January 13, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release [File No. S7-16-15]

Dear Mr. Fields:

The Financial Services Roundtable ("FSR")[1] appreciates the opportunity to respond to the rule making proposal in Release No. IC-31835 (Oct. 15, 2015) (the "Proposal") issued by the Securities and Exchange Commission (the "Commission") and agrees with the Commission on the importance of prudent liquidity risk management.

FSR agrees that the Commission should be the primary regulator of the asset management industry given the Commission's historic role and deep institutional expertise in regulating the industry. As we have stated in other contexts, the Commission is the appropriate regulator to develop and implement regulations that address potential systemic risks that may impact the industry.[2]

[1] As *advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

[2] *See, e.g.*, Letter from FSR to Financial Stability Oversight Council dated March 25, 2015 responding to Notice Seeking Comment on Asset Management Products and Activities ("The Council should afford the Commission time to develop and implement the full suite of oversight reforms contemplated for the asset management industry.").

The Proposal addresses two related but distinct issues: (1) funds being potentially unable to meet redemption requests and (2) the potential dilutive impact of shareholder redemptions. FSR believes that the Commission could adequately address these concerns through a principles-based requirement to incorporate liquidity management in a fund's Rule 38a-1 compliance program.

The Commission has previously disclosed that its regulatory agenda includes the development of a stress testing rule for funds,[3] and there are portions of the Proposal relating to the liquidity risk management programs that appear to be more appropriately related to stress-testing. The Commission should explain how it plans to connect these rulemaking initiatives.

I. Executive Summary

A. Liquidity Risk Management Proposal – Proposed Rule 22e-4 under the Investment Company Act of 1940 ("Company Act")

- FSR supports the concept of funds adopting a formalized liquidity management program, subject to the further comments herein.

- FSR agrees that the fund liquidity management programs should include a requirement for funds and their advisers to assess and periodically review their liquidity risk.

- FSR believes that such programs should be "principles based" and tailored to the specific needs of each fund.

- With respect to the three key components of liquidity management programs in the Proposal:

    - FSR agrees that the 15% limitation on illiquid assets as codified in the "15% Standard Asset" definition is beneficial and should be retained.

    - To the extent that the Commission rejects a principles based approach, FSR believes that the liquidity categories used should be less numerous and based on objective criteria that could be applied equally to all funds.

[3] *See, Stress Testing for Large Asset Managers and Large Investment Companies,* Office of Information and Regulatory Affairs Regulatory Agenda, US Securities and Exchange Commission ("The Division is considering recommending that the Commission propose new requirements for stress testing by large asset managers and large investment companies. Such rules would implement section 165(i) of the Dodd Frank Act.") (Fall 2015, available at http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=3235-AL63).

    - FSR would eliminate the three-day liquid asset minimum or incorporate a version of this concept into the upcoming stress testing proposal.

- FSR believes that the Commission should provide further clarity as to the consequences of being labeled an "outlier" with respect to liquidity classifications.

- FSR believes that the application of the liquidity risk management portion of the Proposal to exchange-traded funds ("ETFs") and exchange-traded managed funds ("ETMFs") that primarily satisfy purchase and redemption orders in-kind is unnecessary and potentially misleading.

- Similarly, FSR believes that the Commission should consider different liquidity management requirements for index funds that seek to track the performance of indices that are comprised of highly liquid assets (*e.g.*, S&P 500 funds).

- FSR believes that certain of the responsibilities placed on fund boards in the Proposal are more appropriate for fund management exercising their managerial decision-making role. Accordingly, FSR urges the Commission to reconsider the responsibilities of a fund board with respect to portions of the Proposal, and to consider whether the delegation of these responsibilities to a chief compliance officer or an investment adviser or its officers would be more appropriate.

B. Board Standard of Care under the Proposal

- FSR believes that the Commission should include in the final rule an express statement about the standard of care to which the Commission will hold a board accountable.

C. Swing Pricing

- While FSR believes that the concept of swing pricing is laudable, the implementation of swing pricing for funds in the United States is not feasible at this time given the market's structure and funds' reliance on intermediaries and omnibus accounts held by such intermediaries.

- Additionally, with respect to a fund's use of swing pricing, as currently proposed, FSR believes that the requirement to use a "market impact" cost component in the swing factor determination is problematic given that this component is inherently dynamic and difficult to determine with any precision.

