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VIA ELECTRONIC SUBMISSION

February 10, 2023

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

Re: Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting; File No. S7-26-22

Dear Ms. Countryman:

Invesco Ltd. ("**Invesco**") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "**SEC**" or "**Commission**") on the proposed amendments to Rule 22e-4 ("**Rule 22e-4**") under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the proposed amendments to the reporting requirements on Form N-PORT (collectively, the "**Proposed Amendments**").[1] The Proposed Amendments would require most open-end registered investment companies to establish minimum standards and incorporate stress into their liquidity classifications performed pursuant to Rule 22e-4, including by requiring funds to assume the sale of a stressed trade size. The Proposed Amendments also would amend Rule 22e-4's liquidity categories, including removing the less liquid investment category and requiring funds to treat investments in this category as illiquid investments. Additionally, the Proposed Amendments would change Rule 22e-4's highly liquid investment minimum ("**HLIM**") provisions to make more funds subject to the HLIM requirement and to require these funds to maintain at least 10% of net assets in highly liquid investments. These elements of the Proposed Amendments are intended to prevent funds from overestimating the liquidity of their investments and to assist them in preparing for and managing stressed conditions, mitigating the risk that funds are unable to pay redemptions in the period required by Section 22(e) of the Investment Company Act or that sales of portfolio investments to satisfy redemptions dilute remaining shareholders. Finally, the Proposed Amendments would change regulatory reporting requirements for most registered investment companies through amendments to Form N-PORT, including by requiring more frequent filing of Form N-PORT with the Commission.

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[1] See Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Investment Company Act Release No. 34746, 87 Fed. Reg. 77172 (December 16, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-24376.pdf (the "**Proposing Release**"). The Proposed Amendments also include changes to Rule 22c-1 under the Investment Company Act to require (i) that mutual funds use swing pricing to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity and (ii) a "hard close" for these funds to operationalize the proposed swing pricing requirement. In this letter, Invesco provides comments on only the proposed amendments to Rule 22e-4 and the reporting requirements on Forms N-PORT. Comments on the swing pricing and hard close elements of the Proposed Amendments are the subject of a separate Invesco letter to be submitted to the Commission.

Invesco is a leading independent investment manager with approximately $1,409.2 billion in assets under management as of December 31, 2022. Invesco is a global company focused on investment management, and our services are provided to a wide range of clients throughout the world, including open-end mutual funds, exchange-traded funds ("**ETFs**"), closed-end funds, collective trust funds, UCITS, real estate investment trusts, unit investment trusts and other pooled investment vehicles, as well as separately managed accounts for pensions, endowments, insurance companies and sovereign wealth funds. Invesco's indirect wholly-owned U.S. registered investment adviser subsidiaries, Invesco Advisers, Inc., Invesco Capital Management LLC and Invesco Senior Secured Management, Inc., sponsor and advise mutual funds, ETFs, closed-end funds and unit investment trusts for a broad client base. Additionally, these investment advisers sponsor and manage bank loan mutual funds and ETFs with approximately $10.5 billion in assets under management as of December 31, 2022, making Invesco one of the largest sponsors and advisers of open-end bank loan funds in the industry.

I. Summary

Redeemability of shares is a foundational characteristic of open-end funds to which their success and popularity can be substantially attributed. As one of the largest sponsors and advisers of open-end funds (including ETFs), Invesco recognizes the criticality of effective liquidity risk management by these funds to ensure their ability to pay shareholder redemptions as required by Section 22(e) of the Investment Company Act without adversely impacting remaining shareholders, even in periods of market stress. Even before the Commission's 2016 adoption of Rule 22e-4, Invesco and the open-end fund industry has a long history of effective liquidity risk management through all types of market conditions, as evidenced by the exceedingly rare instances of funds failing to pay redemptions timely. Nonetheless, we support Rule 22e-4's objective of ensuring that all open-end funds adopt and implement liquidity risk management programs reasonably designed to manage liquidity risk.

We also believe, however, that Rule 22e-4's liquidity risk management program requirement is most effective by imposing a principles-based framework on open-end funds, in recognition of the diversity of funds' investment objectives and strategies, the markets and asset classes in which they invest and their shareholder compositions. For this reason, we are deeply concerned that the Proposed Amendments, including the 10% stressed trade size, the minimum value impact standard, the treatment of all GAAP "level 3" investments as illiquid and the application of a uniform 10% minimum HLIM, reflect a prescriptive, invariable approach to regulation of funds' liquidity risk management and a departure from several principles-based elements of existing Rule 22e-4. We also disagree with many of the assumptions and analyses upon which the Commission justifies these changes. Other aspects of the Proposed Amendments, especially changes to how funds assess compliance with the HLIM requirement and the 15% net asset value limit on Illiquid Investments, are in our view overly conservative and excessively technical and complex.

We strongly disagree with the Commission's proposal to eliminate the less liquid investment category and treat these investments as illiquid. This proposal in particular is driven by the March 2020 market dislocation during which open-end bank loan funds incurred stressed outflows. Eliminating the less liquid investment category will cause substantially all of these funds to cease operations and liquidate, depriving many investors of access to an important asset class that provides high income and diversification benefits owing to its insensitivity to interest rate changes. The fact that these funds successfully operated through March 2020 and previous periods of substantial market stress makes this proposal strikingly disproportionate. In our view, the Commission fails to recognize that less liquid investments create a fundamentally different type of liquidity risk for funds than illiquid investments that can be appropriately addressed through liquidity risk management tools, including committed credit facilities and a HLIM. We believe the Commission must consider bank loan funds' use of these liquidity risk management tools as appropriate alternatives to eliminating the less liquid investment category given the adverse impact that eliminating bank loan investing by open-end funds will undoubtedly have on investors, the syndicated bank loan market and capital formation.

Set forth below is a summary of Invesco's comments to the Proposed Amendments. In the remainder of this letter, we provide a detailed discussion of these comments. Where we disagree with elements of the Proposed Amendments, we provide potential alternatives for the Commission's consideration.

Stressed Trade Size and Significant Change to Market Value; Removal of Asset Class Classifications; Frequency of Classifications

- Though we agree that a Fund[2] should classify the liquidity of its investments using an assumed stressed trade size based upon stressed shareholder outflows, we oppose the proposed 10% stressed trade size and believe the Commission's analysis supporting it is flawed. The 10% stressed trade size conflates weekly and daily outflow data by pairing an unjustifiably high weekly outflow figure with a classification requirement that assumes daily sales of a stressed trade size, necessitating that Funds classify their investments as if a week's worth of stressed outflows must be satisfied through a single trading day's worth of sales. The 10% stressed trade size will also unjustifiably harm certain Funds by causing their liquidity profiles to appear fallaciously less liquid, challenging their compliance with Rule 22e-4. Rather than the 10% stressed trade size, we believe the Commission should require a Fund to establish its stressed trade size as at least equal to the 99th percentile highest daily net outflow observed over a rolling three-year historical lookback period.

- We agree that a minimum value impact standard in Rule 22e-4 would minimize variation in how Funds determine value impact. However, we cannot support the Commission's proposed 20%/1% thresholds unless it abandons the 10% stressed trade size.

- We agree that requiring Funds to classify the liquidity of each investment separately (rather than based solely on asset class) on each business day will significantly enhance Funds' liquidity risk management programs.

[2] Unless otherwise defined in this letter, capitalized terms used herein have the same meanings assigned to such terms in Rule 22e-4.

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Amendments to Liquidity Classification Categories

- We disagree with the proposal to eliminate the Less Liquid Investment category and amend the definition of Illiquid Investment to capture Less Liquid Investments. We believe this change will cause the liquidation of substantially all bank loan Funds, and the Commission has inadequately considered the attendant costs and adverse impacts on investors, the syndicated bank loan market[3] and the U.S. companies that borrow in it, especially in light of bank loan Funds' impeccable record of satisfying redemption obligations. We believe the Commission must consider appropriate alternatives to eliminating the Less Liquid Investment category (and consequently bank loan Funds) to achieve its objectives.

- We do not believe investments with extended settlement periods constitute Illiquid Investments. Less Liquid Investments create a fundamentally different type of liquidity risk for Funds than Illiquid Investments, and the Commission's proposal to eliminate the category fails to recognize that Funds primarily invested in Less Liquid Investments can satisfy a period of stressed outflows without significant shareholder dilution by deploying appropriate liquidity risk management tools.

- The Commission incorrectly dismisses or does not consider the effectiveness of liquidity risk management tools presently employed by Funds primarily invested in Less Liquid Investments, including committed revolving lines of credit and HLIMs. When used in combination, these tools enable these Funds to aptly manage liquidity risk and provide an appropriate alternative to eliminating the Less Liquid Investment category.

- We believe the Commission's proposal to treat GAAP "level 3" investments as Illiquid Investments inappropriately conflates valuation and liquidity. Funds should account for inputs in the fair value measurement of their investments when making liquidity classifications, but classification should not turn on fair value measurement.

- We disagree with the proposal to require Funds to count the day of classification when determining the period in which an investment is expected to be convertible to U.S. dollars. This methodology change will cause Funds' liquidity profiles to appear less liquid arbitrarily. We also believe the proposal is at odds with the Commission's basis for originally referencing "three business days" in the Highly Liquid Investment category.

[3] When we reference syndicated bank loans in this letter, we mean broadly syndicated institutional loans to corporate borrowers that trade actively in the secondary market. We do not mean "private credit" loans or "direct lending" loans, which are typically smaller loans made to middle market companies that are held by a small group of institutional investors and that do not trade actively (if at all) in a secondary market. Among those entities regulated under the Investment Company Act, we believe that traditional closed-end funds, closed-end interval funds and business development companies (and not Funds) are the predominate investors in private credit loans and direct origination loans.

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Highly Liquid Investment Minimum

- We believe elimination of the "primarily exclusion", subjecting Funds that are primarily invested in Highly Liquid Investments to the HLIM requirement, is unnecessary and the primarily exclusion should be retained. The scale of these Funds' holdings of Primarily Highly Liquid Investments enables them to meet stressed outflows, rendering a HLIM and shortfall procedures unwarranted and unnecessary.

- We believe the HLIM requirement should be viewed as a liquidity coverage tool, not as a by-product of the stressed trade size, and Funds should have discretion and flexibility to determine a HLIM on the basis of their particular circumstances, including an assessment of their liquidity risk factors and investment objective. Because the proposed 10% minimum HLIM is linked to the 10% stressed trade size and affords a Fund no discretion to evaluate its particular circumstances, we disagree with the proposal.

- We believe the two adjustments to a Fund's Highly Liquid Investments proposed in connection with HLIM compliance are overly conservative, excessively technical and complex and, in combination, can cause a Fund to overstate the amount of its Highly Liquid Investments committed to meet obligations other than redemptions. In particular, the proposal is unfairly conservative because it would require Funds subject to the HLIM requirement to deduct all liabilities when assessing HLIM compliance while providing Funds no credit for non-investment assets representing present entitlements to cash.

Limit on Illiquid Investments

- We believe the change to how Funds assess compliance with the 15% net asset value limit on Illiquid Investments in connection with illiquid derivatives transactions is also excessively technical, complex and unnecessary and the Commission's objectives can be achieved more simply.

Form N-PORT Changes

- We appreciate the Commission's desire to have funds file Form N-PORT on a monthly (rather than a quarterly) cadence to enhance the Commission's ability to effectively oversee funds and monitor their activities. However, the Commission's proposal to require Form N-PORT reporting within 30 days after each month end does not provide funds, their advisers and their service providers enough time to produce and file the reports and we request that funds have until the 45th day after each month end to file the form.

- We oppose the proposal to require monthly reporting by funds on Part F of Form N-PORT because this reporting will impose significant additional obligations on funds, even though the information to be reported is already in the public domain.

- We oppose public reporting of aggregate liquidity classifications on Form N-PORT. As the Commission itself concluded in 2016, the information is subjective, lacks the context of other disclosures and suggests a false sense of precision when presented in isolation. Should the Commission desire aggregate liquidity classification reporting on Form N-PORT, we urge it to find that public disclosure neither serves the public interest nor protects investors.

II. Stressed Trade Size and Significant Change to Market Value; Removal of Asset Class Classifications; Frequency of Classifications

A. The Commission's Proposal to Replace RATS With the 10% STS Is Based Upon Incongruous Analysis

Because predicting when market stress will occur is difficult, the Proposed Amendments would require Funds to continuously incorporate stress into their liquidity classifications by assuming the sale of a stressed trade size equal to 10% of each portfolio investment (the "**10% STS**").[4] The 10% STS would replace Rule 22e-4's current approach, which requires a Fund to assume the sale of a "reasonably anticipated trade size" of each of its investments in current market conditions ("**RATS**").[5] Observing that Funds currently consider a variety of different factors when determining RATS (such as flow history, flow trends of similar funds and shareholder makeup and concentration), the relative importance of which Funds may weigh differently, the Commission concludes that establishing RATS on these factors (or a subset of them) leaves Funds unprepared for future stressed conditions like those observed in March 2020 at the outset of the COVID 19 pandemic.[6] To obviate variability in Funds' RATS and potential ineffectiveness of a small RATS in preparing a Fund for stressed market conditions, the Commission proposes mandating that all Funds apply the 10% STS when performing liquidity classifications. By requiring Funds to consistently assume sales of larger-than-typical position sizes, the Commission theorizes that Funds can better emulate the potential effects of stress on their portfolios, akin to a continuous stress test, and better prepare for future stress periods during which they face unusually high redemptions.[7]

While we agree with the Commission that a Fund should classify the liquidity of its investments using an assumed stressed trade size based upon stressed shareholder outflows to help it prepare for future stress periods, we strongly disagree with the 10% STS and believe the Commission's analysis supporting it is flawed and incongruous. The Commission advises that, using Morningstar weekly fund flow data, it analyzed weekly flows of equity and fixed-income funds over a historical period of more than ten years, observing that outflows greater than 6.6% occurred 1% of the time in the sample across weeks and funds. While the Commission concedes that weekly outflows at the 99th percentile – 6.6% – is a useful approximation of the level of weekly outflows funds may experience in future stressed conditions, it justifies the substantially

[4] Proposed Rule 22e-4(b)(1)(ii)(B).

[5] Rule 22e-4(b)(1)(ii)(B).

[6] See Proposing Release at 77186.

