COHEN & STEERS

January 13, 2016

Submitted Electronically

Mr. Brent Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: File Nos. S7-16-15, S7-08-15; SEC Release 33-9922 Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release

Dear Mr. Fields:

Cohen & Steers Capital Management, Inc., investment advisor to the Cohen & Steers Funds ("Cohen & Steers"), appreciates the opportunity to comment on the recent proposed rules release "Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release" issued by the Securities and Exchange Commission (the "SEC" or "Commission") on October 15, 2015.[1] Among other requirements, the proposals (i) would require an open-end fund to adopt and implement a written liquidity risk management program to assess and manage the fund's liquidity risk, including by classifying each portfolio asset (or portion thereof) into pre-defined categories and by setting a three-day liquid asset minimum; (ii) would require an open-end fund to publicly disclose the liquidity classifications of each of the fund's portfolio assets; and (ii) would permit, but not require, an open-end fund to use swing pricing under certain circumstances (collectively, the "Proposals"). With these Proposals, the Commission is seeking to reduce the risk that a fund will be unable to meet shareholder redemptions and mitigate dilution of interests of shareholders remaining invested in the fund.

Executive Summary

Cohen & Steers was founded in 1986 and is a global investment manager focusing on real assets strategies, including real estate, infrastructure and commodities, along with preferred securities and other income solutions. As of December 31, 2015, Cohen & Steers had $52.6 billion in assets under management across various investment products, including $17.5 billion in thirteen Cohen & Steers U.S. open-end funds.

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[1] *Open-end Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release,* SEC Release No. IC-31835 (Sept. 22, 2015) (the "Release").

As a registered investment advisor, Cohen & Steers is committed to supporting the Commission's ability to monitor the industry for systematic risk and to fulfill both its role as primary regulator for the fund industry and its mission of investor protection, the maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation and investment opportunity.

Cohen & Steers generally supports the Commission's proposal to promote effective liquidity risk management throughout the open-end fund industry by requiring funds to adopt written liquidity risk management programs to assess and manage liquidity on an ongoing basis. However, we would like to submit comments addressing certain aspects of the proposals relating to (i) the definition of liquidity risk; (ii) the classification of portfolio assets into prescribed categories using specific factors enumerated by the Commission; (iii) the establishment of a three-day liquid asset minimum that funds would be required to maintain; (iv) a board's oversight role with respect to liquidity risk management; (v) the public disclosure of a fund's liquidity classifications of specific portfolio assets; and (v) the proposed compliance dates. A more detailed discussion with respect to each of these comments is set forth below.

In addition to our own views expressed herein, we also wish to communicate our general support for the comments and recommendations set forth in the comment letter to the Proposals submitted to the Commission by the Investment Company Institute ("ICI").

Program Requirements and Scope of Proposed Rule 22e-4

Written liquidity risk management program

Cohen & Steers supports the Commission's proposed rule 22e–4, which would require each open-end or exchange-traded fund to adopt and implement a written liquidity risk management program that is designed to assess and manage a fund's liquidity risk. At a minimum, we agree that funds should have in place policies and procedures to monitor a fund's liquidity on a continuous basis in order to reasonably ensure that the fund can satisfy shareholder redemptions during varied market conditions. However, such programs should be flexible in scope to account for various market conditions and types of funds, and should be developed and revised over time by experienced asset managers in conjunction with oversight from a fund's board. In setting forth prescribed methods and factors to be considered when establishing and implementing a liquidity risk management program, we believe the Commission should recognize the long standing history of open-end funds' ability to satisfy their redemption obligations, to adhere to stated investment objectives and strategies, to comply with federal securities laws, and to oversee various risks, including market, liquidity and regulatory.

