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February 14, 2023

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 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:

This letter is submitted on behalf of Neuberger Berman Group LLC ("Neuberger Berman") with respect to the above-referenced release proposing amendments to the current rules for open-end management investment companies ("open-end funds") regarding liquidity risk management programs and swing pricing (collectively, the "Proposed Rules"). Founded in 1939, Neuberger Berman is a global, independent, employee-owned investment manager. As of February 1, 2023, the firm manages almost $437 billion across a range of strategies – including equity, fixed income, private equity, real estate and hedge funds – on behalf of institutions, financial advisors, and individual investors globally. That management includes 43 open-end funds (U.S. mutual funds and exchange-traded funds ("ETFs")), with approximately $50 billion in assets under management. With more than 700 investment professionals and approximately 2,600 employees in total, Neuberger Berman has built a diverse team of individuals united in their commitment to delivering compelling investment results for our clients over the long term.

Neuberger Berman thanks the Securities and Exchange Commission (the "Commission") for the opportunity to comment on the Proposed Rules. Set forth below is a general summary of the firm's views, followed by specific comments related to the Proposed Rules. We are members of both the Investment Company Institute ("ICI") and SIFMA's Asset Management Group ("SIFMA AMG"). Both ICI and SIFMA AMG have submitted comment letters in response to the Proposed Rules, which we generally support. There are, however, certain aspects to the Proposed Rules that we are compelled to provide our specific comments and perspective. Please note that our silence on various aspects of the Proposed Rule should not be interpreted to mean that we believe those aspects should be adopted as proposed.

Summary of Comments

A little over four years ago, the Commission established what we believe is an appropriate and practical regulatory framework for the management and oversight of fund[1] liquidity by adopting Rule 22e-4 under the Act (the "Liquidity Rule" or "Rule 22e-4"). One of the most important aspects of the Liquidity Rule was to make it appropriately flexible for funds to implement. We have found that it provides a sound and principles-based framework and complements our pre-existing processes for assessing, managing, and reviewing liquidity risk. We note that even prior to the implementation of Rule 22e-4, the mutual fund industry has successfully and effectively managed fund liquidity needs, including during extreme market events such as the financial crisis of 2008-9. Although we appreciate the Commission's revisit of Rule 22e-4 in anticipation of future, unforeseen liquidity challenges, we express strong concern for the unduly rigid and arbitrary requirements that would be applied across the open-end fund universe without accounting for the significant differences among funds that would be required to comply with the Proposed Rules.

We also note that with respect to the swing pricing components of the Proposed Rules, we believe that they were proposed prematurely and require thorough consultation with a broad set of key market participants *(e.g.*, financial intermediaries such as broker-dealers, registered investment advisers, custodians, recordkeepers and plan administrators) in addition to fund complexes before mandated swing pricing could be enacted. Without that consultation, the required cost-benefit analysis and true assessment of the impact on fund investors cannot be achieved. While swing pricing has been successfully implemented on a limited and voluntary basis outside the United Sates, including by Neuberger Berman in its management of our UCITS platform, we believe that limited experience is not sufficient support to impose swing pricing on all mutual funds. Instead, we would encourage the Commission to engage with both the mutual fund industry and financial intermediaries to consider alternative structures, such as redemption fees or liquidity tariffs that could provide a more cost-effective means of combatting shareholder dilution. Although we do agree that the cost of redeeming shareholders is currently borne by those that remain invested in the fund, we believe that the benefits of existing commingled fund structures far outweigh those costs. We encourage the Commission to consider instead whether education and disclosure on the costs and benefits of commingled funds is more appropriate than such an extreme overhaul of the industry's operations, which will introduce new costs and reduce investor choice.

Our specific comments on the liquidity aspects of the Proposed Rules are outlined in the sections below.

I. Assumed Trade Size and Mandated 10% and Highly Liquid Investment Minimum ("HLIM") for Funds

The Proposed Rules would require funds to incorporate stressed conditions into their liquidity classifications by assuming the sale of a predetermined trade size, which the Commission has proposed to be 10% of each portfolio investment, rather than the Liquidity Rule's current approach of assuming the sale of a "reasonably anticipated trade size" ("RATS") in current market conditions.

[1] The use of the term "fund" herein refers to mutual funds (other than money market funds) and exchange-traded funds ("ETFs").