D. Disclosures

- As currently constituted, the Proposal's requirement to publicly disclose certain Form N-PORT reports on a lag basis concerns FSR as such reporting could mislead and confuse investors.

E. Cost-Benefit Analysis & Compliance Dates

- FSR further notes that certain of the Proposal's cost estimates appear to be unduly optimistic and, therefore, FSR urges the Commission to reconsider its cost estimates for many of the Proposal's new requirements.

- FSR notes that certain of the cost estimates are based on previous Commission cost estimates for the 2014 rule amendments relating to money market funds. The use of estimates that are derived from other estimates represents an overly speculative analytical framework that is not appropriate.

- FSR urges the Commission to adopt the same compliance date for larger entities that is proposed for smaller entities, which is 30 months after the effective date of final Rule 22e-4.

II. Liquidity Risk Management Proposal

The requirement that funds adopt written liquidity management programs

Proposed Rule 22e-4 would require funds to adopt and implement liquidity risk management programs that would be required to provide for: (i) classification and ongoing review of the liquidity of the fund's portfolio positions; (ii) assessment and periodic review of the fund's liquidity risk; and (iii) management of the fund's liquidity risk, including the requirement to determine the "three-day liquid asset minimum" ("TDLA Minimum"). FSR agrees that requiring funds to adopt formal programs is a worthwhile goal and supports this aspect of the Proposal, subject to the further comments discussed below.

Assess and periodically review the fund's liquidity risk

Proposed Rule 22e-4(e)(4)(b)(2)(iii) requires that, as part of the fund liquidity management program, the fund assess and periodically review its liquidity risk.

In making these assessments, the Proposal requires that a fund consider the following factors:

(A) short-term and long-term cash flow projections, taking into account the following considerations; (1) size, frequency, and volatility of historical purchases and redemptions of fund shares during normal and stressed periods; (2) the fund's redemption policies; (3) the fund's shareholder ownership concentration; (4) the fund's distribution channels; and (5) degree of certainty associated with the fund's short-term and long-term cash flow projections;

(B) investment strategy and liquidity of portfolio assets;

(C) use of borrowings and derivatives for investment purposes; and

(D) holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources.

FSR agrees that this requirement is an important component of the Proposal and supports the concept that funds, together with their advisers, engage in a periodic assessment of liquidity risk. FSR also agrees with the Commission's position that a fund would not be required to consider those factors that are not applicable to that particular fund.[4]

The Commission's decision to retain the current 15% limitation on illiquid assets for open end investment companies

FSR supports the Commission's approach of retaining the current 15% limitation on illiquid assets which has now been recharacterized as "15% Standard Assets." FSR believes that this limitation has served the fund industry well in protecting fund investors from liquidity risk and is consistent with the statutory definition of "redeemable security" in Section 2(a)(32) as well as the requirements of Section 22(e) of the Company Act which generally prohibits registered investment companies from suspending the right of redemption or postponing the payment of redemption proceeds for more than seven days.

Nevertheless, FSR believes that there is a disconnect in how the "15% Standard Assets" definition is incorporated into the Proposal and believes that the alternative "approach to liquidity classifications" discussed below would provide a more coherent approach to liquidity management.

Proposed establishment of six liquidity categories

FSR believes that the Proposal's requirement that funds classify their holdings, on an ongoing basis into one of six liquidity categories based on the ability to convert the security to cash will place an undue burden on fund complexes that invest in a wide range of securities. Moreover, a classification system based on days to liquidate ("DTL") is speculative and subjective and will lead to fund complexes classifying similar securities

[4] Proposal at 62305.

differently. This will limit the usefulness of the public dissemination of the underlying information which will be issuer-specific and can end up mis-informing investors.

While the Proposal aims to facilitate comparisons of the liquidity profiles of similar funds, the use of DTL which, as the Commission concedes, is subject to constant change and based on subjective and opaque criteria, will result in misleading comparisons among funds. Moreover, the data that is generated from this analysis, while potentially useful to the Commission which employs sophisticated analytical tools, will likely be confusing and even misleading to investors when presented on a time lag as proposed.

