Closed-end interval funds should be excluded from the scope of proposed Rule 22e-4 as these types of funds do not permit shareholders to redeem their shares each day. Closed-end interval funds are already subject to heightened liquidity standards in order to ensure that they can complete repurchase offers and are required to adopt procedures to ensure that their portfolio assets are sufficiently liquid to comply with their fundamental policies on repurchases as set forth in Rule 23c-3 under the 1940 Act.

We Disagree with Certain Elements of the Proposed Liquidity Risk Management Program

Classifying the Liquidity of a Fund's Portfolio Positions

We recommend that the SEC modify proposed Rule 22e-4 to remove the requirement to classify the liquidity of a fund's portfolio positions into the six categories based on the amount of days each position is "convertible to cash" at a price that does not materially affect the value of the asset immediately prior to sale. It is our opinion that categories are inherently flawed. We do not believe that there is a reliable way to accurately predict in advance how many days it will take to convert a position to cash. This is especially true if a fund is expected to make this

---

3 *See* Proposal at 40.

determination at a price that does not allow for market movement. This exercise suggests a false level of precision.

As we describe further below, Voya strongly believes that it is unnecessary to require a fund to classify its position in light of the three-day liquid asset minimum requirement. If the fund determines and maintains an appropriate three-day liquid asset minimum, this together with the compliance with the 15% limit on illiquid securities responds to the redemption concerns that the SEC has stated is the purpose of the proposed liquidity risk management program.

There are several reasons why the liquidity classification requirement is problematic. First, aside from the adverse effects described more fully below, it would be very costly and burdensome to funds and investors to implement a system that might achieve this onerous type of liquidity classification. Moreover, classifying funds' positions into six liquidity categories would require a misleading level of precision. This is especially true in a volatile market. The non-prescriptive factors that funds are required to consider when determining a position's liquidity classification[4] allow for a level of discretion that may lead to very different classifications by funds for similar or even identical holdings or positions. This level of discretion potentially detracts from the main purposes of the proposed rules – "to promote investor protection by … elevating the overall quality of liquidity risk management across the fund industry…[and]… increasing transparency of funds' liquidity risks and risk management practices."[5] Because funds will likely apply the factors in varying ways, making varying assumptions, estimations, and judgments, this would negatively affect the comparability of reporting across funds. This information would be more confusing than beneficial for investors.

The SEC acknowledges that "a fund may predict liquidity based on current information that it will take a certain time period to convert a particular asset to cash only to find that it takes longer to do so when the fund actually sells the asset."[6] Proposed amendments to Form N-PORT require that, for each of the fund's positions in a portfolio asset, the liquidity classification of that position as determined pursuant to proposed Rule 22e-4(b)(2)(i) be disclosed.[7] These liquidity classifications will be available to the public. As the SEC acknowledges, a liquidity classification is a prediction that may prove to be inaccurate when a fund actually sells an asset. Making this information available to the public simply invites a plaintiff to sue funds for what might seem—after the fact—as arguably inaccurate liquidity classifications. Similarly, funds will be concerned about enforcement risk as the SEC will also be reviewing liquidity classifications disclosed on Form N-PORT. Unnecessary and excessive litigation and enforcement risk will not promote more accurate liquidity classifications, particularly given the subjective and predictive nature of these determinations.

---

4 Proposed Rule 22e-4(b)(2)(ii)(A) – (I).

5 *See* Proposal at 275.

6 *See* Proposal at 260.

7 Proposed Item C.13 of proposed Form N-PORT.

Assessing a Fund's Liquidity Risk

Proposed Rule 22e-4 also requires that each fund must assess and periodically review the fund's "liquidity risk." The rule defines liquidity risk as "the risk that the fund could not meet requests to redeem shares issued by the fund that are expected under normal conditions, or are reasonably foreseeable under stressed conditions, without materially affecting the fund's net asset value."[8] When assessing its liquidity risk, a fund would be required to consider a number of factors.[9]

We do not agree with the current proposed rule requiring a fund to assess and periodically review its liquidity risk. Similar to our view on the liquidity classifications, we believe that it is unnecessary for the SEC to mandate the manner in which the funds assess their liquidity risk. As described in more detail below, if a fund sets its three-day liquid asset minimum and determines how to comply with this three-day liquid asset minimum, the fund will already be appropriately assessing its ongoing liquidity risk.

