PGIM Investments LLC
655 Broad Street, 6th Floor
Newark, NJ 07102
Tel 973-367-7659
Fax 973-367-8065

February 14, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Ms. Countryman:

PGIM Investments LLC ("PGIM Investments") submits this letter in response to the request of the Securities and Exchange Commission (the "Commission" or "SEC") in Release IC-34746 (November 2, 2022) (the "Proposing Release") for comments on proposed amendments to Rule 22e-4, Rule 22c-1, and certain reporting and disclosure forms under the Investment Company Act of 1940 (the "Investment Company Act" or the "1940 Act") (collectively, the "Proposed Rule").

PGIM Investments and its predecessors have served as a manager or administrator to investment companies since 1987. As of December 31, 2022, PGIM Investments, a wholly-owned subsidiary of Prudential Financial, Inc., served as the investment manager to all of the PGIM Investments U.S. and offshore mutual funds, closed-end funds and exchange-traded funds, with aggregate assets of approximately $283.5 billion.

PGIM Investments appreciates the Commission's goals of preparing open-end management investment companies ("open-end funds") for stressed conditions and to mitigate dilution of shareholders' interests. Further, PGIM Investments recognizes the benefits of open-end funds remaining resilient in periods of market stress. We acknowledge that, without effective liquidity risk management, a fund may not be able to make timely payment on shareholder redemptions and significant sales of portfolio investments to satisfy redemptions may result in the dilution of outstanding fund shares. The current liquidity framework, however, presents effective liquidity risk management.

The Proposed Rule raises serious concerns for our investors.

As it pertains to the proposed swing pricing and hard close requirements, PGIM Investments strongly opposes mandatory swing pricing and the proposed requirement for a hard close. These changes would fundamentally alter the processing of fund orders and disadvantage mutual fund investors – particularly

retail investors – who purchase and redeem fund shares through intermediaries and retirement savings plans. The proposed swing pricing hard close requirement would result in irreparable harm to mutual fund investors. The proposed means of reducing dilution—mandating swing pricing for all mutual funds—would be severe and costly for shareholders and for mutual funds and would produce benefits that would be minor at best. PGIM Investments respectfully requests that the Commission take considerable time to analyze the extensive impact of the Proposed Rule and potential unintended consequences. As it pertains to the proposed liquidity changes, open-end funds have had in place sound liquidity management practices for decades, and the practices were comprehensively examined and strengthened in 2016. Mutual funds have served investors well for over 80 years. Mutual funds have managed liquidity and met redemptions successfully while pursuing their investment objectives and strategies, including in stressed conditions such as March 2020. The expected costs and adverse impacts of the Proposed Rule would be significant, varied, and far-reaching for investors. Adopting the Proposed Rule is expected to result in fund investors losing much of what they value in their funds today. In addition, the Proposed Rule threatens to unfavorably impact open-end fund portfolio management by applying "one-size-fits-all" requirements that will benefit other vehicle types that are not included in the Proposed Rule. In PGIM Investment's experience, flexibility is necessary to respond to fund-specific circumstances in changing liquidity conditions, particularly during periods of market stress.

As a member of the Investment Company Institute (the "ICI") and the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG"), PGIM Investments participated in the preparation of the letters submitted by those trade organizations. PGIM Investments echoes the concerns expressed in both of those letters and would like to emphasize our concurrence with the following views that were expressed therein.

A. <u>Hard Close Requirement Should Not be Adopted</u>

As the Commission is aware, the U.S. pricing model is governed by Rule 22c-1. Under Rule 22c-1, investors' orders to buy or redeem mutual fund shares must be placed before the fund's NAV is determined each day. The cut-off time, *i.e.*, the time when the NAV is determined, is generally set at 4:00 p.m. ET ("the "Market Close"), the close of a regular trading session of the New York Stock Exchange. This time was chosen given the belief that the value of a fund's portfolio would not change much between the time of the orders to buy and redeem are submitted and the Market Close.[1] With certain exceptions, orders received after the Market Close are executed at the price determined at the Market Close the following business day.

The U.S. pricing system has developed uniquely to accommodate the increasing investor need to utilize intermediaries, particularly retail investors, who often seek advice from an intermediary in purchasing and redeeming fund shares in support of a more personalized investment strategy. While there were no 401(k) plans or variable products during the creation of the existing U.S. pricing system, investment channels were created later in order to accommodate these newer types of investments. Intermediaries faced challenges in accommodating these newer channels. Most intermediaries today use "omnibus accounts" to transact in fund shares. When intermediaries receive investors' orders, they have to collate the orders into one group for "buy" and another for "redeem" and then send the information to the mutual fund at

[1] 15 U.S.C. § 80a-22(c); 17 C.F.R. § 270.22c-1; Frankel & Cunningham, *supra* note 11, at 240.

the aggregate omnibus account level. Given the volume of orders, this process can be extremely time-consuming. To ensure timely and cost-effective processing, intermediaries often needed to outsource work to organizations that collect and collate investors' orders. In light of these challenges, the Commission permitted intermediaries to forward orders to mutual funds after the Market Close, honoring the time the order was placed with the intermediary.[2] Therefore, orders placed with intermediaries would receive that day's price which aligned with the price the shareholders expected to transact as long as the order is placed with the intermediary by the Market Close cut-off.