[7] See id. at 77187.

higher 10% STS on the supposition that future stress events (including their effect and length) are difficult to predict, especially if official sector entities fail to intervene, and that funds had weekly inflows greater than 8% for 1% of the time during the period analyzed.[8] We disagree with the Commission that a 10% STS is only "moderately higher"[9] than the 6.6% weekly outflow figure. Indeed, the 10% STS is actually 151.5% of the 99th percentile worst weekly outflow experienced by funds in the relevant data set. Accordingly, the Commission has failed to adequately justify the 10% STS, relying instead on the conjectural characteristics of potential future stress events and a speculative conclusion that large Fund inflows can reverse into equivalently large outflows.

More importantly, the operation of the 10% STS conflates weekly and daily outflow data. In the Proposing Release, the Commission expounds that weekly outflows are a better proxy for stressed trade size than daily outflows because stressed conditions can take time to fully present in flows and frequently result in outflows that continue over several days or more.[10] However, proposed Rule 22e-4(b)(1)(ii)'s requirement that a Fund perform daily liquidity classifications assuming the sale of 10% of its net assets by reducing each investment position by 10% necessarily supposes that the Fund experiences a daily net outflow of 10% of its net assets, with the result that a Fund must apply an exceedingly stressed *weekly* outflow scenario as if incurred *daily*. The 10% STS requires a Fund to classify the liquidity of its investments assuming a highly stressed amount of outflows incurred over a five business day period will be satisfied by the Fund with U.S. dollars raised through a single trading day's sales. Applying the 10% STS on a daily basis as proposed, a Fund's net assets would be reduced to approximately 66% of their starting value after only four business days, approximately 48% of their starting value after only seven business days and approximately 10% of their starting value after only 22 business days.[11] Except in the context of a planned liquidation or large redemption of which a Fund has prior notice, we believe it is exceptionally unlikely that a Fund will experience a daily net outflow of this magnitude (let alone consecutive daily net outflows of this magnitude)[12], and that it is unjustifiably punitive to require Funds to perform liquidity classifications and manage liquidity risk as if constantly operating in such improbably stressed conditions. A weekly outflow of 10% of a Fund's net assets equates to a daily outflow of 2.1% of the Fund's net assets[13], which is an exceedingly more reasonable and supportable highly stressed outflow assumption than the 10% STS. If a Fund experienced persistent daily outflows of 2.1% of net assets, the Fund would lose approximately 37% of its net assets over a monthly period of 22 business days. While still a precipitous decline in a Fund's size

[8] See id.

[9] See id.

[10] See id at FN 83.

[11] To put the 10% STS in a different perspective, the Commission in effect proposes to require that each Fund assume a daily net outflow with a magnitude so large that it would cause an approximate 90% reduction in aggregate net assets of all Funds over a single monthly period.

[12] If a Fund did experience a daily net outflow of 10% of its net assets, our proposal in Section II.B. *infra* would require the Fund to include this outflow when determining its Stressed Daily Net Outflow and establishing its STS (as such terms are defined in Section II.B.).

[13] Assuming a Fund experiences an equal percentage of outflows over a five business day period.

attributable to outflows, this scenario is substantially more plausible than the Fund losing 90% of its net assets over the same period.

Additionally, the 10% STS will be unjustifiably harmful to certain Funds. For example, the 10% STS will have an especially acute impact on Funds with large net asset values. Because Funds would need to assume the sale of 10% of each investment position, a larger Fund will necessarily assume the sale of a larger quantity of its investments than a smaller Fund holding identical investments. Consequently, the larger Fund is likely to conclude that it holds a smaller percentage of its net assets in Highly Liquid Investments or a larger percentage of its net assets in Illiquid Investments as compared to the smaller Fund, potentially challenging its compliance with Rule 22e-4's HLIM requirement or 15% net asset value limit on Illiquid Investments (the "**15% Illiquid Investment Limit**") merely because it is larger. The 10% STS will inordinately impact large Funds notwithstanding that larger Funds ordinarily have less concentrated ownership and flow volatility as compared to smaller Funds. The 10% STS will also be disproportionately detrimental to Funds investing in asset classes and markets with less trading depth than large capitalization equities, such as small cap equity funds, sector focused equity funds and certain fixed-income funds. For example, our pro forma analysis applying the 10% STS across the Invesco funds complex indicates a substantial adverse impact on the liquidity profiles of small cap equity Funds, emerging markets equity Funds, municipal bond Funds, Funds investing in energy-related master limited partnerships and Funds investing in preferred equity. Requiring these Funds to assume liquidation of an inordinately large pro rata slice of their portfolios each day causes their liquidity profiles indicated by the Rule 22e-4 classifications to appear fallaciously less liquid (or even illiquid), challenging their compliance with Rule 22e-4.

B. A Fund's Stressed Trade Size Should Be Quantitatively Derived Based on Its Daily Net Outflow History and Its Shareholder Composition and Concentration

As noted in Section II.A. *supra*, we agree that Funds should classify the liquidity of their investments using an assumed stressed trade size that is based upon stressed shareholder outflows (an "**STS**"). Requiring a Fund to assume an STS when performing liquidity classifications can cause the Fund to maintain a liquidity profile that is better enabled to satisfy stressed outflows without negatively affecting performance or diluting remaining shareholders.[14] Accordingly, we support the Commission amending Rule 22e-4(b)(1)(ii) to require that Funds perform liquidity classifications using an STS determined on the basis of their reasonably foreseeable stressed shareholder outflows.

Rather than the 10% STS, we believe the Commission should require a Fund to determine an assumed stressed trade size by (i) analyzing its daily net outflows over a rolling three-year historical lookback period and (ii) considering its existing shareholder composition and

[14] We also agree with the Commission that Rule 22e-4 should require a Fund to perform its liquidity classifications assuming the sale of a pro rata portion (or vertical slice) of each of its investments. Although as a practical matter a Fund is unlikely to satisfy a period of stressed outflows through a precise pro rata liquidation of each investment (especially if it has Illiquid Investments), we believe that requiring a Fund to evaluate and manage its liquidity profile using a vertical slice method can be effective to prevent shareholder dilution.

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concentration, and establish its STS as at least equal to the 99th percentile highest daily net outflow observed over the period (the "**Stressed Daily Net Outflow**"). We believe that a rolling three-year historical lookback period is appropriate because it would require a Fund to determine its Stressed Daily Net Outflow on the basis of a sufficiently large sample of actual shareholder flows, while omitting older flow data that, because of changes in a Fund's net assets and shareholder composition over time, is irrelevant for determining the magnitude of stressed shareholder outflows that the Fund could presently incur. By recommending Rule 22e-4 use as a stressed daily net outflow, we disagree with the Commission that weekly outflows provide a better proxy for stressed trade size because stressed conditions can manifest over time and result in outflows that continue over several days or more. On the contrary, weekly flow data that nets a Fund's daily outflows and inflows experienced over rolling five business day periods can mask daily flow volatility. An STS that is at least equal to the Stressed Daily Net Outflow will require a Fund to account for the compounding effect of a series of highly stressed daily net outflows. For example, if a Fund with an STS of 2% incurs an actual daily net outflow of 2% and liquidates investments to meet that outflow, the Fund would, on the immediately following business day, be required to classify the liquidity of its remaining investments again assuming an STS of 2%. Further, as discussed in Section II.A. *supra*, pairing a weekly outflow figure with a daily classification requirement that assumes daily sales of a stressed trade size is inappropriate because Funds would be required to classify the liquidity of their investments as if a week's worth of stressed shareholder outflows must be satisfied through a single trading day's worth of sales. Finally, by requiring that Funds consider their shareholder composition and concentration when establishing an STS, a Fund would need to evaluate whether the characteristics of its shareholder base create the potential for it to incur a daily net outflow that substantially exceeds its Stressed Daily Net Outflow, in which case the Fund should establish an STS that is greater.[15]

When analyzing the distribution of its daily net outflows over a rolling three-year historical lookback period for purposes of determining its Stressed Daily Net Outflow, we believe a Fund should be permitted to exclude redemptions (x) of which it had prior notice or (y) that it satisfied in kind. Such redemptions are ordinarily associated with idiosyncratic events impacting a Fund's shareholder composition, such as reallocations of capital by fund-of-funds or other large institutional investors, and present substantially less liquidity risk. On the other hand, because we propose that a Fund establish its STS upon consideration of its existing shareholder composition and concentration, a Fund with proportionately large shareholders who have no obligation to provide prior notice of substantial redemption requests would likely need to establish an STS that exceeds its Stressed Daily Net Outflow.

Finally, we recognize that the 10% STS reflects the Commission's desire to subject all Funds to a consistent, baseline stressed trade size for liquidity classification purposes. We also recognize that newly launched Funds will not have sufficient historical shareholder flow data to

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[15] If the Commission empirically determines that large daily net inflows to a Fund can reverse, causing similarly large daily net outflows, the Commission could require Funds to determine the Stressed Daily Net Outflow as the 99th percentile highest daily net flow observed over the historical period (treating daily net inflows as having negative value for purposes of the Fund's distribution of historical daily net flows).

determine a Stressed Daily Net Outflow as we propose until the third anniversary of their launch and, even then, shareholder flow data in the period following a Fund launch can be inadequate for determining an STS.[16] Additionally, historical shareholder flow data may be unavailable or inadequate for determining an STS for Funds that have recently undergone significant investment strategy changes, absorbed other Funds through mergers or converted from closed-end companies to open-end companies. To address, the Commission could require that Funds apply a specified fixed, minimum percentage as the Stressed Daily Net Outflow whenever a Fund's actual 99th percentile highest daily net outflow is less or the person(s) designated to administer the Fund's program (the "**program administrator**") reasonably concludes that the Fund has insufficient or inadequate historical shareholder flow data to accurately determine the Stressed Daily Net Outflow. By flooring the Stressed Daily Net Outflow at a specified fixed percentage, the Commission could ensure all Funds perform liquidity classifications using a stressed trade size at least equal to a baseline value determined by the Commission and promote greater consistency among Funds. We encourage the Commission to analyze historical daily flows of equity and fixed-income funds over an appropriate historical period to arrive at an appropriate fixed percentage. However, we think the Commission's analysis of weekly flows referenced in the Proposing Release can be instructive. As we discuss in Section II.A. *supra*, the 10% STS equates to a highly stressed daily outflow of 2.1% of a Fund's net assets. Accordingly, a requirement that Funds use a minimum Stressed Daily Net Outflow of 2% when establishing an STS is in our view reasonable.[17]

C. The Proposed Value Impact Standard Is Supportable Only If the Commission Abandons the 10% STS

For purposes of Funds' liquidity classifications, the Commission proposes to establish a minimum value impact standard more precisely defining what constitutes "significantly changing the market value of an investment". The Commission believes this change will improve the quality of Funds' liquidity classifications by preventing over-estimation of liquidity and also increase the comparability and consistency of liquidity classifications among Funds.[18] Specifically, the Commission proposes to define the phrase "significantly changing the market value of an investment" using a bifurcated formulation that depends on whether a particular investment is exchange traded or not: (i) for shares listed on an exchange, any disposition of more than 20% of average daily trading volume of the shares ("**ADTV**"), as measured over the preceding 20 business days, would be treated as significantly changing the market value and (ii) for other investments, any disposition that the Fund reasonably expects would result in a decrease in sale price of more

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[16] For example, large outflows in the period following a Fund launch are frequently associated with the sponsor's repatriation of seed capital after the Fund's net assets have grown sufficiently to allow it to operate at scale without investment from the sponsor.

[17] Because we propose requiring Funds to analyze daily net outflows over a rolling three-year historical lookback period when establishing an STS, we believe Rule 22e-4 should require Funds to periodically reevaluate and revise (as appropriate) their STS upon at least a specified interval.

[18] See Proposing Release at 77188.

than 1% would be treated as significantly changing the market value.[19] Though we agree conceptually with the inclusion of a minimum value impact standard in Rule 22e-4, because we emphatically oppose the 10% STS, we also cannot support the Commission's proposed minimum value impact standard.

We agree with the Commission that amending Rule 22e-4 to establish a minimum value impact standard would minimize variation in how Funds presently determine value impact, which limits the comparability of classifications of the same (or similar investments) across Funds' and creates differences in the quality of Funds' classifications. We also agree with the Commission's proposed bifurcated approach, which would apply a different standard depending on whether or not a particular investment is exchange traded. For a listed security, ADTV is an objective metric, and we believe expressing a "significant change in market value" as a limitation on a Fund's participation rate in a listed security's ADTV is practical and appropriate. Further, we believe computing ADTV using a rolling 20 business day look back period is an apposite methodology for capturing current trading depth in a listed security, striking an appropriate balance between longer periods (which can be less reflective of present market conditions) and shorter periods (which can be skewed by one or a few anomalous volume days).[20]

However, under Rule 22e-4, the liquidity classification of a particular investment necessarily turns on the interaction of two variables: the assumed trading size and the minimum value impact standard. A substantial increase in an investment's assumed trading size, absent a corresponding increase in the minimum value impact, will require a Fund to treat the investment as less liquid. Given our aversion to the 10% STS, we cannot support the Commission's proposal to define the phrase "significantly changing the market value of an investment" as constituting a participation rate that exceeds 20% of a listed security's ADTV or a sale price decrease that exceeds 1% for an unlisted investment. We believe that pairing these thresholds with the inordinately high 10% STS will significantly and unjustifiably reduce the liquidity profiles of many Funds indicated by the Rule 22e-4 classifications. As noted in Section II.A. *supra*, our pro forma analysis indicates that implementation of the Proposed Amendments would have a

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[19] Proposed Rule 22e-4(a) (defining "Significantly changing the market value of an investment").

[20] In the Proposing Release, the Commission advises that, when measuring ADTV of a foreign listed security, the preceding 20 business days includes those days where U.S. markets are open but the relevant international market is closed, and that a Fund should count foreign exchange holidays as zero volume days for the security (See Proposing Release at 77188). Foreign holidays spanning several consecutive days can result in a Fund's inability to access liquidity in investments traded on exchange(s) located in the relevant foreign country and can cause temporary HLIM shortfalls or 15% Illiquid Investment Limit breaches during the period of closure. Once the extended foreign holiday period is over and trading on the relevant exchange(s) resumes, however, we believe it is inappropriate to require a Fund to compute ADTV for the next 20 business days as if each foreign holiday was a day that the foreign exchange was open but not a single share traded, because that methodology will invariably understate the investment's liquidity. Rather than calculating ADTV as proposed, we believe the Commission should implement procedures similar to those set forth in Question 34 of the SEC Staff's Investment Company Liquidity Risk Management Programs Frequently Asked Questions. See SEC Staff Investment Company Liquidity Risk Management Programs Frequently Asked Questions, Question 34 (Apr. 10, 2019), available at https://www.sec.gov/investment/investment-company-liquidity-risk-management-programs-faq.