While we do not object to the consideration of stressed markets in determining RATS for bucketing purposes, and note that we believe Rule 22e-4 requires that consideration already, we do not believe mandating a predetermined single number is appropriate for all funds and believe this should continue to be determined by each fund, through its Program Administrator (as defined in Rule 22e-4) and with oversight by the fund's board of directors/trustees. Further, the 10% trade size is purely arbitrary and not based on the actual experiences of any fund or group of funds in managing redemptions, even during stressed markets. We note the Commission acknowledged that fact in the proposing release, stating that the 10% sale size is a "larger-than-typical" position size and may "better emulate the potential effects of stress on the fund's portfolio." The Commission further hypothesizes that "based on an analysis of weekly flows of equity and fixed-income funds over a period of more than ten years, outflows greater than 6.6% occurred 1% of the time in a pooled sample across weeks and funds. Based on this analysis, we estimate that a random fund in a random week has approximately a 0.5% chance of experiencing redemptions in excess of the 10% stressed trade size." Given the implications of requiring funds to consider a stressed trading size, we believe that any mandated amount should be supported by actual analytical data, not an arbitrary hypothetical amount. Our analytical data shows that from September 2015 through December 2022, net outflows for our open-end funds exceeded 10% only 0.06% of the time when evaluating daily historical flows and 0.4% of the time when evaluating weekly historical flows. This is significantly lower than even the 1% figure set forth by the Commission. Regulating an entire industry for events the likelihood of which do not even round to 1% seems like an irrational and confusing approach to managing fund liquidity.

Moreover, a single number for all funds fails to recognize the legitimate differences in funds' portfolios and liquidity profiles. We believe that requiring a fund's classification model to assume the sale of larger-than-typical position sizes to emulate the potential effects of stress on the fund's portfolio can be achieved in the calculation of RATS and through a principles-based approach that factors in the investment strategy, size, historical flows and other relevant considerations that should already be utilized by funds in complying with the requirements of Rule 22e-4. Moreover, mandating a 10% trade size, rather than allowing funds to take into account principles-based factors in determining a RATS would disproportionately harm certain larger funds with diversified investor compositions and in turn remove the benefit to shareholders of the cost-sharing reductions that economies of scale from larger funds can provide.

We believe that should the Commission have concerns that funds are not properly undertaking the required analysis under Rule 22e-4, then that deficiency should be addressed via Commission or staff guidance and the regular examination process, rather than through arbitrary and overly proscriptive rule making. We also note that mandating a 10% trade size could, in certain instances, materially understate liquidity for certain funds leading to investor confusion, especially when combined with the Commission's proposals for more frequent public disclosure about bucketing.

Rule 22e-4 currently requires a fund to determine a HLIM if it does not primarily hold assets that are highly liquid investments. While we support the notion that more funds should adopt a HLIM, the requirement that all funds use a 10% HLIM is arbitrary and unnecessary and is completely contradictory with the Commission's prior findings when it adopted the Liquidity Rule. Currently, funds that are subject to the HLIM requirements must determine a HLIM considering several factors, review the appropriateness of a HLIM at least annually, and adopt policies and

procedures to respond to a shortfall of the HLIM. We believe the current requirements, when implemented and monitored as contemplated by the Liquidity Rule, provide an appropriate means to ensure certain funds are able to meet normal redemptions. Any changes to impose a HLIM more broadly will have the effect of removing the flexibility to determine the appropriate level for the HLIM. We believe a better approach would be to provide guidance on appropriate ranges for an HLIM that take into account instrument and/or market specific factors or imposing a minimum HLIM requirement for certain types of strategies that have characteristics that may present opportunities for challenges to liquidity (*e.g.*, a fund that primarily invests in instruments with settlement times that typically exceed 7 days). We note that we are members of the Loan Syndications and Trading Association ("LSTA") and the LSTA has submitted a comprehensive comment letter which addresses proposed options for HLIMs for funds that primarily invest in bank loans.

The Proposed Rules would also inadvisably require that, when determining the amount of assets a fund has classified as highly liquid that count toward the HLIM, a fund would be required to subtract the value of any highly liquid assets that are posted as margin or collateral in connection with any derivatives transaction that is classified as moderately liquid or illiquid. We believe the Proposed Rules fails to recognize the challenges of implementing that requirement as assets are not often posted as margin with respect to a specific derivative contract and in most instances would not represent amounts material enough to change the outcome.