Since that time, it has been the expectation of U.S. investors that orders placed before the Market Close (whether directly to the fund or through an intermediary) will receive that day's price. Proposed amendments to Rule 22c-1 would require a "hard close" for mutual fund orders. This would provide that a direction to purchase or redeem a fund's shares is eligible to receive the current day's price solely if the fund, its designated transfer agent, or a registered securities clearing agency (collectively, "designated parties") receives an eligible order before the pricing time as of which the fund calculates its NAV. These amendments are designed to support the proposed swing pricing amendments by facilitating the timelier receipt of fund order flow information and help prevent late trading of fund shares.

PGIM Investments strongly opposes the implementation of a hard close requirement to facilitate swing pricing. A hard close is contrary with the current mutual fund structure and would disrupt the utilization of mutual funds by investors. Implementing a hard close also would require significant systems rebuilds across the industry, affecting the entire fund ecosystem. Further, the cost, resources, and effort to build these systems would be enormous. If the Proposed Rule is adopted, investors will primarily bear the burden of these significant expenses. Neither experience with our funds nor the Proposed Rule's economic analysis establishes that such costly measures are warranted. The Proposed Rule understates the impact of a hard close and quantifying these impacts in real dollars for the retail investors who, as noted above, ultimately will bear these costs which are expected to outweigh the dilution that the Commission referred to in the proposal.

The hard close would negatively affect mutual fund investors in several additional respects to increase expenses. We expect the Proposed Rule would result in diminished shareholder choice and many retail investors moving to less regulated vehicles. Investors also would not be able to execute fund trades as they do today throughout normal market hours, and some may face cut-offs as early as 10:00 am ET which may result in some shareholders receiving Trade Date + 1 NAV pricing. These delays would create a new source of involuntary investment risk for investors, as they would be unable to promptly transact and receive same-day pricing.

Additionally, the proposed hard close will create an environment where shareholders are not treated equally, simply because of the way they purchase fund shares. Direct investors would continue to have the ability to trade up until 4:00 p.m. ET and not be subject to unwanted market risk. While indirect investors would be cut off from trading much earlier in the day or will have to obtain the exposure they are seeking on a day lag. This would create an uneven playing field among mutual fund shareholders themselves and between mutual funds and other financial products in which investors can efficiently trade

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[2] *See* Staff Interpretive Position Relating to Rule 22c-1, Investment Company Act Release No. 5569 (Dec. 27, 1968) (Rule 22c-1 "contemplates that the time of receipt of the order by the retail dealer is controlling" for purposes of determining the price obtained by the dealer).

during normal market hours. In fact, it is highly likely that the hard close would lead to multiple cut-off times within the 10 a.m. and 2 p.m. ET timeframe based on the product type or intermediary. Further, this will result in unequal treatment of investors depending on where the fund is held by an investor.

Currently, the majority of mutual fund investors hold mutual fund shares indirectly through intermediaries, as those intermediaries offer additional customer services or support, and through retirement plans. Some of these intermediaries allow investors to hold mutual fund shares in multiple fund families and to make exchanges across fund families on a same-day basis through batch and net trades. It would be a great disservice to investors if they were forced to choose between using an intermediary to receive these benefits or investing directly to have until 4 p.m. to submit their orders, particularly when there may be other alternatives to address potential dilution.

Investors who purchase and sell fund shares through intermediaries or through retirement accounts also would be at an informational disadvantage if the Proposed Rule is adopted. Intermediaries would have to set different cut-off times depending on the client channel. For example, certain intermediaries might be able to manage trades for institutional clients up until a time very close to the Market Close, while a retirement investor might have to submit instructions to their its retirement plan intermediary much earlier. An earlier cutoff for investors that transact through intermediaries is problematic because these investors would not be able to benefit from late-breaking market information that direct investors would have before transacting up to the Market Close. This would create a "last-mover advantage." That is, investors who can buy directly from the funds and can wait to place their orders until immediately before the Market Close to benefit of whatever information becomes available after intermediary investors have had to place their orders for the day. The Proposed Rule purportedly seeks to address and mitigate the effects of a "first-mover advantage." However, in doing so, the Commission may be trading one timing advantage for another.

In addition, orders of investors who purchase and sell fund shares through intermediaries or through retirement accounts could be subject to market movements from a delay in execution of their orders. If adopted, the Proposed Rule would be taking away from the very investors it seeks to protect, control over their own investment timing. Particularly for shareholders seeking safety in a time of market volatility, being locked out of the market for another day limits the freedom and agency of shareholders to control their own destiny.