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substantial detrimental impact on the liquidity profiles of several Invesco Funds, in many cases primarily attributable to the 10% STS. On the other hand, if Rule 22e-4 incorporated a realistic, empirical STS, determined on the basis of a Fund's reasonably foreseeable stressed daily outflows (subject to an appropriate minimum percentage as we propose in Section II.B. *supra*), then the proposed 20%/1% thresholds could be supportable.

D. Invesco Supports Removing Asset Class Classifications from Rule 22e-4

The Commission proposes removing the asset class method of classification from Rule 22e-4, which currently affords Funds flexibility to classify and review portfolio investments according to their asset class.[21] The Commission believes that the burden associated with determining individual investment classifications has decreased since the adoption of Rule 22e-4 as Funds have become more familiar with developing and implementing liquidity risk management programs and, in some cases, have developed automated processes for classifying investments or employed sophisticated liquidity classification vendors. Additionally, based upon industry outreach, the Commission understands that asset class level classifications are not widely used by Funds. Where asset class level classifications are still used, the Commission concludes that the method risks causing a Fund to over-estimate the liquidity of its investments and to not adjust quickly in times of market stress.[22]

We agree that requiring a Fund to classify the liquidity of each investment separately, rather than based solely on its asset class, will provide a more precise, granular assessment of that investment's liquidity.[23] We also agree that asset class level classifications are incompatible with a minimum value impact standard that defines "significantly changing the market value of an investment" by reference to quantitative thresholds, which require an assessment of each investment's ADTV or market depth. A primary motivation for the Proposed Amendments is the Commission's perception that Funds have failed to appropriately adjust their liquidity risk management programs in periods of market stress, including by reclassifying investments in response to market dislocations, making their programs less effective during these periods.[24] We believe requiring Funds to classify each investment separately, in combination with the daily classification requirement (discussed in Section II.E. *infra*), will be effectual in causing Funds' liquidity risk management programs to more quickly adjust and adapt to evolving market and shareholder flow conditions.

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[21] Rule 22e-4(b)(1)(ii)(A).

[22] See Proposing Release at 77189.

[23] Invesco Funds do not use the asset class method of classification under Rule 22e-4.

[24] See, e.g., Proposing Release at 77183.

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E. Invesco Supports Increasing the Frequency of Classifications under Rule 22e-4

The Commission proposes amending Rule 22e-4 to require Funds to classify their portfolio investments each business day.[25] Compared to existing Rule 22e-4, which generally permits Funds to review portfolio investments' classifications monthly[26], the Commission concludes that daily classifications will require Funds to more accurately reflect current market conditions, contribute to better monitoring by Funds of their liquidity profiles and enhance Funds' ability to more rapidly respond to changes affecting portfolio liquidity. Additionally, the Commission believes that daily classifications will help ensure timely reporting by a Fund of HLIM shortfalls or 15% Illiquid Investment Limit breaches to its board and the Commission, enhancing oversight of the Fund's liquidity risk management program and its effectiveness.[27]

We agree that a daily classification requirement will enhance Funds' liquidity risk management programs. A daily classification requirement would require Funds to continuously monitor and assess their liquidity profiles on the basis of current market conditions, which should enhance Funds' ability to respond to market changes affecting portfolio liquidity. Additionally, the HLIM requirement and the 15% Illiquid Investment Limit necessarily require daily compliance monitoring by Funds. By permitting Funds to evaluate compliance with the HLIM requirement and the 15% Illiquid Investment Limit using investment classifications that can be almost a month old, Rule 22e-4 is presently imprecise, and daily classifications will promote the objectives and the effectiveness of these daily requirements. Further, a daily liquidity classification requirement would address the Commission's concern that some Funds are failing to reclassify their portfolio investments intra-month, even in response to extraordinarily stressed market conditions like those observed in March 2020 (notwithstanding the existing requirement that Funds review classifications more frequently than monthly upon the occurrence of changes in relevant market, trading and investment-specific considerations that are reasonably expected to materially affect investment classifications).[28]

Finally, we emphasize that the Commission should not minimize the complementary benefits of an individual investment classification requirement and a daily classification obligation on the effectiveness of Funds' liquidity risk management programs. In combination, these changes to Rule 22e-4 will cause Funds to have a more precise, evolving view of their liquidity profiles under current market conditions, enable Funds to respond more rapidly to changing market conditions and advance the efficacy of the HLIM requirement and the 15% Illiquid Investment Limit.

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[25] Proposed Rule 22e-4(b)(1)(ii).

[26] Rule 22e-4(b)(1)(ii).

[27] See Proposing Release at 77194.

[28] See id.

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III. Amendments to Liquidity Classification Categories

A. The LLI Elimination Will Eliminate Bank Loan Funds, a Result that Is Disproportionate and Lamentable for Investors, U.S. Companies and the Syndicated Bank Loan Market

Currently, Rule 22e-4 permits Funds to classify as Less Liquid Investments those investments that the Fund reasonably expects to be able to sell or dispose of in seven calendar days or less without significantly changing the market value of the investment, but for which the sale or disposition is reasonably expected to settle in more than seven calendar days.[29] The Commission proposes to eliminate the Less Liquid Investment category and amend the definition of Illiquid Investment to include those investments that a Fund reasonably expects not to be convertible to U.S. dollars in current market conditions in seven calendar days or less without significantly changing the market value of the investment (the "**LLI Elimination**").[30] Absent changes that successfully shorten the settlement time of Less Liquid Investments, the LLI Elimination will cause these investments to become Illiquid Investments. The Commission's stated intention for the LLI Elimination is reducing the timing mismatch between the receipt of cash upon the sale of investments with longer settlement periods and the payment of shareholder redemptions, better preparing Funds for future stressed conditions.[31] Because the most common type of Less Liquid Investment is syndicated bank loans, the LLI Elimination poses an existential threat to bank loan Funds. We unequivocally disagree with the LLI Elimination for the reasons discussed below and in Sections III.B. – III.D. *infra*. In particular, we believe the Commission has inadequately considered the costs and adverse impacts that elimination of bank loan investing by Funds will have on investors, the syndicated bank loan market and the U.S. companies that rely on it for capital, especially in light of bank loan Funds' impeccable record of satisfying redemption obligations under Section 22(e) of the Investment Company Act. The Commission's economic analysis suggests it did not meaningfully consider appropriate alternatives to the LLI Elimination or compare their associated benefits and costs against those arising from the Commission's desire to align the liquidity categories with the statutory timing requirement for payment of redemptions under Section 22(e).[32]

Bank loan Funds (including ETFs) have been extraordinarily successful investment products for investors over the past 20 years, as demonstrated by the enormous growth in both their number and net assets.[33] Compared to high-yield bonds and other traditional fixed-income

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[29] Rule 22e-4(a)(10) (defining "Less liquid investment").

[30] Proposed Rule 22e-4(a) (defining "Illiquid investment").

[31] See Proposing Release at 77190.

[32] See id. at 77266.

[33] Between 2001 and 2021, aggregate net assets in floating-rate high-yield bond mutual funds, comprising funds invested in income-producing senior loans, floating-rate loans and other floating-rate debt securities, grew from $15.7 billion across 21 funds to $102.1 billion across 66 funds. See Investment Company Institute, 2022 Investment Company Fact Book at 213, available at: https://www.ici.org/system/files/2022-05/2022_factbook.pdf.

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investments, syndicated bank loans (and consequently bank loan Funds) offer several potential benefits to investors: (i) because they bear floating rates of interest (typically calculated as the sum of a floating base rate (such as SOFR) and a fixed spread), bank loans exhibit less interest rate sensitivity and their prices are generally less sensitive to changes in prevailing interest rates; (ii) because they bear floating rates of interest, bank loans generate higher interest income when interest rates increase and are especially attractive in an inflationary period during which interest rates are rising; (iii) bank loans are ordinarily senior secured obligations in borrower capital structures and provide substantially higher recovery rates following a borrower default than unsecured or subordinated debt; and (iv) bank loans generally exhibit less performance correlation to the broader fixed-income and equity markets, thereby providing diversification benefits. Especially in today's inflationary environment punctuated by rapidly rising interest rates, syndicated bank loans and bank loan Funds provide an attractive investment option that delivers both diversification and a reliable source of increasing interest income.[34] The desirability of syndicated bank loans is borne out by the asset class's performance: the Morningstar LSTA US Leveraged Loan Index, an index designed to provide comprehensive coverage of the U.S. leveraged loan market, has delivered positive total returns in eight of the past ten years, with negative total returns of only 69 and 60 basis points in 2015 and 2022, respectively.[35] Additionally, the annual default rate for syndicated bank loans is ordinarily low, peaking periodically between 4-5% but generally remaining between 1%-2%.[36] In comparison to the historically abysmal performance of fixed-income generally in 2022, syndicated bank loans' performance strikingly demonstrates the diversification and interest rate insensitivity benefits of the asset class.[37]

Because bank loan Funds are invested predominately in Less Liquid Investments ("**Primarily Less Liquid Funds**"), the LLI Elimination would cause a substantial portion of bank loan Fund investments to be classified as Illiquid Investments. Unable the comply with the 15% Illiquid Investment Limit, bank loan Funds would be prohibited from operating as open-end

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[34] For example, the SEC 30-day yields for Invesco bank loan Funds are between 6-8% currently. See https://www.invesco.com/us/financial-products/mutual-funds/product-detail?audienceType=Advisor&fundId=32006 and https://www.invesco.com/us/financial-products/mutual-funds/product-detail?audienceType=Advisor&fundId=28647.

[35] The Morningstar LSTA US Leveraged Loan 100 Index, designed to measure the performance of the 100 largest facilities in the U.S. leveraged loan market, has delivered positive total returns in seven of the past ten years, with negative total returns of only 275, 62 and 60 basis points in 2015, 2018 and 2022, respectively. See https://indexes morningstar.com/our-indexes/details/morningstar-lsta-us-leveraged-loan-FSUSA084ZT?tab=performance and https://indexes.morningstar.com/our-indexes/details/morningstar-lsta-us-leveraged-loan-100-FS00009448?currency=USD&variant=TR&tab=performance.

[36] See SIFMA Research, Leveraged Loans Fact Sheet (June 25, 2021) (the "**SIFMA Leveraged Loan Fact Sheet**"), available at: https://www.sifma.org/resources/research/leveraged-loans-fact-sheet/.

[37] See, e.g., Fixed Income Funds Report Worst Annual Performance On Record, Despite Q4 Gains, Seeking Alpha (Jan. 14, 2023), available at https://seekingalpha.com/article/4569955-fixed-income-funds-report-worst-annual-performance-on-record-despite-q4-gains.

companies, and we expect substantially all of them would cease operations and liquidate.[38] However, the Commission itself acknowledges that bank loan Funds, despite incurring the heaviest net outflows among all Fund types during March 2020, satisfied those heightened redemptions successfully without exception.[39] Additionally, bank loan Funds successfully operated through other periods of substantial market stress in 2008, 2011 and 2014 without a single Fund failing to comply with its redemption obligations under Section 22(e) of the Investment Company Act.[40] Consequently, the purported benefit of the LLI Elimination – reducing the timing mismatch between the receipt of cash upon the sale of investments and the payment of shareholder redemptions, helping prepare Funds for future stressed conditions – is theoretical and speculative, while its direct cost and harm – elimination of bank loan Funds as an option for investors – is tangible and certain. We believe that the Commission's proposal to, in effect, eliminate bank loan Funds as a category of open-end funds, depriving investors of access to this important asset class, is strikingly disproportionate.[41]

The Commission has also failed to consider the effect of the LLI Elimination on capital formation beyond the direct and substantial impact on bank loan Funds. Non-investment grade U.S. companies rely on financing from the syndicated bank loan market because it offers several benefits and advantages over issuing high yield bonds or maintaining bilateral credit arrangements with several banks, including: speed, ease and certainty of execution; flexibility of loan terms and pricing; availability of large commitments to finance capital-intensive projects or acquisitions; prepayment flexibility; availability of revolving or delayed draw credit; diversity of lenders, including banks, funds, CLOs and insurance companies; confidentiality; and averting costs associated with reporting company obligations under Section 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). Other U.S. companies (especially middle market

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[38] Absent improvement in syndicated bank loan settlement times, complying with the 15% Illiquid Investment Limit could require a bank loan Fund to invest approximately 85% of its net assets in investments that are not syndicated bank loans. Changing classification to a closed-end company would require a bank loan Fund to obtain authorization by vote of a majority of its outstanding shares pursuant to Section 13(a)(1) of the Investment Company Act. We believe these options are neither practical nor achievable. Additionally, multi-sector fixed-income Funds and multi-asset Funds routinely allocate a portion of their assets to syndicated bank loans to attain the diversification benefits and high-income potential offered by the asset class. The LLI Elimination will undoubtedly require these Funds to constrain their investments in syndicated bank loans to remain compliant with the 15% Illiquid Investment Limit, frustrating their investment objectives and strategies.

[39] See Proposing Release at 77191.

[40] See Loan Syndications and Trading Association, Comment Letter on Open-End Fund Liquidity Risk Management Programs; Re-Opening of Comment Period for Investment Company Reporting Modernization Release (File Number S7-16-15) (Jan. 13, 2016) at 12-16, available at: https://www.sec.gov/comments/s7-16-15/s71615-57.pdf.