As noted in the Release, the Commission acknowledges that meeting daily redemption obligations is fundamental for open-end funds, and such funds must manage liquidity in order to meet these obligations.[2] Section 22(e) of the Investment Company Act of 1940 provides that no open-end fund shall suspend the right of redemption or postpone the date of payment of redemption proceeds for more than seven days after the tender of the securities absent specified

[2] *See* Release at 62278.

unusual circumstances. In order for an open-end fund to suspend redemptions, the fund must obtain an exemptive order from the Commission. As far as we are aware, the Commission has only issued such exemptive relief three times in the past 75 years.[3] This is testament to multiple levels of governance, existing federal securities laws and regulations, an asset manager's fiduciary duties to shareholders and board oversight, which provide sufficient shareholder protections in this area. This is a remarkable accomplishment considering that at the end of 2014, there were approximately 9,260 open-end mutual funds available for investment, totaling approximately $15.9 trillion in assets under management.[4]

The fact that daily redeemability is a defining feature of open-end mutual funds mandates that these funds have comprehensive compliance policies and procedures in place to safeguard the fundamental essence of these investment products. Liquidity risk management is one factor among many that an asset manager considers in order to maintain the integrity and functionality of an open-end fund.

We hope that the Commission will recognize the industry's long standing history of consistently meeting shareholder redemptions during both normal and stressed market conditions and exhibit restraint in adopting rules that are too prescriptive in their execution and implementation. We believe that the goals of the proposed rules will best be met if funds, with oversight from their boards, are allowed the flexibility to design and implement liquidity risk management programs that are tailored to each fund's particular portfolio, investment strategies, and investor composition.

Definition of liquidity risk

Under the proposed rule, "liquidity risk" would be defined as the risk that a 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.[5]

Many factors influence the price at which a fund transacts in a security, and the levels of cash a fund holds, and both of these factors may ultimately impact whether a fund's net asset value is affected. Such factors include, but are not limited to, market volatility, portfolio composition, and trade execution and activity. These factors are fluid and are often outside of a fund's control. For example, during stressed market conditions, a fund may be selling securities into a declining market, and additional sales may, regardless of the liquidity of the portfolio securities being sold, further exacerbate those declines. In our view, any resulting decline in net asset value in this case would be a result of general market conditions and not because of any failure to address "liquidity risk."

[3] *See, e.g.*, SEC Release No. IC-31943 (Third Avenue Trust and Third Avenue Management LLC; Notice of application and temporary order under Section 22(e)(3) of the Investment Company Act) (Dec. 16, 2015).
[4] 2015 Investment Company Institute Fact Book.
[5] *See* Release at 62287 (proposed rule 22e-4(a)(7)).

Because the definition of "liquidity risk" will serve as the basis of any liquidity risk management program a fund adopts, the phrase "without materially affecting the fund's net asset value" is problematic in that it is impossible to measure. Therefore, we respectfully ask that the Commission remove this phrase from any final definition.

Classification of portfolio holdings

Cohen & Steers believes there are better alternatives to the Commission's proposal to require a fund to classify the liquidity of each position (or portions of a position) in a portfolio asset into six static categories using the specific list of factors that a fund would need to evaluate when classifying holdings.[6] The six categories proposed by the Commission are: (i) convertible to cash within 1 business day; (ii) convertible to cash within 2-3 business days; (iii) convertible to cash within 4-7 calendar days; (iv) convertible to cash within 8-15 calendar days; (v) convertible to cash within 16-30 calendar days; and (vi) convertible to cash in more than 30 calendar days.[7]

Managing an open-end fund is a complex process. Prescribing specific requirements, such as the proposed classification scheme, does not fully contemplate how dynamic managing investment strategies can be for an open-end fund. Different investment strategies, cash flows, trading in securities, compliance with investment guidelines and federal securities laws, and oversight of market, regulatory, investment and liquidity risks ensure that no two funds are alike. Open-end funds invest in various types of instruments across asset classes (*e.g.*, equities, fixed income, commodities, etc.), trade in different markets (*i.e.*, either on an exchange or over-the-counter, foreign versus domestic), manage pursuant to distinctive investment strategies and processes, and have different historical purchase and redemption activity and shareholders bases, among many other attributes. Liquidity levels are not constant, and funds may be managed one way during normal market conditions and quite differently in periods of stress. In light of these considerations, we encourage the Commission to abandon such a rigid and uniform classification scheme in favor of an approach that allows each open-end fund to adopt a liquidity risk management program that is unique to and appropriate for its particular characteristics.