B. The Commission's Swing Pricing Amendments Should Not be Adopted as Proposed

In 2016, the Commission amended Rule 22c-1, to permit, but not require, certain open-end funds to implement swing pricing as a liquidity risk management tool.[3] In the time since the adoption of amended Rule 22c-1, no U.S. funds have implemented swing pricing.[4]

The Proposed Rule would require an open-end fund, other than an exempt fund, to establish and implement swing pricing policies and procedures that adjust the fund's current net asset value ("NAV")

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[3] Investment Company Liquidity Risk Management Programs, Securities Act Release No. 10,233, Investment Company Act Release No. 32,315, 81 Fed. Reg. 82,142 (Nov. 18, 2016) (the "2016 Adopting Release").
[4] Rule 22c-1 defines "swing pricing" as "the process of adjusting a fund's current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity…".

per share by a "swing factor" if the fund has either (i) net redemptions (no threshold) or (ii) net purchases that exceed 2% of the fund's net assets. The Proposed Rule states that by imposing the costs associated with net purchases or net redemptions on the shareholders who are purchasing or redeeming from the fund at that time, "swing pricing can more fairly allocate costs, reduce the potential for dilution of investors who are not currently transacting in the fund's shares, and reduce any potential first-mover advantages."[5]

The Commission believes that swing pricing: (i) would protect non-transacting mutual fund investors because it would require transacting fund shareholders to bear the estimated trading costs that arise due to their trading activity, and (ii) may mitigate the risk of runs on mutual funds and may decrease the risk of fire-sales for the funds' underlying investments. The Proposed Rule states that the hard close would facilitate swing pricing; help prevent late trading of fund shares; modernize and improve order processing and reduce operational risks; and allow funds to make portfolio and risk management decisions based on more complete and accurate flow information. The Commission did not appropriately quantify current levels of dilution, including how dilution varies across the universe of mutual funds, or the reductions that swing pricing would bring.

1. ***<u>Concerns regarding the Feasibility of Swing Pricing on Intermediaries</u>***

The Proposed Rule relies heavily on the European model to support a universal swing price system. PGIM, Inc, an affiliate of PGIM Investments, serves as investment manager to 30 Undertakings of Collective Investment in Transferable Securities funds (UCITS), which are regulated at the European Union level. As such, PGIM Investments understands and appreciates the nuances around the European and U.S. markets and the differences surrounding swing pricing. In light of such experience, PGIM Investments maintains that reliance on the European system is misplaced and that swing pricing continues to be operationally unworkable across U.S. mutual funds generally. Radical change to how open-end funds are purchased and sold on the premise that swing pricing has been used successfully in Europe as an anti-dilution tool underestimates the critical structural differences between the European and U.S. fund markets.

Unlike in the U.S., swing pricing is achievable operationally in Europe because the system is not structured around the Market Close principle. Instead, trade flows based on estimated prices and actual trades occurring on T are generally available on a timely basis on T, providing the information that is widely understood in Europe to be neither complete nor 100% accurate, but sufficient to make a determination as to whether and by how much to swing the price of a fund. Without similar trade flow information at end-of-day on T, U.S. funds could not comply with the rigorous standards required by the Proposed Rule. U.S. fund managers lack the requisite data to determine whether the price of a fund should be swung based on net redemptions or subscriptions that exceed prescribed thresholds. The hard close, which is offered as a remedy to this problem, invites its own set of operational complications and harms to the retail investor, as discussed above, and cannot be the means to operationalize swing pricing for the U.S. mutual fund industry.

[5] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. at 77,199.

Significantly, the U.S. and European markets have different investor bases. Although the U.S. mutual fund market is comprised primarily of retail investors, Europe's investor base is primarily institutional. Europe also does not have the complex retirement community network of 401(k) investors that rely on intermediaries to offer customer service, support, and financial advice. In Europe, full swing pricing is more likely to be used by funds with institutional investors whose transactions are larger in size and more likely to incur transaction costs, while partial swing pricing is more likely to be used by funds with many, smaller retail investors where only larger, aggregate flows are likely to incur transaction costs. The Proposed Rule would mandate full swing pricing for a market that consists of primarily retail investors, which is a significant difference from the European model.

Finally, operational issues also distinguish the U.S. from Europe. Certain third-party distribution platforms in the U.S. (*e.g.*, retirement plan record-keepers, insurance companies, and trust companies) require the receipt of actual fund prices before making trade allocations across accounts. The majority of fund trades flow through the National Securities Clearing Corporation or Defined Contribution Clearance & Settlement, which introduces an additional layer of feeds and flow processing, delaying the receipt of final flow data by fund managers.

Given the significant distinctions in market structure, order processing, and investor base, the European model should not be used to support the application of swing pricing in the U.S. With that said, the Proposed Rule would actually remove flexibility, a critical feature of the European model. For example, European fund managers review and adjust swing factor models at intervals they deem appropriate, such as quarterly or monthly, based on fund-specific circumstances. However, the Proposed Rule would require funds to design a process to calculate transaction costs with accuracy, as well as mandate the factors that would need to be considered in those calculations.

If the Commission adopts *mandatory* swing pricing, the U.S. would be the only major jurisdiction in the world to do so. When a European fund adopts swing pricing, presumably it first undertakes its own cost/benefit analysis and determines that it would benefit investors. U.S. funds would be afforded no such ability to undertake their own cost/benefit analysis.