[41] While some bank loan Fund shareholders may replace their bank loan exposure through alternative structures, such as traditional closed-end funds, closed-end interval funds, collective investment trusts, private funds and managed accounts, these alternatives will be unavailable or unsatisfactory to many investors. In particular, retail investors will be challenged to find suitable replacements for bank loan Funds. Traditional closed-end funds, which trade on exchange frequently at discounts or premiums to net asset value, and closed-end interval funds, which provide only periodic, limited liquidity at specified intervals, should not be regarded as alternatives to bank loan Funds.

companies) may not have access to financing in the public markets and must look to the syndicated bank loan market for credit. By the Commission's own estimation, the LLI Elimination could cause an immediate and permanent reduction of approximately $200 billion from this vital capital market, representing approximately 13-15% of the market's overall size.[42] The Commission's economic analysis fails to quantify and evaluate the negative impact that exclusion of Funds from the syndicated bank loan market will have on U.S. companies borrowing in this vital capital market, as well as the broader implications for the U.S. economy. Instead, the Commission surmises that, "absent other frictions", the reduction in demand for syndicated bank loans caused by elimination of Funds from the market could be made up by other investors or by Fund shareholders investing through other structures, and that eliminating Fund participation in the syndicated bank loan market could even increase capital formation through greater primary market lending by CLOs.[43] Because suitable replacements for bank loan Funds will be unavailable to many investors, we disagree with the Commission and expect the LLI Elimination will reduce available credit and increase the cost of capital to the substantial detriment of U.S. companies borrowing in the syndicated bank loan market. Accordingly, we believe the Commission must undertake a more comprehensive analysis of the impact of the LLI Elimination on U.S credit markets and the economy and consider whether appropriate alternatives will be less disruptive and harmful.

Additionally, the Commission has failed to consider the LLI Elimination's effect on a fair and orderly syndicated bank loan market and on existing Fund shareholders. By requiring bank loan Funds to liquidate and other Funds to permanently divest of their bank loan investments by the compliance date for the Rule 22e-4 amendments, the LLI Elimination will cause simultaneously selling by Funds of a sizable portion of the syndicated bank loan market in the period leading up the compliance date, which could cause substantial declines in bank loan prices. An impending regulatory requirement will leave Funds no choice but to sell bank loan investments at any price.[44] The Commission has disregarded the potentially pernicious impact of this forced selling on Fund investors, borrowers and the functioning of the syndicated bank loan market. Forced selling will inevitably cause some Fund shareholders to suffer a very harm the Proposed Amendments are intended to obviate – dilution resulting from first mover advantage.

[42] See Proposing Release at 77191. See also SIFMA Leveraged Loan Fact Sheet and Pitchbook Leveraged Loan Primer, available at https://pitchbook.com/leveraged-commentary-data/leveraged-loan-primer#market-size (indicating that the total size of the syndicated bank loan market was $1.6 trillion in June 2021 and $1.375 trillion in February 2022).

[43] See Proposing Release at 77263 and 77265.

[44] Because syndicated bank loans generally do not have "readily available market quotations" (as such phrase is defined in Rule 2a-5 under the Investment Company Act), Rule 17a-7 under the Investment Company Act, which would otherwise permit the sale of desirable bank loan investments from a Fund to certain affiliated funds and accounts that can invest in bank loans, will be unavailable. See Division of Investment Management Staff Statement on Investment Company Cross Trading (March 11, 2021), available at: https://www.sec.gov/news/public-statement/investment-management-statement-investment-company-cross-trading-031121.

Notwithstanding, the Proposing Release does not address the risk of forced selling by Funds in response to the LLI Elimination.[45]

Troubled by extended settlement times attributable to bank loans' individualized legal documentation and reliance on manual processes, the Commission also believes the LLI Elimination could incentivize efforts to shorten the settlement cycle for syndicated bank loans.[46] While we agree that a shortened settlement cycle for syndicated bank loans is undoubtedly desirable and beneficial for the market, we disagree that the Proposed Amendments can be the catalyst and on their own achieve the Commission's objective of reducing bank loan settlement times. The syndicated bank loan market comprises several different market participants, including borrowers, lenders, arranging banks and administrative agents, all of whom share responsibility for bank loan settlements, and the factors affecting settlement times are not unilaterally within Funds' control. We concur with the Commission's observation that a collective action problem is an important factor contributing to the extended settlement times for bank loans.[47] Rather than using the Proposed Amendments as the instrument for stimulating operational change to shorten bank loan settlement times, we urge the Commission to use other tools available to it, including requests for comment, industry roundtables and coordination and joint rulemaking with U.S. banking regulators. These other methods for achieving a shortened bank loan settlement cycle will involve the market's other participants and avoid the blunt and disproportionate outcome of eliminating bank loan Funds.

B. The LLI Elimination Is Erroneous Because Less Liquid Investments and Illiquid Investments Present Fundamentally Different Liquidity Risks for Funds

We do not believe investments with extended settlement periods constitute Illiquid Investments. Currently, the Illiquid Investment definition captures those investments for which a Fund is unable to access trading liquidity in the appropriate trade size without significantly changing market value. Stated differently, Illiquid Investments are investments for which a Fund

[45] As discussed further in FN 48 *infra*, approximately $63.96 billion of syndicated bank loan par amount traded on average each month during the period from January 2018 to December 2022. Assuming Funds would need to liquidate $33 billion of syndicated bank loans in aggregate in each of the six months leading up to the compliance date for the Rule 22e-4 amendments, Funds' selling activity would represent a 51.5% participation rate in total monthly secondary market liquidity available in the syndicated bank loan market.

[46] See, e.g., id. at 77191 ("Further, potential additional demand for these investments could provide incentives to shorten the settlement cycle for bank loans more generally, which may reduce trading costs") and at 77263 ("To the extent that the proposed amendments would lead market participants to standardize and shorten the settlement process for bank loan interests, the prices and spreads for bank loans may become more transparent at a sector level, increasing the efficiency in this market").

[47] See id. at 77253. For example, borrowers in the syndicated bank loan market should desire a deep and liquid market in which loan interests can be easily traded and quickly settled because these characteristics will lower the cost of capital. At the same time, borrowers may also fiercely defend the consent to assignment right, which provides them with veto power over a new lender seeking to purchase into an existing facility. A borrower consent to assignment right introduces an additional loan settlement requirement, potentially extending settlement times.

cannot even "source a bid" in the relevant size without impairing the investment's value. Conversely, the Less Liquid Investment definition reflects those investments for which a Fund can access sufficient trading liquidity to sell an appropriate trade size without significantly impairing the investment's value, but for which the Fund must wait longer than a seven calendar day settlement cycle to realize the sales proceeds.

The ability to trade out of a Less Liquid Investment in response to stressed shareholder outflows enables a Fund to terminate the associated market risk and convert the investment into an unconditional, fixed cash receivable that the Fund can match against its redemption liabilities.[48] Unlike Illiquid Investments, which are incapable of generating cash for a Fund to satisfy stressed outflows without significantly diluting remaining shareholders, the liquidity risk presented by Less Liquid Investments is merely one of cash flow timing, arising because the Fund must pay its redemption obligations before it realizes sales proceeds from Less Liquid Investment dispositions undertaken in response. Accordingly, Less Liquid Investments create a fundamentally different type of liquidity risk for Funds than Illiquid Investments, and the LLI Elimination fails to draw a distinction between Primarily Less Liquid Funds, which can satisfy a period of stressed outflows without significant shareholder dilution by deploying appropriate liquidity risk management tools to "bridge" the period between sale and settlement[49], and funds significantly invested in Illiquid Investments, which are incapable of satisfying stressed outflows in any circumstance without significant shareholder dilution.[50] Promoting Primarily Less Liquid Funds' use of liquidity risk

[48] To evidence and quantify the depth of trading liquidity in the syndicated bank loan market, using monthly secondary market trade statistics published by The Loan Syndications and Trading Association ("**LSTA**"), we computed that an average of approximately $56.71 billion of syndicated bank loan par amount traded each month during the period from January 2013 to December 2022, representing a weighted average monthly turnover rate of 5.85% of aggregate syndicated bank loan par amount outstanding. An average of approximately $63.96 billion of syndicated bank loan par amount traded each month during the period from January 2018 to December 2022, representing a weighted average monthly turnover rate of 5.43% of the aggregate syndicated bank loan par amount outstanding. Notably, in March 2020, $119.28 billion of syndicated bank loan par amount traded, representing 10.01% of syndicated bank loan par amount outstanding.

[49] The Commission previously recognized this distinction between the two liquidity categories and a Fund's ability to use liquidity risk management tools to bridge the settlement gap associated with Less Liquid Investments. See Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315, 81 Fed. Reg. 82142 (Nov. 18, 2016) (the "**Rule 22e-4 Adopting Release**") at 82176 ("[T]he 'less liquid investments' category is meant to identify for the Commission and its staff, as well as investors and other potential users, the portion of a fund's portfolio investments that may be available to meet redemption requests within seven days, but only to the extent that the fund addresses the lengthier settlement period associated with these investments. Because less liquid investments are those that may be sold, but not settled, within seven days, a fund generally could use less liquid investments to meet redemptions within seven days only if the fund obtained an additional source of financing (for example, a line of credit) to bridge the period until the sales would settle, or if the fund used its cash holdings to meet the redemptions while simultaneously selling the less liquid investment and then replenishing its cash holdings upon settlement).

[50] In addition to the inclusion of the Less Liquid Investment category, we believe that existing Rule 22e-4 recognizes this distinction through the liquidity risk factor that requires a Fund or In-Kind ETF to consider the liquidity of its portfolio investments during both normal and reasonably foreseeable stressed conditions and whether its investment

management tools in their Rule 22e-4 compliance programs provides, in our view, an appropriate alternative to the LLI Elimination.

C. The Commission Unjustifiably Dismisses Lines of Credit as an Ineffective Liquidity Risk Management Tool for Primarily Less Liquid Funds

Committed revolving lines of credit provide an important liquidity risk management tool for Funds, and we believe they are indispensable for Primarily Less Liquid Funds for bridging the period between sale and settlement of Less Liquid Investments. Unfortunately, the Commission dismisses the effectiveness of lines of credit in the Proposing Release, citing rising borrowing costs, decreasing availability of credit and potential dilution of remaining Fund shareholders.[51] We disagree with each of these stated concerns. Rather than dismissing lines, we believe the Commission should elevate the status of committed revolving lines of credit as an effective liquidity risk management tool for Funds in Rule 22e-4, especially for Primarily Less Liquid Funds.

Invesco Primarily Less Liquid Funds all maintain committed revolving lines of credit with a diverse group of money center and other large international banks. Critically, because each line of credit is committed, the lending banks are contractually obligated, subject to only certain limited conditions[52], to advance loans to the borrowing Invesco Fund in amounts up to the specified commitment amount. Loans ordinarily must be advanced to the borrowing Fund on the same day as requested and amounts can be drawn, repaid and reborrowed by the Fund over the commitment period. Each line is renewed annually following a rigorous process applied by Invesco, as program administrator, that considers the relevant Fund's asset level (both current and projected), liquidity risk factors and liquidity profile (including HLIM) and the cost of maintaining the line to determine the appropriate commitment size. Additionally, at inception and annually at each renewal, the Invesco Fund's board, including its disinterested directors, approves the line based on an independent evaluation of the facility's terms and a conclusion that participation in the facility is in the best interest of the Fund and its shareholders. Contrary to the Commission's suggestion that credit available to Funds has diminished, Invesco's renewal of existing lines and procurement of new lines for Invesco Funds occurs routinely and in the ordinary course.[53] We understand that

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strategy is appropriate for an open-end fund. A Fund significantly invested in Illiquid Investments, implicating 15% Illiquid Investment Limit, cannot operate as an open-end company.

[51] See Proposing Release at 77191.

[52] Conditions precedent to the lenders' obligation to advance a loan to a borrowing Fund are typically limited to the accuracy of the Fund's representations and warranties, the absence of an event of default, the borrowing request having been made by the specified cut-off time and the Fund remaining compliant with the asset coverage requirements of Section 18(f) of the Investment Company Act after giving effect to the loan.

[53] The Commission also diminishes the value of lines of credit on the basis of them ostensibly not being available to all Funds. See Proposing Release at 77191 ("We also understand that funds with significant extended settlement investments have used borrowing through lines of credit to meet redemptions, but lines of credit may not be available

banks perceive Funds as exceptionally creditworthy, low-risk borrowers owing to the requirements and limitations imposed by the Investment Company Act.[54]

Lines of credit maintained by some Invesco Primarily Less Liquid Funds are organized as multi-borrower, shared credit facilities. In these structures, multiple Funds participate as borrowers in a single "umbrella" line of credit, each entitled to draw loans so long as the aggregate amount of outstanding advances to all participating Funds does not exceed the specified commitment amount. Although the participating Funds share access to the committed credit, each Fund's participation in the facility is otherwise entirely separate and several from each other Fund, and in no circumstance can any Fund be liable for the obligations of any other Fund. Shared lines of credit create administrative efficiencies for lending banks as compared to maintaining a standalone credit facility with each participating Fund, which can reduce the cost of the line for each participating Fund. Invesco, as program administrator for each participating Fund, applies the process described above to determine an appropriate commitment size for each participating Fund, with the shared line's aggregate commitment amount based on the aggregate liquidity needs of the participating Funds. Additionally, shared credit lines are subject to detailed procedures, approved by the relevant Funds' boards under Investment Company Act Rule 38a-1, setting forth methodologies for apportioning available credit and commitment fees among the participating Funds on a fair and equitable basis.[55]

The cost of a committed revolving line of credit for a Fund ordinarily comprises two components: (i) a commitment fee that accrues on the undrawn commitment amount, payable to the bank lenders for standing ready to advance loans and (ii) a financing fee payable to the bank lenders that accrues on outstanding loans, typically calculated as the sum of a floating base rate (such as SOFR) and a fixed spread. Although prevailing interest rates for U.S. dollar borrowings have recently increased as a result of tighter monetary policy, Fund liquidity lines are frequently undrawn for much (or all) of an annual commitment period, mitigating any impact from higher financing fees. Further, because the bank loans held by bank loan Funds bear floating rates of

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to all funds…"). Even if lines of credit are unavailable to some Funds, this should not mean that lines have no efficacy as a liquidity risk management tool for <u>all</u> Funds.

[54] Invesco Funds investing in markets with standard settlement cycles also use committed revolving lines of credit to manage liquidity risk, including Funds investing in municipal bonds and energy-related master limited partnerships. Although these Funds' investments have shorter settlement cycles in comparison to Primarily Less Liquid Funds' investments, Invesco, the Funds and the Funds' boards have concluded, based on consideration of relevant liquidity risk factors, that access to a committed line of credit is a useful liquidity risk management tool.