II. Determining a Significant Change to Market Value.

The Proposed Rules would establish a minimum value impact standard that defines more specifically what constitutes a significant change in market value for purposes of liquidity classifications under Rule 22e-4. The Proposed Rules define "significantly changing the market value of an investment" to mean (1) for shares listed on a national securities exchange or a foreign exchange, any sale or disposition of more than 20% of the security's average daily trading volume as measured over the preceding 20 business days; or (2) for any other investment, any sale or disposition that a fund reasonably expects would result in a decrease in sale price of more than 1%. We are concerned that this overly rigid definition fails to account for differences in instrument-specific trading patterns (e.g., periods with a history of lower trading volumes), and instrument-specific trading characteristics and could lead to inaccurate results. We believe that a price impact assumption of a fixed amount or percentage is unnecessary and that the better approach is to continue to allow funds to define these assumptions by taking into account appropriate fund, asset class or investment-specific considerations.

III. Method for Counting Number of Trading Days.

The Proposed Rules specify when to begin counting the number of days an investment would be convertible to U.S. dollars for purposes of liquidity classifications and would treat the day a liquidity classification is made as "day 1." We believe that would unnecessarily undermine the definitions of liquidity categories set forth in Rule 22e-4 by removing a day from the intended calculations and would not present a fair picture of fund liquidity. That change would result in materially less assets being considered highly liquid (e.g., many international securities with T +3 settlement norms) and would challenge the ability of funds to comply with the 15% illiquid

requirement (e.g., certain holidays could render illiquid an otherwise perfectly liquid investment). We recognize that the shortening of settlement times required by Rule 15c6-1 under the Securities Exchange Act of 1934, as amended, could mitigate some of this impact, but we do not believe that fund liquidity determinations should be dependent on that timing and believe there should not be concerns about normal settlement times that would not present an issue for a mutual fund in raising cash to meet redemptions. We also have significant concerns about the combination of that proposed change with the other proposed bucketing changes, which could lead to inaccurate and confusing representations of fund liquidity.

IV. Elimination of the "Less Liquid" Bucket

The Proposed Rules would harmfully eliminate the less liquid classification category. The less liquid category typically includes instruments that can be sold in seven calendar days or less but not necessarily settle within that period, as well as larger investments that may need to be traded over a number of days to avoid a significant price impact. We believe that Rule 22e-4 properly distinguishes between instruments that cannot be sold within 7 days (the illiquid bucket) and those that may not settle within 7 days (the less liquid bucket). We are concerned that the proposal to eliminate the less liquid classification combined with the changes to the definition of illiquid security, including the required 10% trade size for liquidity classification, and the day counting changes, would result in a meaningful and artificial inflation of the amount of assets in the illiquid bucket for many funds, including bank loan funds, larger funds, and funds that invest in certain foreign markets. We believe that if the Commission focuses on requiring more funds to have HLIMs, the elimination of this bucket is unnecessary especially in light of the tools available to funds to bridge temporary settlement gaps.

V. Amendments to the Definition of Illiquid Security

The Proposed Rules would amend the definition of illiquid investment to include investments for which fair value is measured using an unobservable input that is significant to the overall measurement (i.e., Level 3 investments under U.S. Generally Accepted Accounting Principles (GAAP)). While we observe significant overlap in our Level 3 investments and illiquid bucket, we believe that this change inappropriately conflates leveling and liquidity – leveling is a valuation concept that measures observability of pricing inputs and leveling does not necessarily and without exception translate to a specific liquidity designation. We believe that the Commission could achieve the same result by providing guidance that explicitly requires a Program Administrator (as defined in Rule 22e-4) to conduct a review of the liquidity profile of Level 3 securities in making liquidity classifications. Such an approach would allow funds to make reasonable and proper distinctions between valuation and liquidity.

VI. Bucketing Frequency

We strongly oppose the Proposed Rules requirement that a fund classify all of its portfolio investments each business day instead of at least monthly. We believe that the current Rule 22e-4 framework already requires funds to take into account market and other instrument specific considerations in making, and revising, liquidity determinations. In fact, the Commission staff has provided guidance that "Rule 22e-4 requires an intra-month re-evaluation of an investment's

liquidity classification when a fund becomes aware of changes in relevant market, trading and investment-specific considerations that are *reasonably expected* to *materially affect* an existing classification of that particular investment."[2] For example, when markets close because of both anticipated events (e.g., regional holidays) and unforeseen events (e.g., Russia's invasion of Ukraine), the current framework would require funds to revisit and adjust classifications as necessary. We understand that many fund complexes including our own reclassified liquidity buckets intra-month when the Ukrainian and Russian markets were closed and when there were disruptions to related markets (e.g., London Metal Exchange (LME) for nickel futures). Most investment managers have liquidity risk management frameworks that run parallel to the actual bucketing requirement set forth in Rule 22e-4. As such, we believe that the current liquidity risk management framework, combined with prudent investment oversight, sufficiently captures the need to evaluate liquidity daily, with categorizations only being required monthly.