2. ***Fund Flows to Less Regulated Products***

In its Proposed Rule, the Commission notes that it cannot "predict the number of investors that would choose to keep their investments in the mutual fund sector nor the number of investors that would exit mutual funds and instead invest in other fund structures such as . . . CITs."[6] The Proposed Rule is expected to result in investors moving to less regulated products.

3. ***Effect on Fund of Funds***

Funds of Funds are useful asset allocation vehicles, which provide increased diversification with the agility to move quickly into or out of various asset classes, industry sectors and specific markets. As December 31, 2022, PGIM Investments held 38 funds of funds holding $36.6 billion in assets under management. The proposed swing pricing requirement would create issues for funds of funds in making

[6] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. 77172, 77256 (Dec. 16, 2022).

allocation decisions, greatly impact their efficiency and expose them to unnecessary market risk.

Each day, many funds of funds communicate with their underlying funds before 4:00 p.m. the percentage of their net redemptions or subscriptions that will result in redemptions or subscriptions from each such underlying fund. The hard close requirement would force a fund of funds to communicate to its underlying funds the specific amount of its subscriptions or redemptions before the fund of funds knows its own net subscriptions or redemptions, forcing the fund of funds to wait until the following day to adjust its holdings of underlying funds in light of its own net redemptions or subscriptions.

Further, the proposed swing requirement may impact any fund that invests as part of its investment strategy in other funds, including in reliance on Rule 12d1-4 under the 1940 Act. As is the case with fund of fund allocations, funds with investments in other funds would have to wait until the following day to acquire the information on the underlying fund's NAV. This means that such funds would likely be required to operate under a next day pricing model.

4. ***High Financial Cost of Implementation of Swing Pricing***

At a high level, the Proposed Rule identifies costs of the hard close requirement. The Proposed Rule acknowledges that a "mandatory swing pricing requirement would impose costs on mutual funds, investors, their intermediaries, and other market participants including initial and ongoing operational costs associated with developing and administering swing pricing policies and procedures, changing their systems to accommodate swing pricing, updating fund prospectuses, as well as any costs associated with educating investors about swing pricing procedures." The Proposed Rule identifies, as additional potential costs, potential increases in fund fees (if outflows are substantial and economies of scale are reduced); a reduced set of investment choices available to investors; and delays in the publication and dissemination in fund NAVs.

The proposed hard close and swing pricing amendments would require significant systems enhancements and rebuilds across multiple areas of the mutual fund industry, including for intermediaries, retirement plan recordkeepers, fund administrators, custodians, transfer agents, and even the industry utility, DTCC. The cost, resources, and effort to ensure systems are updated timely and accurately without impacting other areas of the industry simply would be enormous.

In addition, the Proposed Rule will create investor confusion and lack of understanding as it relates to a hard close and swing pricing. Investors may not understand why their fund trading privileges vary by intermediary. Swing pricing is not transparent or easily understandable for retail investors.

5. ***Assessment of the Proposed Swing Pricing and Disclosure Amendments***

Currently, a fund must disclose on Form N-CEN whether it engages in swing pricing during a given year and the upper limit of the swing factor. The Proposed Rule would remove that requirement and replace it with additional information about swing pricing on Form N-PORT, disclosing the number of times the fund applied a swing factor during the period and the amount of each swing factor.

As stated above, PGIM Investments strongly opposes mandatory swing pricing for all mutual funds, and any swing pricing-related disclosure on Form N-PORT should be non-public because it is neither

necessary nor appropriate in the public interest or for the protection of investors. Public disclosure of the swing factor and the number of times it is applied could result in unfair trading and gaming practices and is neither necessary nor appropriate in the public interest or for the protection of investors.

C. Liquidity Risk Management Program Requirements

Long-term mutual funds and open-end ETFs offer redeemable shares, which entitles a shareholder to a proportionate share of the fund's net assets upon returning its shares to the fund. A fund must pay proceeds to the shareholder within 7 days of the redemption request.[7] On October 13, 2016, the Commission adopted Rule 22e-4 under the 1940 Act (the "Liquidity Rule").[8] The Liquidity Rule requires open-end funds (including ETFs but not MMFs) to establish written liquidity risk management programs reasonably designed to assess and manage a fund's liquidity risk.[9] Our funds maintain and continue to maintain liquidity risk management programs of their own design before and after the Liquidity Rule was adopted. Further, the Liquidity Rule requires a fund to classify each of its investments into one of four liquidity buckets using a "days to cash/days to sale" framework (depending on the bucket), generally on a monthly basis. The size and "value impact" assumptions that funds use are key bucketing inputs. With respect to size, the Liquidity Rule requires a fund to classify investments based on "sizes that the fund would reasonably anticipate trading". The Liquidity Rule does not prescribe a precise method for determining value impact (i.e., what constitutes a "significant change in market value" of an investment for purposes of bucketing), leaving funds with discretion in this area.