[55] See The T. Rowe Price Funds, SEC Staff No-Action Letter (publicly available July 31, 1995) and Alliance Capital Management, L.P., SEC Staff No-Action Letter (publicly available April 25, 1997). As required by these no-action letters, the procedures also require the board of each participating Fund, including its disinterested directors, to annually determine that the Fund's participation in the shared line is fair and equitable and in the Fund's best interest based upon consideration of: (i) the Fund's expected benefits and costs; (ii) the Fund's experience under the facility; (iii) the Fund's available sources of liquidity; and (iv) the Fund's expected continuing need for the facility. The procedures generally apportion available credit and commitment fees among the participating Funds pro rata based on relative net assets.

interest, an increase in market interest rates also raises the Funds' interest income, offsetting the impact of higher commitment and financing fees arising under lines of credit. These facts mitigate the potential for a Primarily Less Liquid Fund's shareholders to be diluted by the Fund's use of a line of credit as a liquidity risk management tool.[56]

Additionally, when a Primarily Less Liquid Fund borrows under a line of credit to bridge the period between sale and settlement of Less Liquid Investments and temporarily finance shareholder redemptions, the Fund arguably does not incur leverage if the amount borrowed does not exceed the Fund's receivable for investments sold but unsettled. Because a Fund's receivable for investments sold but unsettled is a fixed amount that is not subject to market fluctuation, borrowings by the Fund that do not exceed the amount of this receivable to finance shareholder redemptions will neither cause the Fund's net asset value to become more sensitive to changes in the value of the Fund's investments nor increase the speculative character of the Fund's shares. Absent a dilutive impact on non-redeeming shareholders, the cost of a line of credit can appropriately be viewed as an operating expense of a Primarily Less Liquid Fund that must be incurred to provide investment exposure to Less Liquid Investments, which (like other Fund operating expenses payable to the Fund's service providers) is mutualized among all shareholders.

Though we oppose the Commission's proposal to impose a uniform 10% minimum HLIM requirement on all Funds, we believe the Commission could appropriately subject Primarily Less Liquid Funds to heightened liquidity risk management requirements under Rule 22e-4 (given the unique liquidity risk incurred by these Funds arising from the longer settlement period associated with their investments) that incorporate and recognize the effectiveness of lines of credit as a liquidity risk management tool. For example, instead of eliminating the Less Liquid Investment category, the Commission could require Primarily Less Liquid Funds to comply with a uniform 10% minimum HLIM requirement and permit these Funds to aggregate undrawn committed credit maintained for liquidity purposes with Highly Liquid Investments when measuring HLIM compliance. Alternatively, the Commission could subject Primarily Less Liquid Funds to an "available liquidity" minimum to compliment the HLIM requirement, requiring a Primarily Less Liquid Fund to maintain a combination of cash, cash equivalents and/or access to committed credit that exceeds a minimum threshold of the Fund's net assets or a multiple of the Fund's STS.

D. Primarily Less Liquid Funds Have Other Liquidity Risk Management Tools Available to Them

Besides committed revolving lines of credit, Primarily Less Liquid Funds have other liquidity risk management tools available to address the liquidity risk arising from investments with extended settlement periods. The Commission has failed to consider and account for these tools which, when used in combination with committed lines of credit, enable a Primarily Less

[56] Invesco Senior Loan ETF, the bank loan ETF sponsored by Invesco Capital Management LLC, applies a unitary fee structure whereby Invesco Capital Management LLC bears the commitment fee associated with the Fund's line of credit.

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Liquid Fund to aptly manage its liquidity risk and provide an appropriate alternative to the LLI Elimination.

The ability to transfer bank loans using loan participations is a liquidity risk management tool that enables Primarily Less Liquid Funds to sell and settle bank loans on a shorter settlement cycle. Syndicated bank loan credit agreements generally permit lenders to transfer loan interests in either of two ways: by assignment or by participation. A sale by assignment effectuates transfer of both legal and beneficial ownership of an existing lender's interest in an outstanding loan and the lender's associated rights and obligations arising under the related credit and security documents (the "**Loan Interest**"), substituting the assignee/buyer for the assignor/seller as the "lender of record" under those documents. Settling a syndicated bank loan by assignment requires that the assignor/seller and assignee/buyer involve and coordinate with the relevant administrative agent (who records transfer of the Loan Interest on the loan register maintained by it to evidence the assignment and change in lender of record) and borrower (who ordinarily has a consent right over changes in lenders of record) and deliver to the administrative agent assignment documentation, in the form prescribed by the relevant credit agreement, that is executed by each of the assignor/seller, assignee/buyer, administrative agent and borrower. [57]

Alternatively, in a loan participation, the grantor/seller of a Loan Interest conveys undivided beneficial ownership of the Loan Interest to a participant/buyer, but remains lender of record under the relevant credit and security documents in contractual privity with the relevant

[57] Coordinating this process and completing the required documentation with these parties contributes to the extended settlement times associated with bank loan transfers. The average and median bank loan settlement times referenced by the Commission in the Proposing Release at 77191 are associated with bank loan transfers by assignment, and Funds generally make liquidity classifications of bank loan investments assuming settlement by assignment. LSTA regularly publishes detailed information regarding bank loan settlement times as part of its quarterly secondary market settlement studies using trade data from 20 of the largest buy-side and sell-side LSTA members, including information regarding buy-side sale settlement times (which excludes secondary market transactions between two sell-side institutions). This data indicates that settlement times for trades in which buy-side entities (such as Funds and CLOs) are sellers are substantially shorter than the market wide settlement times cited by the Commission. For example, in September 2022 and June 2022 the median buy-side sale settlement time was T+9 and 44% and 40% of such trades settled within T+7, respectively. See LSTA, 3Q22 Secondary Trade & Settlement Data Study (October 2022), available at: https://www.lsta.org/content/secondary-trading-settlement-study-third-quarter-2022/ and LSTA, 2Q22 Secondary Trade & Settlement Data Study (July 2022), available at: https://www.lsta.org/content/secondary-trading-settlement-study-second-quarter-2022/. Additionally, we conducted analysis of settlement times associated with "par loan" sales by Invesco bank loan Funds with trade dates occurring during three monthly periods associated with varying industry flows: March 2020 (heavy industry net outflows of $14.7 billion), October 2020 (moderate industry net outflows of $0.4 billion) and February 2022 (heavy industry net inflows of $6.5 billion). Average settlement times associated with these trades over the periods were 13, 15 and 19 days, respectively, and median settlement times associated with these trades over the periods were 8, 9 and 11 days, respectively, all of which are shorter than the average and median settlement times cited by the Commission. Though indicating that buy-side sales of bank loans have settlement times that are, on average, longer than the seven day period provided in Rule 22(e) of the Investment Company Act, we believe this data demonstrates that settlement capacity for bank loan Funds can be a function of settlement urgency and that the Commission should not focus exclusively on market wide average and median settlement times over long periods. The data also demonstrates that the period between sale and settlement of bank loan investments that Funds must "bridge" is shorter than the Commission perceives.

borrower. Unlike sales by assignment, borrowers ordinarily do not have a consent right over an existing lender's conveyance of a Loan Interest by participation. Loan participations in the U.S. are typically effectuated by the two parties entering into a form participation agreement published by the LSTA, which states the parties' intention that the participation arrangement constitutes a "true sale" of the Loan Interest by the grantor/seller to the participant/buyer that is beyond the reach of the grantor/seller's bankruptcy estate. As holder of bare legal title to the Loan Interest, the grantor/seller is obligated under the participation agreement to maintain legal ownership of the Loan Interest for the benefit of the participant/buyer, promptly pay the participant/buyer distributions made by the relevant borrower in respect of the Loan Interest and seek the participant/buyer's direction on matters affecting the Loan Interest that require lender consent. [58] Following conveyance of the participation interest, the participation agreement provides each party the right to request an "elevation" of the interest, which, upon exercise, obligates the parties to use commercially reasonable efforts and take such actions as necessary to effectuate an assignment of the Loan Interest and cause the participant/buyer to become lender of record.

Because a loan participation is a bilateral contractual arrangement between only the grantor/seller and the participant/buyer of the relevant Loan Interest, memorialized using a standardized agreement published by the LSTA, involvement of and coordination with (and consent and approval of) the relevant administrative agent and borrower are unnecessary, documentation can be completed expediently without protracted negotiations and settlement can occur quickly. Unlike an assignment, when a Fund agrees a trade to sell a bank loan to a counterparty with settlement occurring by participation, the settlement date for the transaction can occur within the statutory deadline for the Fund to pay shareholder redemptions. Once settled, the Fund and counterparty can "elevate" the participation interest to assignment, coordinating with the administrative agent and borrower to complete the steps and documentation necessary to recognize the counterparty as lender of record. However, the time required to complete the subsequent assignment is irrelevant to the Fund's liquidity risk, as the Fund has already realized the proceeds of the sale and converted the loan investment into U.S. dollars on the loan participation's settlement date. Accordingly, though we acknowledge that assignment is the preferred settlement method in the syndicated bank loan market because it results in the assignee/buyer becoming lender of record, the ability to settle bank loan sales by participation, especially during stressed market conditions, has proven an important, accessible liquidity risk management tool for Invesco bank loan Funds, allowing them to realize loan sale proceeds on a shorter settlement cycle.[59]

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[58] See, e.g., LSTA Participation Agreement for Par/Near Par Trades (December 2021 version), available at: https://www.lsta.org/content/participation-agreement-for-par-near-par-trades-stcs-dec-2021/. See also The Loan Syndications and Trading Association, Comment Letter to SEC and CFTC Regarding Treatment of Loan Participations under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 25, 2011) at 4-5, available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfsubmission/dfsubmission2_012511-1228.pdf.

[59] Invesco bank loan Funds maintain contractual arrangements with certain of their most significant sell-side trading counterparties pursuant to which a Fund can, after agreeing a trade to sell a bank loan investment to the counterparty, require the counterparty to settle the sale on an expedited basis (either T+2 or T+3), typically by participation using

Additionally, a Primarily Less Liquid Fund's HLIM provides an essential source of liquidity to the Fund to satisfy a period of stressed outflows. In the Rule 22e-4 Adopting Release, the Commission itself described a HLIM as a tool that strengthens a Fund's preparedness to satisfy stressed redemption requests without diluting remaining shareholders.[60] Though we oppose the Commission's proposal to impose a uniform 10% minimum HLIM requirement on all Funds, we believe HLIMs have evolved into a critical element of Primarily Less Liquid Funds' liquidity risk management programs. Based upon consideration of its liquidity risk factors, a HLIM requires a Primarily Highly Liquid Fund to establish and maintain an appropriate baseline level of liquidity typically comprising cash, cash equivalents, corporate bonds or other fixed-income securities that can be sold and settled within a standard settlement cycle. While promoting the importance of HLIMs through the proposed uniform 10% minimum HLIM requirement, the Commission, in justifying the LLI Elimination, simultaneously disregards the effectiveness of HLIMs as a liquidity risk management tool for Primarily Less Liquid Funds.[61]

E. Treating GAAP Level 3 Investments Categorically as Illiquid Investments Inappropriately Conflates Valuation and Liquidity

The Commission also proposes to amend the definition of Illiquid Investment to include any investment whose fair value is measured using an unobservable input that is significant to the overall measurement (the "**GAAP Level 3 Illiquidity Proposal**").[62] Accordingly, Funds would be required to treat investments constituting "level 3" assets under U.S. GAAP's fair value hierarchy as Illiquid Investments regardless of whether a liquid market for the relevant investment exists. The GAAP Level 3 Illiquidity Proposal would impact the liquidity profile of Funds with significant holdings of GAAP level 3 investments, potentially challenging their compliance with Rule 22e-4's HLIM requirement or 15% Illiquid Investment Limit. We believe that the GAAP Level 3 Illiquidity Proposal inappropriately conflates valuation and liquidity. We urge the Commission to abandon the proposal and to instead revise Rule 22e-4 to require Funds to account

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LSTA's form of participation agreement. In consideration for the counterparty's agreement to settle on an expedited basis, the Fund pays the counterparty a modest administrative fee.

[60] See, e.g., Rule 22e-4 Adopting Release at 82199 ("We agree that the highly liquid investment minimum requirement we are adopting, standing alone, may not be a sufficient safeguard for funds to manage liquidity risk under all market conditions. However, we believe that, together with the rest of the liquidity risk management program requirements we are adopting, it is a central tool to help put a fund in a solid position to meet redemption requests without significant dilution of remaining investors' interests.").

[61] See Section III.C. *supra* for our suggestions regarding how a minimum HLIM requirement could be tailored for Primarily Less Liquid Funds to reflect the effectiveness of committed lines of credit as a liquidity risk management tool for these Funds.

[62] Proposed Rule 22e-4(a) (defining "Illiquid investment").

for inputs in the fair value measurement of their investments when making liquidity classifications.[63]

The observability of pricing inputs for a particular investment is fundamentally not an assessment of the investment's liquidity. Though an investment classified as GAAP level 3 for valuation purposes indicates that an active and visible market for the investment may not exist, this does not necessarily require a conclusion that the investment is illiquid. For example, there are approximately 50,000 issuers of 1,000,000 outstanding municipal securities, and the likelihood of any specific security trading on a particular day is approximately 1%.[64] Notwithstanding the municipal market's high fragmentation and "buy and hold" nature, aggregate trading activity in the market is substantial: in 2021 an average of 30,347 trades involving 13,580 unique municipal securities with an aggregate par amount of $8.96 billion occurred each business day and in 2020 an average of 33,603 trades involving 13,869 unique municipal securities with an aggregate par amount of $12.41 billion occurred each business day.[65] The fact that there may be little or no market activity for a particular municipal security (or quoted prices for similar municipal securities in active markets) on a particular measurement date does not mean axiomatically that a Fund would be unable to sell an appropriate quantity of the security without impairing its market value.

