February 14, 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—Comments on Proposals to Revise Liquidity Risk Management Programs and Mandate Swing Pricing and a Hard Close [(File No. S7-26-22)]**

Dear Ms. Countryman:

Natixis Investment Managers appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the "Commission" or "SEC") on the Commission's proposals to revise the liquidity risk management requirements applicable to open-end funds and to require swing pricing by open-end funds (the "Proposals").[1]

Natixis Investment Managers, together with its affiliates, sponsor the Natixis family of funds, which consists of 54 open-end funds (including ETFs) with approximately $57 billion in total assets as of January 31, 2023, and includes various investment strategies such as equity, fixed income and alternative investments. Our funds are managed by our affiliated management firms, which include AEW Capital Management, L.P., AlphaSimplex Group, LLC, Gateway Investment Advisers, LLC, Harris Associates L.P., Loomis, Sayles & Company L.P., Mirova US LLC, Natixis Advisors, LLC, and Vaughan Nelson Investment Management, L.P.

Although Natixis recognizes the Commission's goals of better preparing funds for possible future stressed conditions and addressing concerns about the potential dilution of shareholder interests, we are very concerned that the negative impacts of the Proposals to funds and their shareholders, and the mutual fund industry generally, will far outweigh any benefits.

For that reason, we generally endorse the objections expressed by the Investment Company Institute (the "ICI"), in the ICI's comment letter on the Proposals dated February 14, 2023. In addition, we would like to submit the following additional comments on the Proposals.

Lack of Data Justifying such Significant Proposals: The Proposing Release states that the proposed amendments to Rule 22c-1 are intended "to reduce the dilution" of shareholders'

[1] *Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting*, 87 Fed. Reg. 77,172 (December 16, 2022) (the "Proposing Release"). Certain of the Proposals do not apply to exchange-traded funds or money market funds.

interests.[2] However, the Commission provides no hard data to substantiate its claim that shareholder dilution is a serious problem which necessitates mandatory swing pricing. In fact, the Commission acknowledges that it cannot quantify many of the anticipated costs and benefits associated with the proposed swing pricing framework.[3]

Similarly, the Proposals includes significant amendments to Rule 22e-4 under the 1940 Act (the "Liquidity Rule") which would make the Liquidity Rule more prescriptive, including (but not limited to) requiring all funds to maintain a 10% highly liquid investment minimum, removing the less liquid investment category and thereby expanding the definition of illiquid investments, and requiring funds to assume a 10% "stressed trade size" when making liquidity classifications. We are concerned with the significant and, as discussed in more detail below, overly prescriptive revisions proposed to a rule that has only fully been in effect for less than four years. The Commission does not provide data indicating that the Liquidity Rule is not already effectively regulating funds' liquidity risks or identify any real shortcomings with the current rule.

Our experience suggests there is not a need for extensive additional regulatory action of the types proposed by the Commission. We sponsor 54 open-end funds and ETFs that span a broad range of asset classes, investment strategies, size and composition of shareholder bases. We have been able to manage the liquidity needs of all of our funds successfully using existing resources and facilities, including under the severely disrupted market conditions of 2008-09 and March 2020. Our existing resources and tools include the ability to redeem in kind, maintaining open communications with financial intermediaries and other investors to help manage large redemptions, committed bank lending facilities, accelerated settlement of portfolio trades in certain circumstances, and prudent portfolio management which takes into account expected cash needs based on a fund's portfolio, shareholder base, market conditions, historical shareholder flow experience and stress testing.

Before so significantly changing the framework under which investors buy and sell mutual fund shares and investment advisers manage fund portfolios, the Commission should undertake a more extensive and rigorous economic analysis of the impact of requiring across-the-board swing pricing and implementing the proposed changes to the Liquidity Rule and whether the benefits outweigh the significant costs and potential harms, including shareholder harm. We suggest that the Commission issue a concept release, solicit industry feedback through industry roundtables and outreach over a reasonable period of time, and draft any resulting rules to target any specific identified and empirically supported shortcomings of the current regulatory regime that are identified through that process.

Justifying Swing Pricing by Reference to the European Model is Unpersuasive: The Commission cites the use of swing pricing in Europe for its support of requiring swing pricing in the United States. We acknowledge that European funds, including funds sponsored by our European affiliates, have implemented swing pricing; however, there are several critical differences between European markets and U.S. markets that we believe would make swing pricing, at least as currently proposed, unworkable in the U.S. In addition to significant differences

[2] *Id.* at 77,184.