The Commission now proposes multiple changes to liquidity risk management by significantly amending the Liquidity Rule. The Proposed Rule's far-reaching changes would provide additional standards for making liquidity determinations, amend every liquidity category, and require more frequent liquidity classifications. The Proposed Rule would require funds to maintain a higher proportion of highly liquid holdings and deem more assets to be illiquid and therefore limited to no more than 15% of a fund's net assets. Among other things, the Proposed Rule requires funds to assume a "stressed trade size" when making liquidity classifications, eliminates the less liquid investment category, mandates what is a significant change in market value, changes the framework for counting classification days, and introduces a U.S. GAAP concept into a liquidity regime. In addition, the Proposed Rule would require an open-end fund that is subject to classification requirements under the Liquidity Rule to provide information regarding the aggregate percentage of its portfolio represented in each of the three proposed liquidity classification categories, which would be publicly available, with such percentages adjusted to give effect to other aspects of the Proposed Rule.

PGIM Investments recognizes the benefits of open-end funds remaining resilient in times of market stress and actively managing their liquidity risk. However, effective liquidity risk management programs

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[7] Section 22(e) of the Investment Company Act of 1940 ("Investment Company Act").

[8] Investment Company Liquidity Risk Management Programs, Securities Act Release No. 10,233, Investment Act Release No. 32,315, 81 Fed. Reg. 82,142 (Nov. 18, 2016) (the "2016 Adopting Release").

[9] A fund's liquidity risk management program must include written policies and procedures reasonably designed to incorporate the following elements: (i) assessing, managing and periodically reviewing a fund's liquidity risk; (ii) classifying the liquidity of a fund's investments into one of four liquidity categories at least monthly; (iii) for funds that do not primarily hold assets that are highly liquid investments, determining a highly liquid investment minimum ("HLIM") and responding to shortfalls if the fund's level of highly liquid investments fall below that minimum; (iv) limiting a fund's investments in illiquid investments that are assets to no more than 15% of the fund's net assets; and (v) adopting policies and procedures for in-kind redemptions, if the fund engages in, or reserves the right to engage in, in-kind redemptions.

operate best as flexible, principles-based frameworks that recognize an array of funds and their specific investments. The current Liquidity Rule's sound requirements include its (i) written program requirement; (ii) principles-based framework for assessing, managing, and reviewing liquidity risk; and (iii) board oversight provisions. These requirements of the Liquidity Rule have sufficiently enhanced liquidity risk management practices, and strengthened funds' liquidity practices, including in the face of an unprecedented global events such as those experienced in March 2020. Based on our experience, the proposed changes are necessary.

The Proposed Rule identifies as potential benefits increased resiliency (for funds and markets generally) and reduced dilution. But the Proposed Rule's economic analysis never quantifies these benefits, or otherwise provides substantive reason to believe they would be meaningful.

Transaction costs are part of investing generally, whether in an individual account or a pooled investment vehicle such as a fund. Exiting any investment generates transaction costs. In a pooled vehicle, transaction costs are mutualized, as are the shared benefits of greater diversification, economies of scale, professional portfolio management, and more efficient portfolio trading—these are all part of the bargain.

1. ***The Proposed Rule's Discussion of Costs***

The Proposed Rule's does not appropriately assess potential costs associated with implementation of the proposed revised liquidity risk management program, primarily because the Commission's focuses on proposed bucketing changes in isolation. The proposed changes should be assessed collectively—as they would be experienced by funds and other stakeholder so they can best serve the public interest. When they are, a more distressing picture emerges. For instance, the Proposed Rule states that it "would disproportionally affect open-end funds that hold less liquid investments" and then discusses bank loans. And in discussing the proposed 10% size assumption, it states that the change could result in rebalancing of portfolios to comply with the highly liquid investment minimum ("HLIM") and the 15% illiquid investments limit, which in turn could mean holding less risky investments with lower returns.

But these observations only scratch the surface. Based on how they currently invest, certain larger and other funds would be unable to simultaneously comply with (i) the amended bucketing requirements, and (ii) the 15% illiquid limit. The economic analysis fails to identify this as a possibility, much less explore what a fund would be expected to do in such a case, and what additional costs could be generated if funds were forced to fundamentally alter their portfolios and investment strategies, or reorganize, to comply with all requirements. Nor does the economic analysis attempt to grapple with what this might mean for certain markets and their issuers (e.g., small-cap companies and municipalities).

Certain of the changes would increase ongoing compliance costs for all funds (e.g., requiring daily classifications), prevent larger funds and funds with certain other characteristics (e.g., a greater degree of concentration) from fully pursuing their investment strategies, unnecessarily limit the types of strategies that may be offered within mutual funds and ETFs, and affect certain underlying markets and issuers. The economic analysis's treatment of these matters is cursory at best.

2. ***Assessment of the Proposed Bucketing Changes Will Distort Liquidity Risk Profiles***

PGIM Investments opposes the proposed changes to the bucketing requirements. The proposed changes

would alter funds' liquidity risk profiles. Specifically, certain funds would no longer be able to satisfy the Proposed Rule's requirements and would need to restructure, despite operating without experiencing liquidity concerns that could not be addressed with the framework of the liquidity rule.