As evidenced by the Commission's proposals to remove the asset class method of classification and require Funds to classify portfolio investments each business day, an objective of the Proposed Amendments is requiring Funds to make more granular liquidity assessments of their investments under Rule 22e-4. We believe the GAAP Level 3 Illiquidity Proposal is adversative to this objective. On the other hand, because the valuation of a GAAP level 3 investment is derived substantially from unobservable inputs owing to the absence of active markets, quoted prices or other corroborated market data, we recognize that correlation exists between this fair valuation category and the Illiquid Investment category and that there can be considerable overlap. Consequently, we believe requiring Funds to account for inputs in an investment's fair value measurement when classifying the investment's liquidity – in particular whether the investment's fair value is measured using an unobservable input that is significant to the overall fair value measurement – strikes a better balance than the GAAP Level 3 Illiquidity Proposal because it would obligate Funds to make more refined assessments of liquidity which considers (but does not turn on) fair value measurement. To accomplish, the Commission could amend Rule 22e-4(b)(1)(ii), which already requires Funds to account for relevant market, trading and investment-specific considerations when classifying investments, to also require Funds to

[63] We analyzed the holdings of GAAP level 3 investments across the Invesco funds complex, which indicated that the GAAP Level 3 Illiquidity Proposal would disproportionately impact bank loan Funds and municipal Funds because of the larger exposure of these Funds to these investments.

[64] See Municipal Securities Rulemaking Board, Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline? (July 2018) at 4, available at: https://www.msrb.org/sites/default/files/Transaction-Costs-for-Customer-Trades-in-the-Municipal-Bond-Market.pdf.

[65] See Municipal Securities Rulemaking Board 2021 Fact Book at 34, available at: https://www.msrb.org/sites/default/files/MSRB-2021-Fact-Book.pdf.

account for inputs in an investment's fair value measurement (in particular whether its fair value is measured using an unobservable input that is significant to the overall fair value measurement).

F. The Methodology Change for Counting Days Is Capricious and Will Cause Funds to Appear Less Liquid Arbitrarily

To ostensibly promote consistency and comparability of liquidity across Funds and to prevent Funds from overestimating their liquidity classifications, the Commission proposes to specify when Funds must start to measure the identified number of days in which they reasonably expect a stressed trade size of an investment would be convertible to U.S. dollars without significantly changing its market value. Specifically, the Commission proposes to require Funds to count the day of classification when determining the period in which an investment is reasonably expected to be convertible to U.S. dollars (the "**Proposed Day Count Convention**").[66] We believe this methodology change is capricious and will cause Funds to appear less liquid arbitrarily. Accordingly, we oppose adoption of the Proposed Day Count Convention.

Though the Commission intends the Proposed Day Count Convention to promote consistency in Funds' liquidity classifications, the proposed methodology is inconsistent with prevailing securities market conventions and existing Commission rules. Settlement cycles are customarily expressed using a "T+" convention, where the integral number following "T+" reflects the number of local trading days after a transaction's execution date that it will settle. For example, for a market with a T+3 convention, a trade executed on a Monday is required to settle on the following Thursday (treating Monday as "T" and Tuesday as the first trading day in the series). The Commission itself recognizes this convention in Rule 15c6-1 under the Exchange Act, which prescribes the settlement cycle to which brokers and dealers must adhere when entering into contracts for the purchase or sale of securities. Subject to certain exceptions, Rule 15c6-1 prohibits a broker or dealer from entering into a contract for the purchase or sale of a security "that provides for payment of funds and delivery of securities later than the second business day ***after the date of the contract*** unless otherwise expressly agreed to by the parties at the time of the transaction".[67] The Proposed Day Count Convention is also inconsistent with the Investment Company Act, and would impose a convention different from the statute's articulation of the period in which Funds must satisfy redemption requests.[68] We are also unaware of any statutory basis for the Highly Liquid Investment category's reference to "three business days", and instead understand the reference reflects the Commission's desire for Funds to determine the portion of their portfolios

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[66] Proposed Rule 22e-4(b)(1)(ii)(A).

[67] See Exchange Act Rule 15c6-1(a) (emphasis added). See also FINRA Rule 11320(b) (providing that the date of delivery of securities for a "regular way" transaction "shall be made at the office of the purchaser on, but not before, the second business day ***following the date of the transaction***" (emphasis added)).

[68] See Section 22(e) of the Investment Company Act (providing that, subject to certain enumerated exceptions, "[N]o 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 to the company or its agent designated for that purpose for redemption***" (emphasis added)).

convertible to cash (and capable of meeting redemptions) within a relatively short period, regardless of any particular settlement cycle.[69]

The Proposed Day Count Convention will cause securities traded in certain foreign markets to *per se* be non-highly liquid because the settlement cycle in these markets is greater than T+2[70], a result at odds with the Commission's basis for referencing "three business days" articulated in the Rule 22e-4 Adopting Release. Consequently, the Proposed Day Count Convention will acutely and disproportionately impact Funds with investments in these markets. Additionally, the Proposed Day Count Convention will detrimentally impact all Funds by depriving them of one business day or one calendar day (depending on the relevant liquidity category) when classifying investments, increasing the compliance burdens of the HLIM requirement and the 15% Illiquid Investment Limit. If the Commission desires greater consistency and comparability of Funds' liquidity, it can accomplish this objective as effectively through rule amendments (or guidance) providing that Funds <u>not</u> count the day of classification when determining liquidity classifications. As compared to the Proposed Day Count Convention, this strategy would avoid arbitrarily causing Funds to appear less liquid solely because there is one fewer day associated with each relevant liquidity category.

IV. <u>Highly Liquid Investment Minimum</u>

A. Eliminating the Primarily Exclusion and Requiring All Funds to Comply with the HLIM Requirement Is Ineffectual and Unnecessary

The Proposed Amendments would require all Funds to determine and maintain a HLIM of at least 10% of the Fund's net assets[71], which is equivalent to the 10% STS. In so proposing, the Commission would eliminate the existing "primarily exclusion" in Rule 22e-4, which permits Funds that are primarily invested in Highly Liquid Investments to not determine and comply with a HLIM. Based on review of Form N-PORT data, the Commission observed that currently most Funds do not determine and comply with a HLIM, instead relying on the primarily exclusion. Additionally, the Commission has discerned wide divergence in HLIMs, observing that most

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[69] See Rule 22e-4 Adopting Release at 82174 - 82175 ("We continue to believe, as discussed in the Proposing Release, that it is important for funds to determine what percentage of their portfolio is convertible to cash—that is, available to meet redemptions—within the relatively short term…[o]ur decision to define highly liquid investments to include any investment that the fund reasonably expects to be convertible into cash in current market conditions in three business days or less is founded in our belief that funds should understand what portion of their investments are convertible to cash in a short period of time taking into account current market conditions, not solely on which asset transactions can be settled in three days or less from the trade date…Accordingly, we believe we have appropriately defined ''highly liquid investments'' under rule 22e–4 notwithstanding initiatives to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2").

[70] For example, equity markets in Kenya, Kuwait, Nigeria, Philippines, Qatar and South Africa, and the market for "B" shares traded on The Shanghai Stock Exchange and The Shenzhen Stock Exchange, have settlement cycles greater than T+2.

[71] Proposed Rule 22e-4(b)(1)(iii).

Funds have established HLIMs lower than the proposed 10% level. The Commission believes that these changes to Rule 22e-4 will ensure Funds have sufficient liquid investments to manage stressed conditions and heightened levels of redemptions, and that a uniform minimum HLIM requirement will minimize competitive advantages accruing to Funds with smaller HLIMs than peers. Additionally, the Commission intends for the 10% STS and 10% minimum HLIM requirements to work together to better prepare Funds for future stressed conditions and to reduce the risk of dilution.[72]

We believe that elimination of the primarily exclusion, subjecting Funds that are primarily invested in Highly Liquid Investments ("**Primarily Highly Liquid Funds**") to the HLIM requirement, is superfluous and that the primarily exclusion should be retained.[73] The Commission justifies the elimination by surmising that a Primarily Highly Fund relying on the primarily exclusion could experience significant declines in its liquidity resulting in the Fund holding less than 50% of its portfolio in Highly Liquid Investments for a temporary period, such as in connection with political or economic turmoil or an extended holiday market closure in a foreign country.[74] While such a circumstance is theoretically possible, we nonetheless find it implausible that the Primarily Highly Liquid Fund's concentration in Highly Liquid Investments would fall below the proposed 10% minimum HLIM, triggering a need to apply HLIM shortfall procedures. Additionally, if a Primarily Highly Liquid Fund's concentration of Highly Liquid Investments declined below 50% in connection with a more prolonged change in circumstances affecting its liquidity profile, we expect the Fund, commensurate with Rule 22e-4's periodic review requirement, would be required to implement a HLIM because it would no longer be a Primarily Highly Liquid Fund. In effect, the primarily exclusion operates to require a Primarily Highly Liquid Fund to maintain a minimum amount of Highly Liquid Investments that is so large relative to its net assets that the objectives of the HLIM requirement and shortfall procedures are inapplicable. The scale of a Primarily Highly Liquid Fund's holdings of Primarily Highly Liquid Investments enables the Fund to meet stressed outflows, rendering a HLIM and shortfall procedures unwarranted and unnecessary.

While we agree with the Commission that the costs and burdens of complying with the HLIM requirement might be reduced for Primarily Highly Liquid Funds that are part of fund complexes already experienced with developing and applying HLIM shortfall procedures for affiliated Funds, this presumption alone is insufficient to justify revocation of the primarily exclusion. In particular, smaller Funds and ETFs (and the boards of these Funds) and smaller fund complexes are likely to have no experience implementing the HLIM requirement and associated shortfall procedures, which (not insignificantly) necessitate that a Fund and its adviser have procedures and available resources to make ad-hoc board reports and regulatory reports on Form

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72 See Proposing Release at 77195 - 77196.

73 Invesco supports a revision to Rule 22e-4 providing that the primarily exclusion applies only to Funds holding 50% or more of their net assets in Highly Liquid Investments that are assets.

74 See Proposing Release at 77196.

N-RN on an extremely short timeline, notwithstanding the unlikelihood of actually needing to do so. The Commission concludes that, because approximately 83% of Funds currently rely on the primarily exclusion, its revocation is unlikely to affect most Funds' investment strategies.[75] In our view, the Commission's ability to draw this conclusion evidences the fact that application of the HLIM requirement to all Funds would be ineffectual and impose unnecessary compliance costs and burdens on Primarily Highly Liquid Funds and their advisers.

B. The HLIM Proposal Is Predicated on the Inapt 10% STS; Funds Need Discretion and Flexibility to Determine Their HLIMs

We have grave concerns regarding the proposed 10% minimum HLIM requirement. By presuming that a Fund must sell a stressed trade size of a pro rata slice of each of its investments (as both the Commission and we propose), Rule 22e-4's liquidity classification requirement provides a Fund with a wholistic, conservative assessment of its liquidity profile and the information necessary to evaluate its compliance with the 15% Illiquid Investment Limit and HLIM requirement (if applicable). On the other hand, the HLIM requirement seeks to ensure that a Fund whose portfolio is not constituted primarily by Highly Liquid Investments has sufficient investments that are readily convertible to U.S. dollars to satisfy a period of stressed outflows. Though satisfaction of stressed outflows entirely through dispositions of Highly Liquid Investments would raise dilution concerns, the HLIM requirement recognizes that non-Primarily Highly Liquid Funds are unlikely to satisfy redemptions through a precise pro rata liquidation of portfolio investments and seeks to ensure these Funds have sufficient Highly Liquid Investments to avoid resorting to sales of less liquid holdings at discounted prices, which can be more deleterious and dilutive to remaining shareholders.[76] In times of market stress and elevated shareholder outflows, a HLIM supports a Fund's satisfaction of redemptions in a non-dilutive manner and provides the Fund greater flexibility to adjust its portfolio in response. Accordingly, the HLIM requirement should be viewed as a liquidity coverage tool, not as a by-product of the stressed trade size, and we believe that Funds should have discretion and flexibility to determine a HLIM on the basis of their particular circumstances, including (as currently required by Rule 22e-4) an assessment of their liquidity risk factors and investment objective.

Instead, the Commission seeks to impose a uniform 10% minimum HLIM on all Funds, linking the HLIM to the 10% STS so that the two are equivalent percentages. Yet, as we discuss in Section II.A. *supra*, the 10% STS is itself fundamentally flawed and inapt, as the Commission arrived at the figure through a rudimentary rounding up by 51.5% of the 99th percentile worst weekly outflow experienced by a broad group of Funds. A 10% minimum HLIM requirement affords a Fund no discretion to evaluate its particular liquidity risk factors, in particular its cash flow projections arising from an analysis of its daily net flows, unless the Fund independently determines that its HLIM should be greater than 10% (which, as the Commission's analysis substantiates, is uncommon).

[75] See id.

[76] The Commission also recognizes this as the purpose of the HLIM requirement. See id. at 77195.

The combination of a 10% minimum HLIM with a 10% STS will be inimical to Funds subject to the HLIM requirement. We expect many of these Funds will need to substantially increase their HLIMs to reach the 10% minimum. Simultaneously, the 10% STS will cause fewer of their investments to be classified as Highly Liquid Investments, especially for the Funds we note in Section II.A. *supra*. In tandem, these changes will force Funds subject to the HLIM requirement to hold more off strategy investments or even change their investment strategies and objective to comply with the minimum HLIM requirement. Doing so will prove especially problematic for index-based Funds (including ETFs) that have a stated investment objective to track the performance of a specified index and whose ability to hold non-constituent securities is therefore constrained. Unable to deliver their investment objective or pursue investment strategies as intended, some Funds could need to liquidate in response. Additionally, Fund sponsors like Invesco will be reticent to design, launch and advise new Funds whose investment objectives and strategies could be inhibited by the minimum HLIM requirement.[77] Consequently, in trying to solve an illusory liquidity risk problem through an unreasonably high HLIM requirement, the Commission will in fact create different types of dilution for Fund shareholders – namely, dilution of investor returns and choice attributable to Funds' diminished ability to invest in desirable asset classes and markets and provide appealing investment strategies.

If the Commission is adamant that a Fund's HLIM be linked to its stressed trade size or that an objectively determinable minimum HLIM is necessary to mitigate the potential for shareholder dilution and competitive advantages among Funds, we believe preferable alternatives to the 10% minimum HLIM exist. For example, to address the risk that a Fund might incur a stressed daily outflow over several business days, the Commission could require a Fund to establish a HLIM equal to a multiple of its Stressed Daily Net Outflow, which would reflect our view of the HLIM as a liquidity coverage tool. This methodology would permit Funds to account for their particular circumstances and liquidity risk factors when determining a minimum HLIM, while avoiding the bluntness of an inapposite 10% HLIM loosely derived from the Commission's analysis of weekly outflows across a broad group of funds.[78]

C. The Changes Proposed to How Funds Assess Compliance with the HLIM Requirement Are Overly Conservative, Excessively Technical and Complex and Can Cause an Over-Reduction of Highly Liquid Investments

The Commission proposes two changes to the HLIM requirement to help ensure a Fund's Highly Liquid Investments are available to support meeting redemptions by requiring the Fund to account for limitations in its ability to use those investments. Specifically, in assessing compliance

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[77] Paradoxically, the 10% minimum HLIM requirement could become more problematic for a new Fund if it is successful, grows its net assets and diversifies its shareholder base. As we discuss in Section II.A. *supra*, the 10% STS will have an acute impact on Funds with large net asset values merely because they are larger.