Alternative approach to liquidity classifications

FSR believes that a principles-based approach to liquidity management is the preferred solution. To the extent that the Commission determines to retain the use of liquidity categories, FSR requests that the Commission revise the Proposal to utilize liquidity categories that: (A) are based on objective criteria; (B) would apply industry-wide; and (C) would not be dependent upon subjective and opaque inputs such as position size or types of fund investors. FSR believes that it would be preferable to utilize categories that are based on objective top-down asset class-based criteria that would apply to both normal and stressed markets as opposed to categories and criteria that are constantly changing depending on market conditions.

To address the fact that certain positions may be more or less liquid than their specific asset type, FSR suggests that investment advisers have the flexibility to classify a particular position in a different category and disclose the exception. This would permit a greater degree of transparency and comparability among funds than the current proposal. The application of more uniform standards (even with the flexibility to make small adjustments as discussed above) would facilitate direct comparisons and would not be subject to constant changes which, as noted above, would make the delayed disclosure of such information stale and uninformative and confusing to investors.

Also, the use of objective criteria for the categories could include a final category that would generally consist of assets that would be outside of the "15% Standard Asset" criteria so the liquidity categories would now correspond to the current definition of illiquid securities which is based on statutory criteria.

FSR also believes that the proposed use of six liquidity categories is excessive. As noted in the Proposal, many fund groups already view liquidity on a spectrum, rather than as a binary analysis, and some do even utilize different categories or buckets for classifying liquidity. Nevertheless, the requirement that funds include six categories of liquidity is not based on statutory principles or any existing regulatory requirements and will introduce substantial additional operational and compliance burden on funds. FSR also believes that a multitude of categories (*e.g.*, having three categories for less than 7-

day DTL, and three for greater than 7-day DTL) creates a false degree of precision when considering each instrument's DTL and the Proposal's risk management goals can be met without such a granular approach.

The Commission's review of liquidity classifications and the use of third-party service providers

In the Proposal, the Commission notes that it is expected that the position level liquidity disclosure on Form N-PORT will allow the Commission staff to identify "outliers" with respect to liquidity classifications.[5] FSR respectfully requests that the Commission provide further clarity in the final rule as to the consequences of being labeled as such an outlier. Although the Commission acknowledges that it is not proposing an approach that presumes uniform classifications for certain asset classes, the staff's review of the disclosures to identify outliers, without further guidance as to the consequences of such, may discourage a fund from appropriately tailoring its classification system for fear of being labeled an outsider and subjecting itself to further scrutiny by the Commission.

Additionally, the focus on outliers with respect to liquidity classifications may also cause funds to engage in a herd mentality and forgo proprietary liquidity classification programs in reliance solely on programs designed by third-party service providers that have programs designed for uniform application to various types of funds. This may have negative consequences. For example, proprietary liquidity classification programs developed internally by a fund's adviser may be uniquely tailored to that fund and therefore may arguably produce more accurate, or robust, liquidity classifications for that particular fund compared to a program that relies solely on third-party service providers. This explicit statement about focusing on outliers could prevent the desired goal of a fund appropriately customizing its liquidity classification program for fear of improperly being labeled as an outlier with respect to its liquidity classifications. FSR respectfully requests that the Commission fully consider these consequences when moving forward with the Proposal's focus on outliers with respect to liquidity classifications.

Three-Day Liquid Assets

The Proposal would require that liquidity management plans establish a TDLA Minimum which includes instruments that are convertible into cash within three business days. As with the six liquidity categories, the TDLA Minimum would be based on the flawed DTL analytical framework that is discussed above. In addition, while the current definition of illiquid security (and the newly proposed definition of "15% Standard Assets") are derived from statutory requirements, there are questions regarding the

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5 *Id.* at 62294. FSR addresses its concerns with the proposed liquidity disclosure on Form N-PORT below.

Commission's authority to mandate the TDLA Minimum which does not have any statutory basis.[6]

FSR believes that the establishment of a TDLA Minimum is a flawed and an unnecessary component of fund liquidity management programs. FSR believes that rather than engaging in such a calculation on an ongoing basis, the concept underlying TDLA Minimums is more appropriate for a stress testing scenario and FSR requests that the Commission reconsider this proposal in light of its upcoming stress testing rule.