In addition, the proposed changes to bucketing requirements will likely require applying uniform standards across the large and diverse fund universe. This will result in discrepancies and poor analysis of the bucketing process. In addition, such bucketing process may limit shareholder choice and diversification of investments. Certain asset classes that retail investors may want to access may no longer be available or would need to be accessed in less regulated vehicles. This is not in the best interest of shareholders.

3. ***Proposed Change to the Size that a Fund Would Reasonably Anticipate Trading Leads to Constant Stress Testing***

Under the existing Liquidity Rule, funds must classify investments based on "sizes that the fund would reasonably anticipate trading" ("RATS"). The Proposed Rule instead would require a fund to assume the sale of 10% of each portfolio investment, on the theory that this is more representative of a "stressed" trade size.

PGIM Investments questions the basis for requiring a stressed trade size at all times. The Proposed Rule arrives at this 10% figure via two unclear steps. First, it relies on weekly outflow figures. Basing size on weekly flows would be credible only if the time interval is kept consistent throughout the calculation methodology, which is not part of the Proposed Rule. If the weekly outflow figure best approximates a stressed trading size, then a fund should have five trading days to meet five days of outflows, not one. Or, any volume-based value impact standard must also capture a week of aggregate trading activity, not a day (e.g., for exchange-traded investments, this would mean using a weekly trading volume test).

In fact, funds' daily flow figures are much smaller than the weekly numbers the Proposed Rule references, as the Commission's own data make clear.

Second, the Proposed Rule inflates even its weekly figures to reach 10%. The Commission's analysis of weekly fund flows from 2009 through 2021 shows that outflows greater than 6.6% occurred only 1% of the time. The Proposed Rule arrives at the 10% size assumption by increasing this figure by about 50%, describing this as a "moderately higher" figure. Its rationale for this jump is that "it is difficult to predict future stress events," notwithstanding extensive data set that includes March 2020. This is an unreasonable approach.

PGIM Investments strongly objects to the notion that any single number could be appropriate for all funds. This clarification must remain a fund-specific determination, based on various fund specific breaches, including known investor concentration. For most funds, a fund's daily stressed trade size assumption would be well below 10%. Further, we would submit that there is no precise correlation between outflows and portfolio investment sales.[10]

[10] Funds can meet redemptions through other sources of cash and in-kind redemptions, where appropriate.

4. ***Proposed Change to the Day Counting Requirement is Detrimental as Investments that are Currently Highly Liquid may now be Considered Moderately Liquidity***

Currently, the Liquidity Rule does not specify when to begin counting the number of days for purposes of determining the period in which an investment is reasonably expected to be convertible to U.S. dollars. Under the Proposed Rule, the bucketing provisions of the existing Liquidity Rule would be amended by requiring a fund to "include the day on which the liquidity classification is made in that measurement" (i.e., Trade Date ('T') +2). The Commission states that funds have inconsistent practices regarding when they begin the measurement and that such inconsistency may lead certain funds to overestimate their liquidity classifications. PGIM Investments strongly opposes this proposed change to the Liquidity Rule. Requiring funds to count the day of classification as day one, however, is inconsistent with industry practice including how redemptions are met, where the redemption must be met within seven days of receiving a redemption request. Further, a specified day counting approach is unnecessary as the Liquidity Rule clearly addresses this issue by stating that highly liquid investment be convertible to cash "in three business days" (i.e., T+3).

Under the Proposed Rule, the Commission would be effectively removing a day from the highly liquid category (its threshold would become 2 business days) and the illiquid category (its threshold would become 6 calendar days). As such, this would hinder a fund's ability to comply with the 15% illiquid investment limit and their HLIMs and would not fairly represent fund liquidity. Combined with the other proposed bucketing changes, the impact on funds' aggregate bucketing output would be significant. PGIM Investments urges the Commission to leave the rule text unchanged.

5. ***Proposed Change to the Value Impact Assumption***

The Liquidity Rule's bucketing system requires a fund to consider "value impact," i.e., whether a sale would "significantly change the market value of the investment." However, the Liquidity Rule and related guidance do not define this term, affording funds with discretion to determine appropriate value impact assumptions. The Proposed Rule would specifically define "significantly changing the market value of an investment" to mean, in part, for exchange-listed shares, "any sale or disposition of more than 20% of the average daily trading volume of those shares, as measured over the preceding 20 business days."

We strongly oppose this proposed change for exchange-listed shares. Defining this term would fail to account for the wide range of investments and their differing trading characteristics and may result in inconsistent results. Instead, funds must have the ability to calibrate the appropriate value impact standards, as they do now.

Average daily trading volume ("ADTV") measures may be used by funds, but application of fixed numbers (e.g., 20% and a 20-day period) for all applicable investments in all circumstances is not. Such a rigid requirement would produce false positives and false negatives.

For instance, trading in some markets and countries has a seasonal rhythm. In the U.S., trading on exchanges slows down in August and December. However, liquidity is not impaired in those months. Yet under this requirement, funds' bucketing output would look less liquid at the end of those months and for

some time thereafter. Also, in the case of an extended foreign market holiday, the liquidity of investments would continue to look impaired well after the market had re-opened and trading fully resumed. A relatively short 20-day window would therefore introduce considerable "noise"—false positives—especially in ordinary (low volume) market conditions. In some circumstances, longer windows may be more appropriate to eliminate this noise; in other circumstances, using much *shorter* windows may be more appropriate, particularly in connection with sudden changes in market liquidity.

