MEMORANDUM

February 3, 2023

TO: File No. S7-26-22

FROM: Holly Hunter-Ceci
Office of Commissioner Mark T. Uyeda

RE: Meeting with Representatives of the Investment Company Institute ("ICI")

On January 24, 2023, Commissioner Mark T. Uyeda and his counsels, Holly Hunter-Ceci and Steven B. Levine, met with the following:

- George C.W. Gatch, ICI's Vice Chair and CEO of JP Morgan Asset Management
- Eric Pan, President & CEO, ICI

Among other matters, the participants discussed the ICI's preliminary thoughts, which it indicated were subject to its forthcoming comment letter(s), on certain aspects of the proposals on Open-End Fund Liquidity Risk Management Programs and Swing Pricing and Form N-PORT Reporting (the "proposals").

The participants noted that while they had significant concerns about swing pricing and the hard close, they were focusing their discussion on the following aspects of the proposals:

- In reviewing recent stress events, e.g., the rising of interest rates and March 2020, it was unclear what problem the SEC was attempting to address in the proposals. Funds had withstood the stresses without encountering fire sales, investor runs, and liquidity spirals that were posited as potential threats to financial stability.
- The proposals were founded on unsupported assumptions and insufficient data analysis.
- The proposals were problematic and raised important structural concerns for the fund industry.
- The proposals would require funds to determine and maintain a highly liquid investment minimum ("HLIM") equal to at least 10% of net assets, eliminating the current exclusion for funds that primarily invest in highly liquid investments. The participants noted that the 10% HLIM requirement (together with the changes to the liquidity classifications) would affect not just bank loan and similar funds that may be more illiquid, but also funds that generally were considered more liquid, such as large cap equity funds.
- The proposals would require that funds incorporate stress into their liquidity classifications by assuming the sale of a set stressed trade size equal to 10% of each portfolio investment. The participants expressed the view that the 10% number was not supported by data. In analyzing market data from the past 13 years, the participants

believed that a much lower number (under 5%) was more appropriate. Given the vast discrepancy between the two results, the participants questioned whether 10% was appropriate or supportable based on the available data.

- The proposals would create unintended consequences for "plain vanilla" funds and their investors. The portfolio de-risking that would be necessary to comply with the proposals would substantially limit fund performance and have much broader and negative implications to the markets.
- Public disclosure on Form N-PORT would exacerbate a crisis by providing visibility into liquidity at the fund level. Liquidity management is an art, not a science, and investors would be more likely to overreact and redeem their shares in stressed times due to, for example, misunderstanding the liquidity management program underlying the data.