GLOBAL X
by Mirae Asset

February 14, 2023

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

Via email to rule-comments@sec.gov

RE: Proposal Regarding Swing Pricing (File No. S7-26-22)

Dear Ms. Countryman:

Global X Management Company LLC ("Global X") appreciates the opportunity to comment on the proposal by the U.S. Securities and Exchange Commission (the "Commission") to amend Rule 22e-4 (the "Liquidity Rule Proposal") under the Investment Company Act of 1940, as amended (the "1940 Act").[1] In particular, we are writing to express our views with respect to the Commission's proposal to amend Rule 22e-4 to replace the term "convertible to cash" with the term "convertible to U.S. dollars." We understand the Commission's desires to promote the ability of funds to meet redemptions without diluting the interests of the remaining shareholders and to increase consistency in how funds classify the liquidity of investments, including in foreign investments and foreign currencies. However, we believe that the current proposal, if left unmodified, could have significant unintended negative consequences for funds and their shareholders, and we welcome the opportunity to provide our views with respect to such proposal.

Global X serves as the investment adviser to 100 exchange-traded funds subject to the regulations of Rule 22e-4 (the "Global X ETFs"). Global X ETFs invest in developed, emerging and frontier market securities, with investments in 67 securities markets across the globe. The monetary authorities in certain of these markets (predominantly frontier markets) may at times impose exchange controls that can cause a fund to experience delays in the ability to repatriate currencies (i.e. convert local currency to U.S. dollars), notwithstanding the ongoing ability to fully utilize such currency within the applicable local market, including in connection with the purchase of local market securities. Particularly in the case of funds focused on exposure to a single emerging or frontier market, exposure to securities denominated in currencies experiencing convertibility issues may exceed 15% of a fund's portfolio, as these securities can represent the bulk of the fund's investments consistent with the fund's investment objective and principal investment strategy.

Global X believes that the current proposal, if left unmodified, could unnecessarily restrict the ability of funds to enter into regular transactions within a market experiencing repatriation issues for so long as such currency were to experience convertibility issues. Under the proposed rule, any security or asset that could not be converted to U.S. dollars within seven calendar days or less would be deemed to be illiquid, and any "fund or In-Kind ETF"[2] that held more than 15% of its net assets in such a security or asset would not be able to acquire an additional illiquid asset. Specifically, our understanding is that, if the current proposal were adopted, then any holding of the currency that could not be repatriated within seven days

[1] *See* Investment Company Names, SEC Release No. IC-34593 (May 25, 2022), available at https://www.sec.gov/rules/proposed/2022/ic-34593.pdf (the "Release").
[2] An "In-Kind ETF" is defined in Rule 22e-4(a)(9) as "an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a de minimis amount of cash and that publishes its portfolio holdings daily."

or less, as well as any holding of a security denominated in such currency, would each be deemed to be an illiquid position.

If a fund were to have substantial holdings in foreign securities (i.e., more than 15% of its net assets) denominated in a specific foreign currency, and such currency became illiquid due to capital controls, the fund would be effectively barred from managing its portfolio in the best interests of shareholders. First, the fund would be prohibited from selling any securities denominated in the local currency. Although it could readily sell the "illiquid" securities on the local market, such a sale would necessitate receipt of the local currency. However, if the currency was itself deemed illiquid, the fund would be prohibited from receiving the local currency because that currency would be considered "an illiquid investment." As a result, the fund would be effectively prohibited from selling securities that were denominated in the local currency. Second, the fund would also be prohibited from buying securities denominated in the local currency. Because those purchased investments would be denominated in the underlying foreign currency, they too would not be able to be converted to U.S. dollars within seven calendar days or less due to the exchange restrictions on the underlying currency. Consequently, a fund would be prohibited from using free cash (in the form of the local currency) to purchase additional securities, even if those securities were highly liquid on the existing market. As a result, the Commission's proposed approach, if left intact and without tailored exclusions, would require any fund with more than 15% of its assets denominated in a foreign currency subject to capital controls to "freeze" all of its investments denominated in such foreign currency as of the date such capital controls were deemed to render the currency and related securities investments illiquid. Among other negative consequences, this outcome would expressly prohibit a fund from its only avenue for increasing exposure to liquid assets, namely by selling securities and attempting to repatriate the underlying currency in a period of longer than seven calendar days, since the sale itself of such securities would be prohibited insofar as it resulted, even on an interim basis, in the acquisition of the underlying currency that has been deemed to be an illiquid investment.

This risk would be particularly amplified in the case of funds focused on a single frontier market, as the prohibition on the acquisition of additional illiquid investments could render the fund wholly unable to transact. This could unnecessarily limit such fund's normal ability to execute otherwise liquid local market trades for the benefit of shareholders, including normal reinvestment of local market dividends and/or periodic repositioning that may be required to ensure appropriate diversification and allow a fund to continue to qualify and be taxed as a regulated investment company pursuant to 26 USC § 851 of the Internal Revenue Code of 1986, as amended. Rather than protecting investors, such an approach would unnecessarily constrain options that may become available to investment advisers seeking to manage the fund for the benefit of investors. Such limitation could particularly impact investors interested in accessing exposure to a single frontier market, who may otherwise be in a position to evaluate specific country risks associated with the idiosyncrasies of local currency regimes associated with such a market as part of their normal investment process.

Global X therefore believes that, in circumstances where capital controls could limit repatriation of a currency beyond seven calendar days, thereby implicating the convertibility of an otherwise liquid local market security into U.S. dollars, a superior policy outcome for fund shareholders would be to exclude from the prohibition on purchasing illiquid investments any transaction that solely involved the local currency and securities denominated in that currency. In doing so, the rule would view such currency and all securities denominated in such currency on a consolidated basis when evaluating whether a transaction results in an acquisition of additional illiquid assets. Such an approach would allow a fund with such exposure to an illiquid currency to be managed in a manner consistent with investor expectations, while at the same time limiting such fund's ability to increase exposure to the purported illiquid asset: namely, the underlying currency that is subject to capital controls. Global X thus believes that the Commission's proposal should be modified to clarify that, in cases where more than 15% of fund holdings may be deemed illiquid as a result of currency convertibility issues, Rule 22e-4's prohibition on the acquisition of additional illiquid assets shall not be deemed to prohibit transactions made entirely within such currency. We believe that this result would be particularly appropriate for In-Kind ETFs that have the opportunity to redeem foreign currency in-kind to redeeming authorized participants, who are better positioned to transact in foreign currencies than retail investors.

We appreciate that the Commission's desire to promote the ability of funds to meet redemptions without diluting the interests of the remaining shareholders, and we believe that the proposed modification of the Commission's proposal may enable funds managed for the benefit of shareholders to avoid negative unintended consequences of the proposal as currently framed. We appreciate the opportunity to share these views with the commission, and we would be happy to discuss our concerns further with members of the Commission or the Commission's staff. Thank you in advance for your consideration of such feedback.

Sincerely,

John Belanger
Chief Operating Officer
Global X Management Company LLC