There are several other flaws with respect to the TDLA Minimum. For example, the fact that the determination of whether a particular fund has established an amount to meet redemption requests that was "reasonably foreseeable under the circumstances" will be subject to the perfect judgment of review after the fact. Additionally, the Proposal requires that the TDLA Minimum be calculated such that the fund would be able to meet such redemptions "without materially affecting the fund's net asset value ("NAV")". FSR believes this requirement would be operationally difficult to monitor and to routinely calculate.

FSR is also concerned that the imposition of the TDLA Minimum and the six liquidity categories which are both highly prescriptive and, at the same time, largely subjective could result in stifling new investment products. The Commission has long recognized that the Company Act is designed to both protect investors while also allowing for "innovation and diversification" in the industry.[7] Generally, when adopting new compliance requirements, the Commission has allowed funds the flexibility to implement policies and procedures that are appropriate for their specific operations such as when the Commission adopted Rule 38a-1.[8]

In this instance, the Proposal mandates new criteria, outside of the statutory language of the Company Act that could reduce product innovation by decreasing the ability of managing certain asset classes and strategies in an open-end fund that have been historically operated without any liquidity issues. For example, to avoid looking like an outlier, there may be pressure to operate these strategies with relatively high TDLA Minimums which would reduce the desirability and performance of these types strategies. As demand for new investment strategies declines, this, in turn, could result in

6 *Instead*, the TDLA Minimum requirement is indirectly derived from a regulatory requirement that is not directly applicable to registered investment companies. *See* Rule 15c6-1 under the Securities Exchange Act of 1934.

7 *See, e.g.*, Opening Remarks at the 75th Anniversary of the Investment Company Act and Investment Advisers Act, "The Investment Company Act and Investment Advisers Act Standing the Test of Time" (Speech by Chair Mary Jo White) (Sept. 29, 2015).

8 *See* Compliance Programs of Investment Companies and Investment Advisers, IC-26299 (Dec. 17, 2003).

(1) a migration of assets to unregistered and/or less regulated products and (2) more correlation among mutual funds which, could, ironically, result in greater systemic risk.

Moreover, even if product innovation is not materially impacted by the Proposal, these requirements could result in fund managers choosing to avoid potential regulatory scrutiny and second guessing from the Commission during the exam process by engaging in more conservative behavior with respect to maintaining a TDLA Minimum or holding more assets in the more liquid buckets despite facing little, if any, redemption risk. This would result in fund managers making risk reward decisions that do not benefit fund investors.

ETFs, ETMFs, and Other Considerations

FSR believes that the application of the liquidity risk management portion of the Proposal to ETFs and ETMFs that primarily satisfy purchase and redemption orders in-kind is unnecessary and potentially misleading. Most shareholders do not transact directly with an ETF or ETMF and these shareholders buy and sell shares in secondary market transactions, obtaining liquidity through secondary market trading. Accordingly, requiring ETFs and ETMFs that primarily satisfy purchases and redemptions in-kind to adopt a liquidity risk management program is unnecessary and ill suited. Additionally, shareholders of these ETFs and ETMFs may find the liquidity risk management program information misleading or confusing as the information is not relevant to their shareholder experience.

FSR respectfully recommends that the Commission either exempt ETFs and ETMFs that primarily satisfy purchase and redemption orders in-kind from the liquidity risk management portion of the Proposal or develop another regulatory approach that would apply to the unique features of ETFs and ETMFs. For example, the Commission could permit these products to consider all assets as liquid. Similarly, the Commission should consider alternative regulatory approaches for index funds that seek to track the performance of indices that are comprised of highly liquid assets (*e.g.*, S&P 500 Index funds) as the costs associated with implementing and maintaining a liquidity risk management program as currently proposed for these highly liquid funds (*e.g.*, increased tracking error) are likely greater than the benefits of the program to shareholders.

Board Considerations

FSR believes that the liquidity risk management portion of the Proposal imposes certain responsibilities on fund boards that are more appropriate for fund management exercising their managerial decision-making role. For example, requiring board approval of the fund's TDLA Minimum[9] and certain provisions of proposed Rule 22e-4, including the designation of specific persons to administer the fund's liquidity management

[9] The Proposal at 62297.

program and material changes to the program,[10] are the types of decisions that are more reflective of managerial decision-making than board oversight. As noted in the Proposal, the requirement for a fund board to approve material changes to a fund's liquidity risk management program differs from the requirements under Rule 38a-1 under the Company Act, which does not require a fund board to approve changes to a fund's compliance policies and procedures.[11] FSR believes that similar to Rule 38a-1 regarding a fund's compliance program, there should be no requirement for board approval of changes to the liquidity risk management program. Accordingly, FSR urges the Commission to reconsider the responsibilities of the board under the Proposal, and to consider whether the delegation of these responsibilities to a chief compliance officer or an investment adviser or its officers would be more appropriate.