We are also concerned that a daily classification, without the ability to research and correct vendor mistakes or other inputs to liquidity classifications, could lead to an increase in material errors in a fund's liquidity profile and cause some funds to have to file N-LIQUIDs prematurely and, of significant consequence, harm funds and their investors. The SEC staff has recognized those concerns in its FAQs, stating that:

> *"The staff understands, however, that a fund may potentially exceed a limit if, for example, the fund's policies and procedures require a fund to determine whether to reclassify an investment when a third party service provider's system or a sub-adviser reclassifies one or more of a fund's investments. In other cases, a provisional classification may indicate a liquidity issue, but the fund has not yet verified and made a final determination that such an issue actually exists. In these circumstances, a fund may need a reasonable amount of time to determine and verify for itself the impact and validity of the reclassification on the fund's compliance with its limits. In general, the staff believes that this verification and final determination process should be completed within three business days or less, including the day that the triggering event was observed. In those limited circumstances, the staff believes that a fund's reporting obligation would be triggered not by the event itself, but instead when the fund has determined and verified (within three business days of the event) that the fund has in fact exceeded the 15% illiquid investment limit or fallen below its HLIM (if applicable) (see also Q. 33 for guidance on reporting the time period for the event on Form N-LIQUID in such cases). [Feb. 21, 2018]*[3]*"*

In light of the requirements of the current framework articulated above and the potential for investor confusion and harm that could result from daily liquidity classifications, we urge the Commission to retain the current requirement of monthly bucketing. If the Commission is compelled to change this standard, we urge the Commission to consider bi-weekly bucketing and we believe, based on the reasons articulated above, this is the only other workable construct.

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[2] SEC.gov | Investment Company Liquidity Risk Management Programs Frequently Asked Questions

[3] SEC.gov | Investment Company Liquidity Risk Management Programs Frequently Asked Questions

VII. N-PORT Filing Frequency and Public Disclosure of Bucketing Output

The Proposed Rules would also require Form N-PORT to be filed on a monthly (30 days' after the completion of the relevant month-end), rather than quarterly basis, and to become public 60 days' after the relevant month-end to which they relate. While the Commission notes that many funds choose to make the fund's full holdings public on the fund's website, typically on a 30-day lag, we stress that this is not true for all funds and investment strategies and the potential for abusive trading practices, such as front-running, that was compelling to the Commission in connection with Rule 22e-4 remains. The significant increase in expenses to generate N-PORT Attachment F on a monthly basis also does not seem to be justified in the Proposed Rules. We also note that given the concerns articulated above with respect to the mandated 10% RATS and HLIM and the daily bucketing requirements, we believe the potential for investor confusion is amplified as these requirements would cause funds to significantly understate its actual liquidity for the sake of compliance with arbitrary requirements and also prevent funds from fully vetting errors in the bucketing methodology. The argument that the arbitrary requirements for a 10% RATS and HLIM, among other proposals, would lead to a more standardized basis for comparing funds is also flawed. For example, larger funds would be disproportionately harmed and appear less liquid simply due to their size. Finally, we would note that this aspect of the Proposed Rules would also apply to closed-end funds. Certain closed-end funds may not calculate a net asset value on a monthly basis or, due to the assets they hold, may calculate their NAV on a significant delay. If the Commission does approve this change to N-PORT reporting, we believe that such change should not be required of closed-end funds, which would be quite onerous and potentially cause certain closed-end funds to change their valuation practices.

VIII. Conclusion

We are pleased to have the opportunity to comment on the Proposed Rules. We appreciate the effort of the Commission and its staff to seek to revisit and improve the existing Liquidity Rule. It is in that spirit that we offer our suggestions to help the Commission understand and address some of the consequences that would flow from the Proposed Rules. We are happy to engage with the Commissioners and the Commission staff to discuss any of the issues contained in our comment letter.

Very truly yours,

Joseph V. Amato
President and Chief Investment Officer -- Equities