This ADTV standard also would produce false negatives. Reliance on a "volume only" metric can mask liquidity stress. Following issuance of the proposal, we spoke to one liquidity vendor whose preliminary work suggests that, under this proposed methodology, the liquidity profiles of certain fund types would have looked *best* in March 2020 (due to higher trading volumes that month)—notwithstanding other metrics (e.g., widening bid-ask spreads) indicating an uptick in liquidity stress.

6. ***Proposed Elimination of the "Less Liquid" Bucket; Changes to the "Illiquid Investment" and "Highly Liquid" Definitions is Not Necessary***

If adopted, the Proposed Rule will eliminate the "Less Liquid" bucket and change the definitions of the remaining buckets. PGIM Investments opposes the removal of the "less liquid" bucket. Currently, illiquid investments include only those that cannot be "sold or disposed of" in seven calendar days or less. The "less liquid" category includes longer-settling investments (i.e., those that can be sold within seven calendar days, but not necessarily cash settled within that period), but it also may include other shorter-settling investments for which a fund may need multiple days to sell the requisite size without a significant price impact (e.g., if a fund estimates that it would need 5 trading days to sell the requisite size of a T+2 investment, that investment currently would be "less liquid"). The removal of the less liquid bucket and the expansion of the illiquid bucket would result in longer-settling investments being bucketed as illiquid. The Proposed Rule would impact shareholder choice for no stated reason.

The consequences of these changes extend well beyond bank loans and other longer-settling investments. When these changes are combined with the Commission's proposed day counting change described above, the result would lead to a significant shift of investments into the illiquid bucket, which in turn would increase breaches of the 15% illiquid limit.

Further, PGIM Investments also opposes the proposed change to the "highly liquid investment" definition (i.e., changing the reference from "cash" to "U.S. dollars."). This proposed change would result in many non-dollar denominated international investments no longer qualifying as "highly liquid," notwithstanding funds' ability to easily sell them. Further, this change, combined with the 10% minimum HLIM, could impair or reduce funds' ability to maintain the investment exposures supporting their investment objectives and policies as certain international investments take slightly longer to settle in U.S. dollars.

7. ***Proposed Changes to the Highly Liquid Investment Minimum Requirements***

Currently, a fund must determine a minimum percentage of its net assets to invest in highly liquid investments, based on the factors it uses to assess its liquidity risk. A fund must review its HLIM at least annually. In-Kind ETFs and funds primarily holding highly liquid assets are exempt from this

requirement.

The Proposed Rule would require all open-end funds (except for In-Kind ETFs) to "determine and maintain a highly liquid investment minimum that is equal to or higher than 10% of the fund's net assets." The exclusion for "primarily highly liquid funds" would be removed. The Commission believes that "a regulatory minimum of 10% for the highly liquid investment minimum would benefit investors by improving the ability of funds to meet shareholder redemptions in stressed scenarios."

PGIM Investments is opposed to a minimum 10% HLIM as it can be considered an arbitrary number that in most cases have no reasonable relation to a fund's specific liquidity risk factors, even in stressed conditions. The Commission acknowledges in the Proposed Rule that 10% is higher than the data demonstrates. Therefore, why develop a solution that is based on a flawed assumption and will harm funds. Instead, a fund should continue to set and periodically review its HLIM as it does now (based on an assessment of its specific liquidity risk factors, including flow projections during both normal and reasonably foreseeable stressed conditions). In most cases, an HLIM set primarily by flow history, even in stressed conditions, would result in a number well below 10%.

8. ***Detrimental Impact of the Proposed Rule on Bank Loan Funds***

Assuming settlement time conventions remain unchanged, adoption of the Commission's proposed bucketing changes would be fatal to open-end funds (including ETFs) investing primarily in bank loans. This would be a loss of choice to retail investors. Bank loans can be a useful income-based asset class for investors, particularly in a rising interest rate environment. This asset class also can help investors diversify their portfolios. To date, no fund, including our PGIM funds, investing primarily in bank loans has suspended redemptions.

We acknowledge that this fund type has a different liquidity risk profile because of the settlement conventions of bank loans. Precisely for this reason, these funds utilize risk mitigants such as liquidity buffers, setting appropriate HLIMs, temporary lines of credit for settlement timing differences, and contractual expedited settlement provisions. Lags in settlement times historically have been "bridged" through use of these tools and mitigants.

9. ***Rule 17a-7 Cross Trading should be Adopted within Fixed-Income Securities***

For decades funds had relied on Rule 17a-7 to "cross trade" fixed-income securities with one another to avoid costs that each would otherwise incur if transacting on the open market.[11] This activity was significantly impeded when the Commission's December 2020 cross trading guidance[12] took effect in September 2022.