[78] However, see Section III.C. *supra* for our suggestions regarding how a minimum HLIM requirement could be tailored for Primarily Less Liquid Funds to reflect the effectiveness of committed lines of credit as a liquidity risk management tool for these Funds, given the unique liquidity risk these Funds incur arising from the longer settlement period associated with their investments.

with the HLIM requirement, a Fund would be required to: (i) subtract any Fund liabilities and (ii) subtract the value of any Highly Liquid Investments that are posted as margin or collateral in connection with derivatives transactions that are not classified as Highly Liquid Investments.[79] We believe these two changes are overly conservative, excessively technical and complex and, in combination, can cause a Fund to overstate the amount of its Highly Liquid Investments committed to meet obligations other than shareholder redemptions.

As proposed, a Fund would need to reduce the amount of its Highly Liquid Investments that are assets that count toward the Fund's HLIM by the amount of the Fund's "liabilities", as defined in Rule 6.04 of Regulation S-X. Accordingly, a Fund would need to reduce its Highly Liquid Investments by the amount of all obligations recognizable as a liability on the Fund's Statement of Assets and Liabilities. We believe this approach is excessively complex and technical and will create unjustifiable compliance costs and burdens.

A Fund would need to reduce its Highly Liquid Investments by its "other liabilities", representing compensation and fees payable in the ordinary course of business to its service providers, including its investment adviser, distributor, transfer agent, custodian and board members, and other ordinary course accrued but unpaid operating expenses.[80] We believe these liabilities, at any particular time, are likely to be insignificant relative to the Fund's net assets and Highly Liquid Investments and that the amounts are ordinarily payable by a Fund at varying frequencies such that they are unlikely to collectively constitute a present claim on the Fund's Highly Liquid Investments. Consequently, the cost and burden associated with incorporating the amounts of these liabilities, many of which accrue daily, into the Rule 22e-4 compliance program for Funds subject to the HLIM requirement are unwarranted.

Conversely, the amount of other liabilities recognized on a Fund's Statement of Assets and Liabilities can be material and constitute a present claim on the Fund's Highly Liquid Investments. These include liabilities for investments purchased but unsettled, dividends or other distributions declared on Fund shares but unpaid, open options contracts written, variation margin and other amounts payable under derivatives transactions, unrealized depreciation on derivatives transactions, obligations associated with "unfunded commitment agreements" (as defined in Rule 18f-4 of the Investment Company Act ("**Rule 18f-4**")) and collateral due upon return of securities loaned.[81] Because a Fund could need to liquidate or use Highly Liquid Investments to satisfy these liabilities, rendering them unavailable to meet redemptions, the Fund arguably should reduce its Highly Liquid Investments that are assets by the associated amounts when assessing compliance with the HLIM requirement. Additionally, consistent with our view of a HLIM as a liquidity coverage tool, a Fund arguably should reduce its Highly Liquid Investments that are assets to account for potential future redemptions as well as redemptions incurred but unsatisfied. However,

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[79] Proposed Rule 22e-4(b)(1)(iii)(B)(1) and (2). See Proposing Release at 77197.

[80] See Item 12 of Rule 6.04 of Regulation S-X.

[81] See id.

a Fund will invariably have assets recognized on its Statement of Assets and Liabilities for receivables in connection with investments sold but unsettled, dividends and interest on portfolio investments and subscriptions to Fund shares not yet paid, as well as for variation margin and other amounts receivable under derivatives transactions and unrealized appreciation on derivatives transactions.[82] Though these amounts frequently constitute a present entitlement to cash, a Fund is unlikely to treat all of them as Highly Liquid Investments because the assets do not constitute "investments". The Commission's proposal is unfairly conservative because it requires Funds subject to the HLIM requirement to deduct all liabilities when assessing HLIM compliance while providing no credit for non-investment assets representing present entitlements to cash.

To fairly accomplish the Commission's objective of ensuring the HLIM requirement accounts for present claims on a Fund's Highly Liquid Investments using an accounting-oriented, balance sheet approach, we believe that Rule 22e-4 would need to require that Funds undertake a complicated daily assessment of the mix of their current assets and liabilities as follows:

- require a Fund to reduce the value of its Highly Liquid Investments that are assets by the value of all investments in a liability position (regardless of classification). As the Commission notes, Funds are already required to classify all investments, including investments in a liability position, and reducing the value of the Fund's Highly Liquid Investments that are assets by investments in a liability position addresses the Commission's concern that Funds can incur significant liabilities in connection with derivatives transactions.[83]

- require a Fund to compute a net asset or net liability associated with its pending shareholder activity by netting the amount payable in connection with Fund shares redeemed against the receivable for subscriptions to Fund shares, with the resulting net asset or net liability increasing or decreasing, respectively, the Fund's Highly Liquid Investments that are assets.

- require a Fund to compute a net asset or net liability associated with its pending trading activity by netting the amount payable for investments purchased but unsettled against the receivable for investments sold but unsettled, with the resulting net asset or net liability increasing or decreasing, respectively, the Fund's Highly Liquid Investments that are assets.

- require a Fund to compute a net asset or net liability associated with its pending income distributions by netting the amount payable for dividends declared on Fund shares against dividends and interest receivable, with the resulting net asset or net liability increasing or decreasing, respectively, the Fund's Highly Liquid Investments that are assets.

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[82] See id.

[83] See Proposing Release at 77198.

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- require a Fund to decrease its Highly Liquid Investments that are assets by the amount of its unfunded commitment agreements, which are contractual undertakings to make loans under revolving or delayed draw credit arrangements or to invest equity pursuant to capital commitments that typically can come due at any time.

- require a Fund to decrease its Highly Liquid Investments that are assets by the amount of its indebtedness for borrowed money, excluding indebtedness incurred to bridge the period between sale and settlement of investments and temporarily finance shareholder redemptions.[84]

For Funds subject to the HLIM requirement, we doubt this highly technical, accounting-oriented assessment will create improvements to liquidity risk management programs that outweigh the significant implementation costs and burdens to Funds associated with carrying out the assessment each business day, especially in light of Rule 22e-4's existing requirement that Funds consider liquidity risk factors (including short-term and long-term cash flow projections) when determining an HLIM. Requiring Funds to more frequently review their HLIMs using current state assessments of short-term and long-term cash flow projections, holdings of cash and cash equivalents and borrowing arrangements would further the Commission's goals while imposing less burdensome requirements on Funds subject to the HLIM requirement.

Additionally, requiring a Fund to subtract the value of Highly Liquid Investments that are posted as margin or collateral in connection with non-highly liquid derivatives transactions is unduly complex and, in combination with the proposed liabilities deduction, can cause an over-reduction of a Fund's Highly Liquid Investments. Funds' uncleared derivatives, including uncleared swaps, security-based swaps and foreign exchange forwards, are ordinarily governed by a master netting agreement in the form of an ISDA Master Agreement, while Funds' cleared derivatives are ordinarily subject to an account agreement with a futures commission merchant or clearing broker.[85] In both cases, a Fund typically posts or receives margin or collateral based upon the aggregate, net value of the derivatives transactions subject to the relevant agreement, such that (if multiple transactions are subject to the agreement) Highly Liquid Investments posted by the Fund under the agreement cannot be precisely assigned to any particular non-highly liquid

[84] See Section III.C. *supra*. Funds with access to revolving credit facilities for liquidity purposes may draw loans to provide immediate U.S. dollar cash pending the settlement of portfolio sales, effectively bridging the period between sale and settlement of investments. We do not believe that the amount of such indebtedness, if repaid from the proceeds of pending sales, necessitates a reduction in a Fund's Highly Liquid Investments, especially because the indebtedness does not have a leveraging effect on the Fund's shares. Additionally, not exempting such borrowings could disincentive Funds from using available credit as a tool for meeting stressed outflows. The amount of any net asset calculated by a Fund pursuant to the third bullet above (representing a net receivable for investments sold but unsettled) could be reduced by the amount of any temporary indebtedness incurred by the Fund, with the resulting amount increasing or decreasing the Fund's Highly Liquid Investments that are assets depending on whether it is positive or negative.

[85] See, e.g., Commodity Futures Trading Commission ("**CFTC**") Rule 23.504 under the Commodity Exchange Act and SEC Rule 15Fi-5 under the Exchange Act.

derivatives transaction.[86] Further, a non-highly liquid derivatives transaction that is "out of the money" for a Fund will be recorded by the Fund in a liability position under Rule 6.04 of Regulation S-X, and the Commission proposes that the Fund reduce its Highly Liquid Investments that are assets by the amount of that liability. By requiring the Fund to reduce its Highly Liquid Investments by both the liability associated with the non-highly liquid derivatives transaction and the associated value of margin or collateral posted to support the derivatives transaction (using the complicated mechanism perpetuated in the Proposed Amendments), the Fund's Highly Liquid Investments would be decreased by approximately 200% of the amount of that liability.[87] In contrast, the approach described in the first bullet above, which only requires a Fund to reduce the value of its Highly Liquid Investments that are assets by the value of all investments in a liability position, provides a simpler and more elegant and effective way to reflect that investments in a liability position (regardless of their classifications) represent a senior claim on the Fund's Highly Liquid Investments, rendering them unavailable to satisfy shareholder redemptions.[88]

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[86] If certain derivatives transactions subject to the relevant agreement are "in the money" for a Fund and represent assets, the value of margin or collateral posted by the Fund pursuant to the agreement can be less than the value of the non-highly liquid derivatives transactions in a liability position. When adopting Rule 22e-4, the Commission recognized the challenges associated with mapping specific margin or collateral to specific non-highly liquid derivatives transactions and included a complex mechanism for doing so (see Rule 22e-4, Note to paragraph (B)(1)(II)(C)). The Commission proposes to retain this complicated mechanism in Rule 22e-4 (see proposed Rule 22e-4, Note 1 to paragraph (b)(1)(iii)(B)(1)).

[87] For example, if a Fund has $100 of Highly Liquid Investments that are assets and a single non-highly liquid uncleared derivatives transaction subject to an ISDA Master Agreement that is in a liability position of $10, the Fund can be expected to have posted Highly Liquid Investment collateral with a value of approximately $10 to the counterparty pursuant to the agreement. The Commission's proposal results in the Fund having only $80 of Highly Liquid Investments to satisfy its HLIM requirement (a $10 reduction for the associated liability and a $10 reduction for the associated collateral), notwithstanding that the Fund would need to pay only $10 to the counterparty upon extinguishment of the derivatives transaction.

[88] Additionally, the process of recording derivatives transactions subject to master netting agreements individually as assets or liabilities for purposes of Regulation S-X may be undertaken by Funds only quarterly when producing formal financial statements or Schedules of Investments. The approach described in the first bullet above would not require Funds to change this practice. Municipal Funds using tender option bond (TOB) financings ordinarily present the par amount of and accrued interest on short-term floating rate certificates issued by the relevant TOB trusts as liabilities only semi-annually when preparing a Statement of Assets and Liabilities (and the associated accounting treatment also entails including the municipal bonds held by the TOB trusts on the Fund's Schedule of Investments, thereby brining those bonds back on balance sheet, only once a quarter when producing Schedules of Investments). The Commission's proposal would seemingly require municipal Funds to undertake this accounting treatment each business day. The approach described in the first bullet above would not require municipal Funds to change this practice. A municipal Fund would classify the related residual certificates, which are the investments actually held by the Fund, and reduce its Highly Liquid Investments that are assets by the amount of indebtedness incurred.

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V. <u>Limit on Illiquid Investments</u>

A. The Change Proposed to How Funds Assess Compliance with the 15% Illiquid Investment Limit Is Also Excessively Technical, Complex and Unnecessary

The Commission proposes to revise the 15% Illiquid Investment Limit to provide that the value of margin or collateral that a Fund could only receive upon exiting a derivatives transaction that is an Illiquid Investment would itself be treated as an Illiquid Investment for purposes of the limit.[89] This change ostensibly reflects that, because a Fund does not reasonably expect to be able to liquidate an illiquid derivatives transaction within seven days, it likewise cannot convert to U.S. dollars or access the value of assets posted as margin or collateral in connection with the derivatives transaction within seven days.[90] We believe this proposal is also excessively technical, complex and unnecessary, and that the Commission's objectives can be achieved more simply.

The proposal suffers from the same shortcoming described in Section IV.C. *supra* in connection with the proposed requirement that Funds subtract the value of Highly Liquid Investments that are posted as margin or collateral in connection with non-highly liquid derivatives transactions – namely, that when multiple derivatives transactions are subject to a master netting agreement (as is frequently the case), margin or collateral posted by a Fund under the agreement cannot be precisely assigned to any particular derivatives transaction. A Fund would presumably need to apply a complex mechanism similar to that perpetuated in the Proposed Amendments in connection with the HLIM requirement[91] to determine the value of margin or collateral posted against illiquid derivatives transactions.[92] Additionally, our experience suggests that Funds infrequently enter into illiquid derivatives transactions, such that the costs and burdens associated with adapting a Fund's Rule 22e-4 compliance program to make the assessments and determinations required in connection with this change to the 15% Illiquid Investment Limit are unjustified.

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[89] Proposed Rule 22e-4(b)(1)(iv). The Commission uses the term "fund" in connection with this proposed change, suggesting it is inapplicable to In-Kind ETFs, even though In-Kind ETFs are subject to the 15% Illiquid Investment Limit.

[90] See Proposing Release at 77199.

[91] See proposed Rule 22e-4, Note 1 to paragraph (b)(1)(iii)(B)(1).