Managing a Fund's Liquidity Risk

Three-Day Liquid Asset

We agree that assets eligible for inclusion in each fund's three-day liquid asset minimum holdings could include a broad variety of securities, as well as cash and cash equivalents. However, we believe that defining a three-day liquid asset as "convertible to cash within three business days *at a price that does not materially affect the value of that asset immediately prior to sale*"[10] is flawed and requires a level of precision that is challenging to predict accurately prior to actually liquidating the asset. Additionally, we note that, given the same discretionary factors that the SEC proposes for the liquidity classifications,[11] some funds may consider certain securities to be a three-day liquid asset, while other funds may not consider the same securities to be a three-day liquid asset. This will again impair comparability among funds and cause investor confusion.

Three-Day Liquid Asset Minimum Requirement

We agree that each fund should be able to determine its own three-day liquid asset minimum as opposed to the SEC mandating a standard required three-day liquid asset minimum. We also believe that the SEC should not prescribe a set of factors that a fund should consider when determining its three-day liquid asset minimum.[12] A fund should be able to determine the

---

8 Proposed Rule 22e-4(a)(7).

9 Proposed Rule 22e-5(b)(iii)(A)-(D).

10 Proposed Rule 22e-4(b)(iv) *emphasis added*.

11 Proposed Rule 22e-4(a)(8).

12 Proposed Rule 22e-4(b)(iv).

appropriate minimum of three-day liquid assets for a fund from a top-down perspective. For example, funds already ensure that they have enough assets that can be liquidated within seven days to meet redemption requests as required under Section 22(e) of 1940 Act.[13] Funds have historically been able to meet this requirement by considering their portfolio as a whole, not on an individual security, bottom-up basis. We understand that the SEC wants to ensure that funds are able to meet redemption requests on a shorter time frame (T+3). This is why we agree that having a fund set a three-day liquid asset minimum is appropriate. However, in the same manner that the SEC has allowed funds to establish their own policies and procedures to comply with the seven-day liquidity requirement of Section 22(e), the SEC should again allow funds to do the same based on the shorter three-day period.

If the SEC determines to adopt the proposed three-day liquid asset minimum, we request additional guidance. The Proposal states that the SEC "examination staff would be able to ascertain that funds are indeed considering the required factors"[14] when determining a fund's three-day liquid asset minimum. We would appreciate more guidance on what level of supporting documentation would satisfy the SEC examination staff. We also note that while the proposed rule states that a fund would be required to maintain a written record of how the fund's three-day liquid asset minimum was determined (including an assessment of each of the factors), providing guidance as to the specific level of documentation may assist in preventing overly burdensome recordkeeping.

We disagree that a fund should be limited from acquiring a non-three-day liquid asset when such acquisition would result in a fund investing less than its required minimum in three-day liquid assets.[15] As we are recommending that funds should not be required to categorize individual securities based on how many days it takes to convert them to cash, a fund would not be identifying whether an individual security is a three-day liquid asset. Therefore, a fund could not determine if it should be prohibited from making a purchase in a certain security. As described above, if a fund has adopted policies and procedures around maintaining an appropriate three-day liquid asset minimum from a top-down basis, it would not be necessary to make determinations about whether each individual acquisition is a three-day liquid asset.

As we suggest above, a fund would be tasked with setting and monitoring its three-day liquid asset minimum from a top-down perspective. Similarly, if a fund falls below its three-day liquid asset minimum, the fund should have a policy in place on how to cure this issue. A fund is in the best position to determine what the best course is to get its entire portfolio back in compliance with its three-day liquid asset minimum. A fund may determine that selling certain less-liquid assets (based on asset type, not individual security) is a better investment decision

---

13 Section 22(e) of the 1940 Act ("No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security").

14 *See* Proposal at 138.

15 Proposed Rule 22e-4(b)(2)(iv)(C).

than being prohibited from purchasing an asset that may be considered a non-three day liquid asset.