Cross trading fixed-income securities benefits funds, provided that the trades are consistent with a fund's investment objectives and strategies and accurately priced. Cross trades eliminate dealer costs. We know that cross trading facilitates efficient portfolio management and compliance with investment policies. In

[11] Section 17(a) of the Investment Company Act of 1940 prohibits any affiliated person of a U.S. fund, or any affiliated person of such a person, from selling securities to, or purchasing securities from, the fund.
[12] *Good Faith Determinations of Fair Value*, SEC Release No. IC-34128 (Dec. 3, 2020) ("Fair Value Rule Adopting Release"), at 88-95, available at www.sec.gov/rules/final/2020/ic-34128.pdf.

addition, cross trading is an important complement to transacting through dealers, particularly in times of stress. To the extent that dealers' capacity to intermediate fixed-income transactions has decreased over the years and has not been sufficiently responsive to stressed conditions (e.g., in March 2020).

Unlike the 2015 liquidity proposal or the 2016 adopting release, the Proposed Rule makes no mention of the cross-trading rule, which is a missed opportunity and reflects a rather selective view of resiliency and dilution. We strongly recommend that the Commission amend the cross-trading rule to permit fixed income cross trading, subject to appropriate guardrails.

We understand that affiliated transactions present potential risks and conflicts of interest. But given the tangible, varied, and substantial benefits that cross trading provides, we ask that the Commission consider capturing the benefits of cross trades and attach appropriate conditions to mitigate the potential risks rather than prohibiting a tool that can benefit funds and their shareholders.

D. Form N-PORT Reporting Requirements

The Proposed Rule would require reports on Form N-PORT to be filed within 30 days of month-end, and such reports would be made public 60 days after month-end.[13] Currently, open-end funds, closed-end funds, and ETFs registered as unit investment trusts (excluding MMFs and small business investment companies) are required to file monthly information with the Commission on Form N-PORT within 60 days after the end of each fiscal quarter, and the public only has access to such information for the third month of each quarter. Further, the Proposed Rule would require an open-end fund that is subject to the Liquidity Rule's classification requirements to provide information regarding the aggregate percentage of its portfolio represented in each of the three proposed classification categories, which would be made publicly available, with such percentages adjusted to give effect to other aspects of the Proposed Rule.[14]

The risk of the Proposed Rule's changes to Form N-PORT reporting requirements outweigh any potential benefits. Requiring funds to file Form N-PORT on a monthly instead of quarterly basis may result in a risk of data accuracy and will result in additional costs to the funds, including closed-end funds that are otherwise not directly impacted by the Proposed Rule.

Further, these proposed changes to Form N-PORT would provide for more frequent public disclosure of sensitive fund holdings information. The existing 60-day filing period provides sufficient time that allows funds to properly review and file the critical data information and reduce the opportunities for the misappropriation of sensitive information.

In order to ensure accuracy and reliable information is provided to the Commission and to shareholders, PGIM Investments recommends the Commission leave the 60-day filing period in place. The current quarterly disclosure approach appropriately balances the interest in public transparency against the need to protect sensitive portfolio management positions and strategies.

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[13] The Proposed Rule states that the information reported on Form N-PORT that is currently nonpublic (including liquidity classifications for individual portfolio investments) would remain nonpublic, even in the report for the third month of the quarter that is otherwise publicly available.

[14] The Proposed Rule would also require public disclosure of swing factor adjustments. Swing factor information should not be publicly available.

E. <u>Compliance Date for Proposed Rule</u>

The Proposed Rule outlines the Commission's proposed compliance dates for all aspects of the Proposed Rule. If adopted, the swing pricing and hard close requirements would be effective 24 months after the effective date of such amendments. In addition, if adopted, the Liquidity Rule and reporting changes would be effective 12 months after the effective date.

If adopted as proposed, the implementation of various aspects of the Proposed Rule will require substantial time to properly implement. The proposed amendments would require significant system enhancements across all aspects of the mutual fund industry, including, but not limited to, intermediaries, retirement plan recordkeepers, fund administrators, custodians, and transfer agents. The resources to ensure systems are updated timely and accurately without impacting other areas will be an immense endeavor. To the extent the Commission believes that it is necessary to keep such a timeline and adopts these amendments as proposed, we request that the Commission adopt 24 months to comply with the Liquidity Related Amendments and consider additional time for the implementation of the swing pricing and hard close requirements in light of the magnitude of the implementation of swing pricing on the industry.

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We are grateful for the opportunity to comment on the Proposed Rule and appreciate the Commission's consideration of our comments. If you have any questions or need additional information, please contact the undersigned [redacted] Melissa Gonzalez [redacted] or [redacted]) or Claudia DiGiacomo [redacted] or [redacted]).

Sincerely,

/s/ Stuart S. Parker
Stuart S. Parker
President
PGIM Investments LLC

cc: The Hon. Gary Gensler, Chair, U.S. Securities and Exchange Commission
The Hon. Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
The Hon. Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
The Hon. Mark T. Uyeda, Commissioner, U.S. Securities and Exchange Commission
The Hon. Jaime Lizárraga, Commissioner, U.S. Securities and Exchange Commission
Mr. William A. Birdthistle, Director, Division of Investment Management, U.S. Securities and Exchange Commission