III. Board Standard of Care

The Proposal requires a fund board to approve various aspects of these proposals on an initial basis and/or on an ongoing basis (*e.g.*, under the Proposal, a board would be required to approve the initial swing threshold amount and any changes to such amount). As discussed in this letter, FSR believes that these responsibilities are more appropriate for fund management exercising their managerial decision-making role and represent a level of granularity that is inappropriate for the board's oversight role. FSR further believes that the Commission should include in the final rule an express statement about the standard of care to which the Commission will hold a board accountable. This discussion should be included regardless of whether the Commission addresses FSR's concerns about the responsibilities given to a board in the final rule. Given the inherent complexities in the Proposal, the guidance and certainty provided by such a discussion in would be helpful to board members.

FSR notes that the Commission has included similar guidance in prior adopting releases. For example, in the adopting release for Rule 2a-7,[12] the Commission stated when discussing how a board must satisfy its obligations under Rule 2a-7 that "[t]he Commission has evaluated in the past, and would similarly evaluate in the future, the actions of the board of directors based upon a reasonable business standard."[13] Additionally, in the adopting release for the "audit committee financial expert" disclosure requirement,[14] the Commission noted that the designation and public identification of a

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10 *Id*. at 62287.

11 *Id*. at 62324.

12 *Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds),* IC-13380 (Jul. 11, 1983).

13 *Id.* at n. 40.

14 *Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002,* 33-8177 (Jan. 23, 2003). This adopting release was subsequently amended to make technical corrections to the rules to amend an instruction clarifying the frequency of the required disclosure. *See* 33-8177A (Mar. 26, 2003).

person as an audit committee financial expert would not impose a higher degree of responsibility or obligation on that person.[15] FSR respectfully requests that the Commission include similar guidance in the adopting release for the Proposal.

IV. Swing Pricing

Under the Proposal, funds (other than money market funds and ETFs) would be permitted to implement "swing pricing" to mitigate the risk that purchase and redemption activities by shareholders could dilute the value of the remaining shareholders' interest in the fund. As described in the Proposal, when a fund disposes of securities for purposes of meeting redemption requests, the costs associated with the trading activity are not typically reflected in the price received by the redeeming shareholders, but those costs are reflected in the NAV of the fund going forward.[16] Swing pricing would permit the fund to adjust the NAV of its shares to effectively pass on these costs to the purchasing or redeeming shareholder. The Proposal notes that foreign funds currently use swing pricing and a number of investment management industry representatives operating in certain European jurisdictions have recently issued guidance on the use of swing pricing.[17]

To implement a swing pricing mechanism, a fund would be required to adopt policies and procedures that, among other things, designate a "swing factor" by which the fund will adjust its NAV if the level of net purchases into or net redemptions from the fund exceeds the "swing threshold", which is a specific percentage of the fund's NAV.[18] In addition, the fund's board would have to initially approve the policies and procedures and would also have to approve any material changes to the policies and procedures (including any change to the fund's swing threshold).[19]

While FSR believes that the concept of swing pricing is laudable, it also believes that the implementation of swing pricing for funds in the United States is not feasible at this time given the current market structure and funds' reliance on intermediaries and omnibus accounts held by such intermediaries.

Accordingly, FSR suggests that the proposal to allow funds to implement swing pricing should be preceded by operational improvements that specifically address the limited real-time information that funds receive from intermediaries' omnibus accounts through which a large majority of shareholders hold shares. A fund using swing pricing needs to be able to monitor fund flows to determine whether the fund's net purchases or

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15 *Id.* at 5111.

16 Proposal at 62326.

17 *Id.* at 62327.

18 *Id.* at 62328.