Funds should be able to customize a program that includes both qualitative and quantitative assessments for different market conditions. From the perspective of managing market risk, best practice includes having an integrated approach that considers all relevant risks for a specific type of security. For example, an assessment of the market risks of fixed income securities should consider credit, interest rate and liquidity risks together because prescribing set rules with respect to liquidity classifications in isolation may have a suboptimal effect on the risk profile of a fund. A fund may have greater liquidity in a security, but may also have higher credit or

[6] Specifically proposed rule 22e-4(b)(2)(ii)(A) – (I) would require a fund to consider: (i) existence of an active market for the asset, including whether the asset is listed on an exchange, as well as the number, diversity, and quality of market participants; (ii) frequency of trades or quotes for the asset and average daily trading volume of the asset (regardless of whether the asset is a security traded on an exchange); (iii) volatility of trading prices for the asset; (iv) bid-ask spreads for the asset; (v) whether the asset has a relatively standardized and simple structure; (vi) for fixed income securities, maturity and date of issue; (vii) restrictions on trading of the asset and limitations on transfer of the asset; (viii) the size of the fund's position in the asset relative to the asset's average daily trading volume and, as applicable, the number of units of the asset outstanding; and (ix) relationship of the asset to another portfolio asset (this could arise in connection with hedging or derivatives transactions). The SEC indicates that this list is not meant to be exhaustive, and not every factor will be relevant in each liquidity determination.

[7] Proposed rule 22e-4(b)(2)(i).

interest rate risk, which may result in a suboptimal allocation from a risk/return perspective if a fund is forced to categorize each security (or portions thereof) into standardized liquidity classifications. Similarly, encouraging (as the rule proposal appears to do, even if implicitly) funds to become “more liquid” may as a result encourage greater credit, interest rate or other risks in order to meet the risk return objectives of investors.

In addition, requiring a fund to classify positions (or portions of positions) in portfolio assets into specific categories “at a price that does not materially affect the value of that asset immediately prior to sale” is imprecise, arbitrary, outside the control of a fund and cannot be determined at a security level to the accuracy that the proposal suggests, due to the factors that influence the transacting price of a security, as discussed above in regards to the definition of liquidity risk. Because many factors that are outside the control of a fund impact whether a price will be affected when transacting in a security, categorizing based on this standard will be extremely subjective, subject to great variation across funds and inaccurate (and likely to become more so during periods of market stress). Subjective and inaccurate data will not be useful to the Commission in analyzing liquidity risk across the industry or types of funds nor will it promote comparability of data across funds. Thus, the amount of time and expense that would be required for a fund to classify each portfolio position (or portions thereof) will be unduly burdensome relative to the purported benefits to the Commission and investors.

As noted above, we support the Commission’s adoption of a liquidity risk management requirement. However, we ask that the Commission eliminate any prescribed classification scheme from any final rule and permit a fund to develop, with oversight from its board, a comprehensive approach to portfolio liquidity that considers the unique characteristics of that fund. Such approach will continue to promote the discretion and adaptability funds have had for 75 years in successfully satisfying shareholder redemptions in both normal and stressed market conditions.

In the alternative, if the Commission adopts rules for a liquidity risk management program requiring a prescribed classification scheme, Cohen & Steers requests that such scheme require a fund to categorize liquidity for the overall portfolio rather than for each individual position. An alternative classification scheme that will be more accurate and effective, and simpler for a fund to implement than the proposed rule, could require a fund to report the percentage of its portfolio in three categories:

- “Three-day liquid assets,” which would include cash or any security that can be convertible to cash within three business days under normal market conditions;

- “Illiquid assets,” which would include any portfolio security considered to be a “15% standard asset[8]” as defined in the proposal; and

[8] *See* Release at 62385. A 15% standard asset means an asset that may not be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund. For purposes of this definition, the fund does not need to consider the size of the fund’s position in the asset or the number of days associated with receipt of proceeds of sale or disposition of the asset (proposed rule 22e-4(a)(4)).