[3] *See Id.* at 77,236 ("many of the benefits and costs discussed below are difficult to quantify") and 77,256 ("We are not able to quantify many of the costs associated with the proposed swing pricing framework for several reasons.") The Commission makes a similar statement acknowledging its inability to quantify the costs associated with its proposed changes to funds' liquidity risk management frameworks. *See Id.* at 77,250.

in market structure between the U.S. and European markets, the European swing pricing model is permissive and allows for significant flexibility in deciding whether to adopt and how to implement swing pricing. In Europe, swing pricing is one of several tools that may be used by funds; it is not mandated. In addition, unlike the proposed prescriptive mandatory model proposed by the Commission, the European swing pricing model is flexible; for example, it does not require funds to include market impact in swing factors and European funds can take into consideration fund-specific factors when setting swing thresholds.

Shareholders Investing through Intermediaries Will Be Disadvantaged Relative to Shareholders Investing Directly: Mutual fund shareholders expect that orders placed before 4:00 p.m. (whether directly to the fund or through an intermediary) will receive that day's price.[4] The Commission now seeks to upend this expectation, as a result eliminating the level playing field it had previously established.

Among households owning mutual fund shares in 2021, about 80% purchased and held their shares indirectly through intermediaries such as brokers and advisory accounts or through retirement plans.[5] With respect to our open-end funds, approximately 96% of the assets are held through financial intermediaries or retirement plans. These intermediaries often allow shareholders to hold mutual fund shares in multiple fund families and to make exchanges across fund families on a same-day basis. We believe shareholders will be harmed if they are forced to abandon their financial advisers in order to have until 4:00 p.m. to submit their orders. And we are concerned that retirement plan shareholders will lack even this choice, as they will have no option but to comply with the deadline imposed by their retirement plan administrator.

Specifically, if a hard close were adopted, shareholders holding mutual fund shares through intermediaries would be disadvantaged because the intermediaries would likely have to establish earlier cut-off times for their retail customer trades in order to batch and submit their trades to the mutual fund families by 4:00 p.m. These shareholders would not be able to benefit from late-breaking market information (arising after the intermediary's cut-off time but before 4:00 p.m.). By contrast, shareholders who buy directly from the funds and can wait to place their orders until immediately before 4:00 p.m. will have the benefit of whatever information becomes available after intermediary investors and retirement plan investors have had to place their orders for the day.

We are also concerned that institutional investors will be better able to structure their fund ownership as direct investments (less impacted by the hard close) or to invest through collective investment trusts or separate accounts (not subject to the hard close), potentially leading to disparate treatment between institutional and retail investors. Although we do not expect that this potential disparate treatment was intended by the Proposals, we are concerned it will be a result.

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[4] *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).

[5] Investment Company Institute, *2022 Investment Company Fact Book: A Review of Trends and Activities in the Investment Company Industry* (Washington, DC; Investment Company Institute, 2022). A small percentage of mutual fund investors hold assets directly with fund families, which allows them to place trades directly up to 4:00 p.m. The hard close is not likely to impact their ability to place trades up until the close of the market unless fund families establish earlier cut-offs to aggregate direct retail trades.

Smaller/Retail Investors Could be Disadvantaged by a "Swung Down" NAV: The Proposals will require that a fund's current NAV be adjusted by a swing factor on any day that the fund has net redemptions. When a fund has net redemptions, the NAV will be "swung down" such that redeeming shareholders will receive a price lower than NAV for their shares. For example, if the swing results from a redemption by a large investor, smaller investors who are unfortunate enough to be redeeming the same day (in amounts that do not raise issues of shareholder dilution or the other concerns described in the Proposals) would have their redemption proceeds reduced.

In addition, purchasing shareholders will pay a lower price for shares at the "swung down" price as compared to the current NAV. The Commission has argued that the operation of these swung prices will reduce the potential for dilution of shareholders who are not currently transacting in the fund's shares. The Commission does not acknowledge, however, that allowing purchasers to buy shares of a fund at a price lower than NAV could also disadvantage long-term shareholders by, in effect, creating a discount for only certain purchasers. A similar problem arises in a net subscription scenario: when net purchases exceed 2% of a fund's net assets, the current NAV will be "swung up" (*i.e.,* increased). Because the same swung price is applied on a given day to both purchasing and redeeming shareholders, shareholders that redeem on a day where the NAV is swung up will receive a price higher than current NAV, unfairly favoring those shareholders to the detriment of shareholders who remain in the fund.