19 *Id.*

net redemptions would cross the fund's swing threshold, thereby triggering the swing factor. Indeed, the Commission has acknowledged that the persons administering the fund's swing pricing policies and procedures may have limited time in which to make this determination.[20]

Funds with a large majority of shareholders holding shares through intermediaries' omnibus accounts will find it incredibly challenging, if not impossible, to obtain adequate real-time data to monitor fund flows for purposes of determining whether the swing threshold has been crossed. Although the Commission suggests in the Proposal a number of practices funds may consider adopting to address these concerns, such as arranging for interim feeds of fund flows from a transfer agent or distributor or encouraging effective communication between the various personnel charged with implementing the fund's swing pricing, portfolio management and day-to-day pricing,[21] FSR does not believe that these measures are sufficient to address this issue.

In addition to these structural issues associated with swing pricing, FSR also believes that the Proposal's requirement for a fund to consider a "market impact" cost component in the swing factor determination is problematic given that this component is inherently dynamic and difficult to determine with any precision. In fact, in the Proposal, the Commission acknowledges that funds may have difficulty determining the market impact cost component, suggesting that a fund may choose to use reasonable estimates for this component.[22] Because of this, FSR does not believe that it is appropriate to *require* a fund to include a market impact cost component in its swing factor determination as doing so may force a fund to use estimates that, although made in good faith, are not sufficiently accurate. Alternatively, FSR suggests that the Commission revise this aspect of the Proposal to provide that a fund *may* include a market impact cost component in its swing factor determination. This would allow funds to include a market cost component only when they are comfortable doing so (*i.e.*, when the funds are sufficiently confident in the estimates) and would eliminate the risk that a fund would be forced to use estimates that may not be sufficiently accurate simply to comply with the swing pricing rule.

Finally, the Proposal's requirement that fund boards approve the swing threshold is another example of the level of granularity that is inappropriate for the board's oversight role. It should be noted that the board appropriately would not be required to administer the swing pricing policy and instead would be required to designate the fund's adviser or officers responsible for such administration.[23] However, the board will be required to approve the swing threshold amount (and any changes to such amount) as part

[20] *Id.* at 62337.

[21] *Id.* at 62328.

[22] *Id.* at 62337.

[23] *Id.* at 62328.

of its approval of the swing pricing policies and procedures. FSR does not believe that this is an appropriate responsibility of a fund board in its oversight role. The determination of the proper swing pricing threshold is a very technical analysis, requiring an intimate familiarity with a fund's daily operations. In its oversight role, a fund board will not have such familiarity to make such determinations and, as a result, the board should not be required to approve the specific threshold (and any changes) for a fund.

V. Disclosure

The Proposal outlines various updates to fund disclosure and reporting requirements regarding liquidity risk and liquidity risk management. In particular, the proposal suggests amendments to Form N-1A, Regulation S-X, proposed Form N-PORT and proposed Form N-CEN to improve the ability of investors, the Commission staff and other potential users to analyze and better understand a fund's redemption practices, its management of liquidity risks, and how liquidity risk management can affect shareholder redemptions.[24] With respect to the amendments to proposed Form N-PORT, the Proposal would require a fund to: (1) identify the liquidity classification category of each portfolio asset based on the number of days the fund anticipates it would take to convert the asset to cash; (2) report whether each portfolio asset is a 15% Standard Asset; and (3) disclose its TDLA Minimum. If the Proposal is adopted as currently constituted, FSR believes that the N-PORT reporting requirements could mislead and confuse investors.

Specifically, although the Proposal would require proposed Form N-PORT to be filed monthly; only the information reported for the third month of a fund's fiscal quarter would be made publicly available (subject to a 60-day delay). This reporting schedule would result in public dissemination of information on the fund that is stale and, perhaps, inaccurate with respect to the current position of the fund, which would not serve the needs of investors. Additionally, and perhaps more importantly, FSR believes that the Proposal's current liquidity categories should not, as a general matter, be used to create fund liquidity profiles that are disclosed to the public. As discussed above, the liquidity categories currently included in the Proposal are based on subjective and opaque inputs, such as position size or types of fund investors, and on criteria constantly changing depending on market conditions. Accordingly, for similar reasons that FSR believes that it would be preferable to utilize categories that are based on objective top-down asset class-based criteria that would apply to both normal and stressed markets, FSR recommends that, if the Commission moves forward with the current liquidity categories, that fund liquidity profiles based on such categories not be publicly disseminated. However, if the Commission revised proposed Form N-PORT to instead require funds to report liquidity categories (as discussed above) that are based on more transparent and objective inputs, the public disclosure of such information might be appropriate as it would be more transparent and not be market specific (and therefore potentially stale)

[24] *Id.* at 62344.

and could more easily be utilized by investors to undertake meaningful comparisons of the liquidity profiles of different funds.