- "Other assets," which would include any security that is not a three-day liquid asset or an illiquid asset.

The classification scheme will still provide the Commission with data it needs to oversee the liquidity of the fund industry and to carry out its role as primary regulator. Analyzing liquidity at the portfolio level will yield a more meaningful result because it provides an integrated approach in which a fund would consider factors such as security type, asset class, trading market and activity, market conditions, investment objective and strategies, and historical purchase and redemption activity to determine the overall liquidity profile of the portfolio. Because many of these factors are interrelated, a portfolio level classification scheme will be a better representation of the liquidity of a fund's portfolio. This will promote a more meaningful comparison of liquidity among similar fund types, and in conjunction with the proposed reporting modernization rules, will provide the Commission with ample information to analyze and oversee the industry's liquidity risk.

Three-Day Liquid Asset Minimum Requirement

Cohen & Steers recommends that the Commission does not adopt the proposal to require funds to establish and maintain a three-day liquid asset minimum as part of its liquidity risk management program. This minimum would include assets held by the fund that are convertible to cash within three days or less. A fund would not be permitted to acquire any less liquid asset if, immediately after the acquisition, the fund would have invested less than its minimum in three-day liquid assets and would be required to conduct a review of the adequacy of its minimum no less frequently than semi-annually.

We recommend that the Commission revise the proposal to eliminate this requirement and allow funds to manage the liquidity of their portfolios informed by market conditions, with oversight by a fund's board. In addition, the Commission should not exacerbate potential liquidity issues in the market by mandating a requirement in an area that has not been an issue for funds in the past. Finally, as part of any final rule, the Commission should permit funds to consider other sources of liquidity, such as lines of credit arrangements, which the proposal currently excludes from being included in the evaluation of a fund's liquidity minimum.

Requiring an open-end fund to maintain a minimum percentage of its net assets to be invested in three-day liquid assets may be contrary to a fund's investment policies, prevent a fund from meeting its investment objective, create an unnecessary cash drag on a fund's performance, and may promote illiquidity in the market unnecessarily during times of stress. Liquidity issues may be exacerbated because similar types of funds are likely to experience a need for more liquid assets during the same time periods and, under the Commission's proposal, would be required to replenish cash or more liquid assets instead of taking advantage of investment opportunities in the market. Funds should be allowed to continuously evaluate the level of liquid assets held in a portfolio to meet shareholder redemptions and not be forced to maintain a stated minimum if unwarranted by market conditions. As noted above, open-end funds have an extremely strong historical record of meeting shareholder redemptions, even during periods of stress (such as the

2008-2009 financial crisis), and the Commission may cause other unintended consequences if a fund is unable to manage its portfolio in the manner expected by investors.

15% Standard Asset Limit

Cohen & Steers supports the codification of the current 15% guideline, which states that an open-end fund may not invest in the aggregate more than 15% of its net assets in "illiquid securities" (any portfolio security that cannot be sold or disposed of in the ordinary course of business within seven days at approximately the value at which the fund valued such security). The Commission states that a fund does not have to consider whether it can actually receive the proceeds of any sale within seven days, and that the guideline also does not involve a fund taking into account any market or other factors, or assessing whether the fund's position size in a particular asset affects the liquidity of that asset."[9]

Continuing to include this requirement as part of any liquidity risk management program is important as this has historically been the practice used to regulate liquidity of open-end funds, and such guideline has proven to be highly effective in assessing the liquidity of a fund's holdings and its overall portfolio.

Board's Role

We support the Commission's goal of involving a fund's board in overseeing the management of the fund's liquidity risk management program. The Commission would require a fund's board to approve the fund's liquidity risk management program, any material changes to the program, and the fund's designation of the fund's investment advisor or officers as responsible for administering the fund's liquidity risk management program (which cannot be solely portfolio managers of the fund).[10] A fund's board would also be required to approve the three-day liquid asset minimum, if adopted.