The Proposals are Arbitrary and Do Not Take into Account Differences among Funds: Although we disagree with need for the Proposals, if the Commission believes further regulatory action is needed, a principles-based approach, rather than a rigid, prescriptive, one-size-fits-all rule, would be better. A principles-based approach would allow liquidity risk management programs and tools that are tailored to the characteristics of each fund. Funds vary widely in size, investment strategy, portfolio composition, portfolio structure, asset classes, and characteristics of their shareholder bases. A liquidity risk management approach tailored to the characteristics and circumstances of each fund is likely to be both more effective, and more cost-efficient, than the inflexible, uniform approach proposed by the Proposing Release.

Two examples of this arbitrary approach are the global 10% highly liquid investment minimum ("HLIM") and the stressed trade size ("STS") of 10% of each portfolio investment, which would replace the fund-specific reasonably anticipated trade size ("RATS"). Notwithstanding these two 10% standards, the Commission itself finds that outflows of 10% in a given week are rare.[6] While failing to provide an empirical basis for the arbitrary 10% requirements, the Commission acknowledges that shareholders may be harmed by this standard as funds may need to alter the composition of their portfolios in order to comply, which could negatively affect fund performance by forcing funds to hold investments with lower returns.[7]

[6] *See* Proposing Release at 77,187 (stating that "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, and there were 3.4% of weeks where more than 1% of funds experienced net redemptions exceeding the proposed stressed trade size.") (internal citations omitted)

[7] *Id.* at 77,251.

We also note that imposing a 10% HLIM and STS requirement, although facially consistent, ignores the interplay of portfolio management and responsible liquidity management. One of the rationales justifying an HLIM is to require funds to be able to satisfy redemptions without having to dispose of securities which are not as liquid and presumably more costly to sell, thus imposing costs on remaining shareholders. However, the STS presumes that a fund will sell a 10% pro rata slice of its portfolio, notwithstanding the fact that the Proposals would also require it to maintain 10% of its assets in highly liquid assets so that it would not be forced to sell a pro rata slice of its assets to meet redemptions.

In contrast to the Proposals' rigid and inflexible requirements, our funds have tailored their HLIMs and RATS to, among other factors, the portfolio characteristics, shareholder bases, and redemption histories of the specific funds. Our funds' HLIMs and RATS are determined on a fund-by-fund basis based on fund-specific characteristics and in some cases are more "conservative" than what would be required by the Proposals. We believe this is consistent with responsible portfolio management, which balances the need to maintain portfolio liquidity with the potentially lower returns to shareholders that result from doing so, taking into account the characteristics of the particular fund.

Potential Elimination of Certain Types of Funds: The Proposals would remove the Liquidity Rule's "less liquid" investment category and expand the "illiquid" investments category to include investments that are currently classified as less liquid. Currently, 90% of bank loans are reported by funds as less liquid in N-PORT filings; under the Proposals, these would be classified as illiquid.[8] As a result, open-end funds with 15% or more of their assets in bank loans would be required to change their strategy, liquidate, or convert to a closed-end fund structure notwithstanding the expectations of investors, supported by years of experience, that they would be able to invest in the bank loan asset class through an open-end mutual fund.[9] The Commission does not cite to any period in history when open-end bank loan funds had trouble meeting redemption requests and even recognizes that bank loan funds "were able to meet redemption requests during March 2020, a period of significant outflows."[10] We believe that removing open-end bank loan funds, and potentially other types of funds, as an investment option for shareholders is an extreme solution to a *potential* future harm that eliminates shareholder choice, at least for smaller or retail shareholders who are unable to invest in the bank loan asset class through private funds or separate accounts. To the extent that the Commission has concerns with bank loan funds, we believe it should consider more targeted approaches that allow them to remain available to investors while addressing the Commission's specific concerns. We believe that similar considerations would apply to other types of funds that invest in "less liquid" assets, such as certain multisector debt funds, local emerging market debt funds, and high yield funds that allocate a portion of their assets to bank loans.

Moreover, to the extent that capital currently invested in these products is not fully converted to other bank loan products, the Proposals also have the potential to reduce the investment capital

[8] *Id.* at 77,191.
[9] *Id.*
[10] *Id.*

available in the U.S. economy. This would seem inconsistent with one of the Commission's core missions of facilitating capital formation.[11]

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We are grateful for the opportunity to comment on the proposed rules. If you have any questions or would like to discuss anything in this letter further, we welcome the opportunity to engage with you.

Sincerely,

David Giunta
President and Chief Executive Officer
Natixis Investment Managers - US

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

[11] SEC, What We Do *available at* https://www.sec.gov/Article/whatwedo.html.