[92] For example, assume (i) a Fund has four uncleared derivatives transactions subject to an ISDA Master Agreement, (ii) two of the transactions are classified as Highly Liquid Investments and two of the transactions are classified as Illiquid Investments and (iii) the value of the two highly liquid transactions and two illiquid transactions are $20, $(10), $(20) and $(30), respectively. The Fund can be expected to have posted Highly Liquid Investment collateral with a value of approximately $40 to the counterparty pursuant to the agreement to cover the aggregate net liability. In this scenario, it is unclear whether the Fund should treat the entire $40 of collateral as illiquid, $30 of the collateral as illiquid (reflecting that the illiquid transactions represent 75% of the combined value of the transactions in a liability position) or some other amount of the collateral as illiquid.

Under Rule 18f-4, Funds and In-Kind ETFs must adopt policies and procedures that are reasonably designed to manage "derivatives risks", which include liquidity risk associated with derivatives transactions.[93] In the adopting release for Rule 18f-4, the Commission described "liquidity risk" in the context of derivatives transactions as "risk involving the liquidity demands that derivatives can create to make payments of margin, collateral, or settlement payments to counterparties".[94] We expect that most Funds, particularly Funds that do not qualify for the exception for limited derivatives users under Rule 18f-4(c)(4) ("**DRMP Funds**"), have adopted procedures for managing liquidity risk arising from derivatives transactions.[95] When considering changes to the HLIM requirement and the 15% Illiquid Investment Limit in respect of derivatives transactions and the attendant costs, we urge the Commission to be mindful of these procedures that Funds and In-Kind ETFs are already required to implement pursuant to Rule 18f-4.

Further, the implementation challenges, costs and burdens associated with the Commission's proposal are avoidable. If the Commission is concerned that illiquid derivatives transactions in a liability position can "freeze" margin or collateral posted by a Fund to support them, the Commission could instead reformulate the 15% Illiquid Investment Limit to require that the sum of (i) the value of the Fund's Illiquid Investments that are assets and (ii) the absolute value of the Fund's derivatives transactions that are Illiquid Investments and are in a liability position cannot exceed 15% of the Fund's net assets. This formulation of the limit would, in effect, treat each of a Fund's illiquid derivatives transactions as if it were margined or collateralized separately, capturing the amount of the Fund's investments required to support these transactions in the Fund's Illiquid Investment concentration. Additionally, because Funds must already classify their derivatives transactions, including derivatives transactions in a liability position[96], this alternative could be implemented more simply than the Commission's proposal.[97]

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[93] Rule 18f-4(a) (defining "Derivatives risks").

[94] See Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084, 85 Fed. Reg. 83162 (Dec. 21, 2020) (the "**Rule 18f-4 Adopting Release**") at 83179.

[95] For example, Invesco Funds that are DRMP Funds regularly stress test derivatives transactions outstanding with their counterparties to assess the liquidity demand that the derivatives transactions could create through margin or collateral calls or close out payments, which amount needs to be sufficiently covered by the Fund's Highly Liquid Investments.

[96] See Rule 22e-4(b)(1)(ii) and proposed Rule 22e-4(b)(1)(ii).

[97] We recognize that our proposal would not reflect the value of assets that a Fund posts as initial or maintenance margin ("**Initial Margin**") in connection with derivatives transactions. However, Initial Margin requirements are most typical in cleared derivatives transactions, such as futures, cleared swaps and listed options, which are unlikely to be classified as Illiquid Investments. Further, only a minority of uncleared swap market participants are subject to regulatory Initial Margin requirements. See, e.g., CFTC Rules 23.151 (defining "Material swaps exposure" and "Covered counterparty") and 23.152 under the Commodity Exchange Act.

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VI. Form N-PORT Changes

A. Invesco Supports a More Frequent Form N-PORT Filing Requirement; However, a 30-Day Reporting Deadline is Too Short and Requiring Part F Reporting Ten Times a Year is Unduly Burdensome

The Commission proposes to amend Rule 30b1-9 under the Investment Company Act and Form N-PORT to require funds to file reports on Form N-PORT more frequently and within a shorter timeframe. Specifically, rather than filing three Forms N-PORT with the Commission within 60 days after each fiscal quarter end, the Commission proposes that funds file Form N-PORT each month within 30 days of the end of the month to which it relates, with relevant portions of the report being made public 60 days after the end of that month.[98] Additionally, to align with the monthly filing requirement, the Commission proposes to amend Part F of Form N-PORT ("**Part F**"), which currently requires funds to attach complete portfolio holdings presented in accordance with Regulation S-X for the end of the first and third fiscal quarters, to require funds to file this disclosure within 60 days of the end of each monthly reporting period (except for the last month of a fund's second and fourth fiscal quarters, for which portfolio holdings are already available in the fund's annual and semi-annual reports). Accordingly, funds would need to file a Regulation S-X compliant statement of portfolio holdings on Part F ten times per year instead of only twice per year.

We appreciate the Commission's desire to have funds file Form N-PORT on a monthly (rather than a quarterly) cadence. Currently, the combination of the quarterly reporting requirement and the 60-day filing delay results in the Commission receiving fund data that is stale, impeding the Commission's ability to use Form N-PORT information to assess the impact of major market events on funds, develop a comprehensive understanding of the market and contribute to interagency discussions of and responses to market stresses. As the Commission observes, by the time Form N-PORT is filed by a fund, the reported information is between two and four months old.[99] Monthly Form N-PORT filings would enhance the Commission's ability to effectively oversee funds and monitor their activities.

However, the Commission's proposal to require Form N-PORT reporting within 30 days after each month end does not provide funds, their advisers and their service providers enough time to produce and file the reports. We request that funds be afforded an additional 15 days and instead be required to file Form N-PORT with the Commission by the 45th day after each month end. Form N-PORT is an extraordinarily detailed report, requiring funds to provide a variety of information regarding assets and liabilities, performance and flows, portfolio holdings, portfolio risk metrics, liquidity and liquidity risk management, derivatives and derivatives risk management

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[98] Proposed Rule 30b1-9; Proposed 17 CFR 274.150.

[99] See Proposing Release at 77226.

and securities lending.[100] Once obtained, derived and compiled, this information must be verified and prepared for filing in structured data format. Owing to the breadth and granularity of information required to be reported, several constituents within a fund complex (including fund financial reporting and accounting, investment risk management and performance measurement) and service providers (including custodians, administrators and securities lending agents) must contribute and collaborate to complete Form N-PORT. Frequently, these parties are also responsible for preparing (or contribute information to) funds' annual and semi-annual reports, including the associated Schedules of Investments. We believe that funds, their advisers and their service providers are already strained to comply with Rule 30b1-9's existing requirement for funds to maintain information in their records required to be included on Form N-PORT by the 30th day after each month. Mandating that funds also populate the form, verify the accuracy of populated information and file the form in structured data format in the same timeframe will be unduly burdensome. Alternatively, requiring funds to file Form N-PORT within 45 days after each month end will undoubtedly provide the Commission with significantly more current and relevant information about funds and will still greatly enhance the Commission's ability to effectively oversee funds and monitor their activities.

Further, while we acknowledge the Commission's efforts in recent years to strengthen its information security program and recognize the Commission has gained additional experience receiving and maintaining sensitive portfolio data of funds on EDGAR, the fiscal year 2022 report of Kearney & Company, P.C, the independent auditor retained by the SEC's Office of Inspector General to conduct the required annual independent evaluation of the Commission's information security program and practices under The Federal Information Security Modernization Act of 2014, concluded that the Commission's information security program did not meet the criteria to be considered "effective" and made several recommendations regarding the Commission's data protection and privacy program.[101] Until these independent evaluations conclude that the Commission has implemented an effective information security program, we are concerned that confidential and proprietary information reported to the Commission on Form N-PORT could be misappropriated before such time (if ever) that it is made public. A 45-day reporting deadline as we recommend would substantially reduce the period that the Commission possesses confidential and proprietary fund information reported on Form N-PORT, mitigating this risk.

We oppose the proposal to require monthly reporting by funds on Part F ten times per year. Part F in effect requires funds to produce a Schedule of Investments, and the Commission's proposal will impose significant additional obligations on funds by requiring they produce three

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[100] The amount of information reportable by funds on Form N-PORT is also ever growing, with several new reporting items having been added to the original form in connection with the Commission's adoption of Rule 22e-4 and Rule 18f-4. The Commission has also proposed new information reporting requirements on Form N-PORT in connection with its proposals concerning investment company names. See Investment Company Names, Investment Company Act Release No. 34593, 87 Fed. Reg. 36594 (June 17, 2022).

[101] See SEC Office of the Inspector General, Fiscal Year 2022 Independent Evaluation of the SEC's Implementation of the Federal Information Security Modernization Act of 2014 at ii and 19, available at: https://www.sec.gov/files/fy-2022-independent-evaluation-sec-implementation-fisma-2014-report-no-574.pdf.

times as many statements annually.[102] Completing a Schedule of Investments requires considerable time and effort from funds and their advisers and obligating funds to complete eight additional Part F statements per year will significantly increase the costs and burdens of Form N-PORT reporting, especially for large fund complexes (which would be required to create and file hundreds or thousands of additional Schedules of Investments each year). Further, the information to be included in the additional schedules is already reported, in substance, in Part C of Form N-PORT[103] and, as the Commission observes, many funds voluntarily post complete portfolio holdings on their websites on a monthly basis, typically lagged 30 days (while ETFs generally are required to provide daily transparency into their portfolio holdings).[104] We do not believe the Commission has undertaken an appropriate cost-benefit analysis for this proposal in light of the fact that the information required to be reported in Part F is already in the public domain.

B. Public Reporting of Aggregate Liquidity Classifications Raises the Same Concerns Acknowledged by the Commission in 2016; If the Commission Desires This Reporting on Form N-PORT, It Should Find that Public Disclosure Is Neither Necessary Nor Appropriate in the Public Interest or for the Protection of Investors

The Commission proposes that Funds' Form N-PORT reporting be supplemented to include the percentage of investments that are assets that fall into each of the liquidity categories. To give effect to the proposed adjustments to a Fund's calculations of its Highly Liquid Investments and Illiquid Investments for purposes of the HLIM requirement and the 15% Illiquid Investment Limit, the Commission also proposes that a Fund be required to make the same adjustments when reporting the amount of its Highly Liquid Investments and Illiquid Investments on Form N-PORT (the "**Reporting Adjustments**").[105]

We oppose this change to Form N-PORT. As the Commission itself concluded in 2016, this information is inappropriate for public disclosure through Form N-PORT because it is subjective, lacks the context of other disclosures and suggests a false sense of precision when presented in isolation.[106] The Commission rationalizes its reversal on the basis of the Proposed Amendment's introduction of the 10% STS and minimum value impact standard, which it believes

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[102] Currently, funds produce a Schedule of Investments four times per year: twice for inclusion in annual and semi-annual reports to shareholders and twice as Part F for the end of the first and third fiscal quarters.

[103] A Regulation S-X compliant Schedule of Investments includes certain information that Form N-PORT Part C does not, including: (i) reference rate and spread for variable rate securities; (ii) subtotals by asset type; (iii) identification of non-income producing securities; (iv) marking of securities held as collateral (though Form N-PORT provides information regarding collateral); and (v) marking of and activity reporting for affiliated securities. We do not believe these differences are meaningful and justify monthly production of a Schedule of Investments.

[104] See Proposing Release at 77228.

[105] Proposed Items B.12.a. and B.12.b. of Form N-PORT.

[106] See Investment Company Liquidity Disclosure, Investment Company Act Release No. 33046, 83 Fed. Reg. 11905 (Mar. 19, 2018) at 11907 - 11909.

will reduce both subjectivity inherent in classifications and variation in Funds' classification practices.[107] Even assuming *arguendo* the adoption of these proposals, Rule 22e-4's liquidity classification regime will still be predicated on several prescribed assumptions that remain highly subjective. We believe the Commission has erroneously concluded that, by promoting greater consistency in the assumptions to be applied by Funds when making liquidity classifications, those assumptions will have greater precision and certainty. For example, although all Funds would be required to apply the proposed 20%/1% thresholds for the minimum value impact standard, those thresholds are inherently subjective assumptions regarding the level of trading activity that causes a "significant change in market value" (especially in relation to unlisted securities, where the 1% threshold does not incorporate the objective ADTV metric). Additionally, as we discuss in Sections IV.C. and V.A. *supra*, the Reporting Adjustments are based on excessively technical and complex adjustments that the Commission proposes Funds make in connection with the HLIM requirement and the 15% Illiquid Investment Limit. The Commission is misguided to expect that investors will understand the intricacies of the assumptions and the impact of their interaction on a Fund's disclosed liquidity profile or the complexity of the adjustments underlying the reported percentages merely on the basis of the instructions accompanying proposed Item B.12.[108]

When promulgating amendments to Form N-PORT in connection with Rule 18f-4, the Commission decided against public availability of technical, complex derivatives related information reported by funds in response to Items B.9. and B.10., finding under Section 45(a) of the Investment Company Act that public disclosure of this information is neither necessary nor appropriate in the public interest or for the protection of investors. In so finding, the Commission concluded that public availability of the relevant information could confuse or mislead investors who may not understand the relevance of or context for the data or may not have the expertise, experience or background to understand and interpret it (especially when comparing funds).[109] We believe that public availability of the information reported by Funds under proposed Item B.12. raises identical concerns in the context of liquidity classifications and that the Commission can appropriately determine, should it desire aggregate liquidity classification reporting on Form N-PORT, that public disclosure neither serves the public interest nor protects investors.

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Invesco appreciates the opportunity to comment on this proposed rulemaking by the Commission, as well as the Commission's consideration of our comments shared in this letter. We

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107 See Proposing Release at 77230.

108 The instructions to proposed Item B.12.b. exacerbate the complexity of the reported classification information and its inappropriateness for public consumption by permitting Funds to round up the amount reported in the moderately liquid investment category so that the sum of the percentages across the categories equals 100% ("To the extent these adjustments result in the sum of the Fund's investments in each category not equaling 100% of the Fund's total investments that are assets, the Fund may adjust the percentage of investments attributed to the moderately liquid investment category so that the sum of the Fund's investments in each category equals 100% of the Fund's total investments that are assets.").

109 See Rule 18f-4 Adopting Release at 83220 - 83223.

are available to discuss our comments or provide any additional information or assistance that the Commission might find useful.

Sincerely,

Invesco Ltd.

Melanie Ringold

Melanie Ringold
Head of Legal, Americas
[redacted]

Scott Baskind

Scott Baskind
Head of Global Private Credit and Chief Investment Officer
[redacted]