A fund's board should function in an oversight role to ensure any program that a fund would adopt is reasonable in scope and provides the level of reporting a board would need in order to perform its oversight role. We ask the Commission to be cautious in the requirements it imposes on board members, who may not have the expertise, and in most cases, will not have the day to day involvement and information needed to be intimately involved in a liquidity management program. A board should not be required to evaluate a fund's liquidity classifications of its portfolio positions as board members may have limited experience with reviewing in detail any such assessment. Under any rules that are adopted, a board should not be tasked with understanding the details of any liquidity risk management program that would require their role to shift from oversight to day-to-day management. In addition, a fund's board should be shielded from liability for its role in approving a fund's liquidity risk management program if the record supports its good faith, reasonable review of that program.

[9] *See* Release at 62292 (proposed rule 22e-4(a)(4).
[10] *See* Release at 62287 (proposed rule 22e-4(b)(3)).

Disclosure

Under the proposed amendments to Form N-PORT, the Commission would require open-end funds that are not money market funds to report information about each portfolio asset's liquidity classification under proposed rule 22e-4 and whether each portfolio asset is a 15% standard asset on a monthly basis, with the information being publicly available each quarter on a 60-day lag.[11] Cohen & Steers requests that the Commission does not adopt rules requiring disclosure of this information at the individual portfolio asset level. As a primarily long-only asset manager, such disclosure may compromise our competitiveness and proprietary investment strategies. As noted above, the usefulness of any data reported at the portfolio asset level is questionable and would not be accurate in terms of drawing conclusions from the data. A fund also may begin using such classifications in its marketing materials to tout the liquidity of its portfolio, which may be misleading to shareholders because such classifications would be subjective as discussed above, and not comparable like a fund's expense ratio or total return. Such disclosure may cause asset managers to adapt behaviors to "fit" an industry or regulatory construct imposed by rules, rather than manage portfolios to provide value to shareholders. Finally, any public disclosure at the portfolio asset level provided on a quarterly basis may promote reverse engineering of proprietary investment models, as funds with lower turnover would not have significant changes in their assessments quarter to quarter. [12]

Proposed Compliance Date

The Commission proposes a tiered set of compliance dates based on asset size for funds to implement liquidity risk management programs and make related disclosures on proposed Form N-PORT. Funds that together with other investment companies in the same "group of related investment companies" having net assets of $1 billion or more as of the end of the most recent fiscal year would have 18 months following the effective date of the rule to comply. Funds that together with other investment companies in the same "group of related investment companies" having net assets of less than $1 billion as of the end of the most recent fiscal year would have 30 months after the effective date of the rule to comply.

We recommend that the Commission provide a 30-month compliance period for all funds, regardless of asset size. We believe that a 30-month compliance period would better recognize the significant operational and resource challenges, both from a cost and personnel perspective, of implementing a liquidity program and compiling, evaluating and ultimately reporting the information being proposed.

Our funds will need time to develop internal processes to conduct the review and analyze portfolios in order to comply with any liquidity classification requirement, to work with third-party service providers to determine the level of services to be provided in order to comply with any rules, to create the written records and frequency of any assessments, to draft policies and

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[11] *See* Release at 62290.
[12] This may also have the perverse effect of encouraging portfolio turnover, with its associated costs, as investment managers seek to avoid disclosing investment strategies to those who might use such information to the fund's disadvantage.

procedures addressing the characteristics of each fund, and to present such analyses, and policies and procedures to the board for approval.

Even if the Commission adopts rules requiring funds to report liquidity metrics at a portfolio level, instead of at a security level, implementation will require us to undertake significant operational and systems development, as well as a sizeable resource commitment to oversee compliance with any rules adopted by the Commission. Finally, our recommended compliance period would afford funds more time to comply with recently proposed reporting modernization and derivatives rules, particularly if the Commission simultaneously adopts these proposals.

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Cohen & Steers appreciates the opportunity to comment on the Proposals. If you have any questions about Cohen & Steers' comments to the Proposals or would like any additional information, please contact Tina Payne, Senior Vice President and Associate General Counsel at [redacted] or [redacted]

Sincerely,

Joseph M. Harvey
President and Chief Investment Officer

cc: The Honorable Mary Jo White
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar
David Grim, Division of Investment Management