We do not agree that changes in the three-day liquid asset minimum should be approved by a fund's board. We do not believe this provides the level of flexibility that may be required if a market-wide or fund-specific event takes place that would require a change in the three-day liquid asset minimum. Instead, we suggest that a fund's board be allowed to delegate the ability to approve a change in the three-day liquid asset minimum to the fund's investment adviser or officers responsible for administering the fund's liquidity risk management program.

We Agree with Codifying the 15% Standard Asset

Long-standing SEC guidance generally limits an open-end fund's aggregate holdings of "illiquid assets" to 15% of the fund's net assets.[16] This guidance also states that a security or other asset is considered "illiquid" if it cannot be *sold or disposed of*, as opposed to *settled* or *convertible to cash*, in the ordinary course of business within seven days at approximately the value at which the fund has valued the investment.[17] We agree that the SEC should codify this existing guidance regarding the definition of a liquid asset and limiting a fund's holdings of illiquid assets to 15% of its net assets. If this existing guidance is not codified, the proposed rules may be viewed as replacing this past guidance.

Additional Liquidity Risk Management Tools

The SEC provides guidance in the proposal stating that "we . . . encourage funds to assess the liquidity characteristics of an ETF's underlying securities, as well as the characteristics of the ETF shares themselves in classifying an ETF's liquidity."[18] We request that the SEC clarify this guidance and provide more detail on how a fund should determine the liquidity of ETFs that it may invest in. If the SEC determines to adopt Rule 22e-4 as proposed and require funds to classify the liquidity of their positions, we request that the SEC provide specific guidance on how to classify the liquidity of ETFs.

Designation of Program Administrative Responsibilities

We agree that it would be appropriate to require a fund to designate the fund's adviser or officers responsible for administering a fund's liquidity risk management program, subject to fund board approval. The SEC states that the fund or its designated responsible party (*i.e.* the adviser) should "oversee any liquidity risk monitoring or risk management activities undertaken by the fund's service providers"[19] (including sub-advisers). We request that the SEC provide

---

16 *See* Proposal at 35. *See also* Revisions of Guidelines to Form N-1A, Investment Company Act Rel. No. 18612 (Mar. 12, 1992) [57 FR 9828 (Mar. 20, 1992)].

17 *Id.*

18 *See* Proposal at 167.

19 *See* Proposal at 179.

more guidance as to what may be delegated from the adviser to sub-advisers with regard to the liquidity risk management program.

While the SEC states that the fund or its designated responsible party could appropriately use data provided by third-party vendors to inform or supplement its consideration of the proposed liquidity risk factors, it requires that the responsible party review the quality of the data received from third parties, as well as the particular methodologies used and metrics analyzed to determine how effective this data can be. We request that the SEC provide more guidance as to what extent a designated responsible party could rely on data from third-party vendors.

We Do Not Agree With Swing Pricing - Proposed Rule 22c-1(a)(3)

We understand the SEC's purpose in permitting swing pricing is to provide funds with a tool for U.S. registered funds to mitigate potential dilution of fund shareholders. However, we believe that the many unintended consequences and operational challenges outweigh any benefit and the SEC should not adopt Proposed Rule 22c-1(a)(3) and therefore not permit swing pricing.

Unintended Consequences and Operational Challenges

Swing pricing could cause performance and net asset value ("NAV") volatility that could cause market distortions, especially when certain funds adopt swing pricing, but other, similarly situated funds do not. Because the application of a swing factor would affect all purchasing and redeeming shareholders equally, regardless of whether the size of an individual shareholder's purchases or redemptions alone would create material trading costs for the fund, individual shareholders could be negatively impacted based purely on the fact that they redeemed or purchased on a day when the swing threshold was breached.

The deadline by which a fund must strike its NAV will precede the time that a fund receives most of its information concerning daily net flows from the fund's transfer agent and it will be challenging, if not impossible, for a fund to obtain reliable interim feeds of flows from its transfer agent or distributor in order to reasonably estimate its daily net flows for swing pricing purposes. Therefore a fund may not be able to accurately determine whether or not a swing threshold is breached in order to adjust the NAV by the swing factor. The inability to make this determination may lead to inaccurate NAV's and may lead to decay in investor confidence.

The proposed rule would permit the person responsible for administering a fund's swing pricing policies and procedures to make the determination of whether the fund's swing threshold has been met based "on the basis of information obtained after reasonable inquiry."[20] The SEC does not provide further guidance on what constitutes a "reasonable inquiry." This discretionary measure will lead to different funds taking different steps to determine whether a swing threshold has been met. This type of variation in fund practices could cause investor confusion and unintended performance dispersion among similar funds.

---

[20] *See* Proposal at 193.

A possible misapplication of a firm's swing pricing policy could result in a material NAV error. For example, the fund may make estimates under its correctly applied swing pricing policy, but the information, such as final shareholder flows, may subsequently change to a material degree. Shareholders and a fund's board would be unfamiliar with how to interpret or deal with this type of NAV error. A fund will have to be concerned about potential litigation from a "harmed" shareholder if its NAV was inappropriately adjusted. The proposed rule and guidance included in the proposal allows for a level of "reasonable estimates" when determining the "swing factor."[21] This will create highly discretionary and varying swing factors, which could lead to even greater market distortion.

Complexity and Administrative Burden

Under the current proposal, a fund that implements swing pricing will have to adopt policies and procedures, approved by the fund's board, regarding its swing pricing practices that include certain specified elements.[22] Additionally, the fund will have to keep records evidencing and supporting each computation of the fund's NAV, to reflect the NAV adjustments based on the fund's swing pricing policies and procedures.[23] Finally, a fund that implements swing pricing will also have to add certain disclosure to its registration statement, including information requested in proposed amendments to Form N-1A that requires "an explanation of the circumstances under which it will use swing pricing and the effects of using swing pricing."[24] These administrative burdens will result in a large cost to the funds and investors and outweigh the potential benefit of permitting swing pricing.

We Disagree with Certain Disclosure and Reporting Requirements Regarding Liquidity Risk and Liquidity Risk Management

Lines of Credit

We do not agree with the proposed amendment to Item 28 on Form N-1A that would require a fund to file as exhibits to its registration statement any agreements related to lines of credit.[25] We believe that our service provider would be concerned about disseminating widely proprietary information included in the line of credit agreement. The proposed amendments to proposed Form N-CEN would require the disclosure of information regarding lines of credit that is still helpful for the industry and SEC to know without disclosing confidential information about the terms of the actual lines of credit.[26] We would recommend that more detail regarding

---

21 *See* Proposal at 225.

22 Proposed Rule 22c-1(a)(3)(i).

23 Proposed Rule 22c-1(a)(3)(iii).

24 *See* Proposal at 347.

25 *See* Proposal at 253.

26 Proposed Item 44(a)(i)-(iii) of Part C of proposed Form N-CEN.

the line of credit could also be included in the fund's statement of additional information that would be responsive to the SEC's concern about transparency regarding how a fund is utilizing lines of credit without causing proprietary concerns by disclosing the actual agreement.

Liquidity Classifications and Three-Day Liquid Asset Minimum

If the SEC determines to require funds to classify their positions into liquidity categories, we do not agree that the liquidity classifications and the three-day liquid asset minimum should be made publicly available. We agree that the information could be included on Form N-PORT and provided to the SEC, but we do not believe it is necessary for this information to be available to the public. As discussed above, the public disclosure of the liquidity classifications and the three-day liquid asset minimum raises concerns about potential litigation if a fund's classifications end up being inaccurate or an investor feels that a fund's three-day liquid asset minimum is too low or too high.

Public disclosure of the liquidity classifications and the three-day liquid asset minimum could also lead to misinterpretation and confusion among investors, particularly due to the subjective nature of such determinations. It may also facilitate predatory trading practices. Finally, public disclosure of the liquidity classifications and three-day liquid asset minimum may also cause proprietary concerns as these classifications are based on assumptions, estimations, and judgments unique to the fund's designated responsible party. This is especially true if the SEC provides guidance or requires that funds explain any methodologies, assumptions or estimations used in determining liquidity classifications.

Conclusion

We appreciate this opportunity to comment on the Proposal and would be happy to answer any questions regarding these comments.

Sincerely,

Voya Investment Management

By: /s/ Jeffrey Becker
Jeffrey Becker
Chief Executive Officer