In addition to FSR's concerns with the revised proposed Form N-PORT, FSR is also concerned with the proposal to amend Item 11 of Form N-1A to require a fund to disclose the number of days in which the fund will pay redemption proceeds to redeeming shareholders.[25] As discussed above, Section 22(e) of the Company Act already requires a fund to pay redemption proceeds within 7 days (absent certain emergency circumstances). As a result, FSR respectfully believes that this additional disclosure may pressure funds to "race" to disclose shorter payment periods. This could end up limiting funds from exercising discretion in stressed markets during times when maximum flexibility is beneficial to investors who choose not to race for the exits.

FSR is also concerned with the proposal to amend Item 28 of Form N-1A to require a fund to file as an exhibit to its registration statement any agreements related to lines of credit for the benefit of the fund.[26] Specifically, although FSR acknowledges that the fees paid in connection with the credit line can be omitted from the exhibit, FSR opposes the requirement to include the identity of the counterparty in the exhibit. FSR believes that redacted versions of credit line agreements that omit the fees and identity of the counterparty will still provide the Commission, investors and other market participants with helpful additional information about arrangements funds have put in place to help meet shareholder redemption requests while preserving the confidentiality of any such business arrangements.

Finally, given the speculative nature of the proposed disclosure, the Commission should afford funds a safe harbor for "forward-looking statements."

VI. Cost Benefit Analysis & Compliance Dates

Cost-Benefit Analysis

FSR notes that certain of the Proposal's cost estimates appear to be unduly optimistic, based on past experience. For example, the estimated cost per fund of $637 to implement the Form N-1A disclosure requirements, appears to be overly optimistic.[27] Specifically, this cost estimate assumes only two hours of work to modify a fund's disclosure in Form N-1A and only envisions the involvement of one compliance attorney/senior programmer.[28] While this is admittedly a less significant aspect of the Proposal, changes to a fund's disclosure typically involve a number of stakeholders and several rounds of drafting and review, such that costs associated with even modest

[25] *Id.* at 62334.

[26] *Id*.

[27] The Proposal at 62371.

[28] *Id.* at n. 790.

changes to fund disclosure, including those changes that are mandated by the Commission, can have a serious cost component. Therefore, if the Commission were to adopt the Proposal, FSR urges the Commission to reconsider its cost estimates for many of the Proposal's new requirements, including, but not limited to the new disclosure requirements.

In addition, a number of the cost estimates in the Proposal, including those relating to the costs to establish a liquidity risk management program[29], the ongoing costs of such programs[30] and the costs relating to the implementation of swing pricing programs[31] are all derived from the Commission's cost estimates with respect to the implementation of "fees and gates" in the 2014 amendments relating to money market funds. FSR respectfully submits that basing the estimated cost on the projections used for a different rule is effectively an "estimate of an estimate" and it would be preferable for the Commission to consider more substantive data upon which its estimates are based.

Compliance Dates

The Proposal also suggests that larger entities—funds that, together with other funds in the same "group of related investment companies," have net assets over $1 billion, as of the end of the most recent year–should have a compliance date of 18 months after the effective date of the Proposal for proposed Rule 22e-4.[32] This compliance date stands in contrast to the compliance date for smaller entities—funds that, together with other funds in the same "group of related investment companies," have net assets less than $1 billion, as of the end of the most recent year-of 30 months after the effective date of final Rule 22e-4.[33]

While FSR is mindful of the potential resource differential among firms, the Proposal does not appear to consider that larger entities will typically manage a much larger and more diverse suite of funds. Accordingly, in many instances, it will take larger entities longer periods of time to "prepare internal processes, policies and procedures and implement liquidity risk management programs that meet the requirements of the rule."[34] Therefore, if the Commission were to adopt the Proposal, FSR urges the Commission to provide a 30-month compliance date for larger entities.

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[29] *Id*. at n. 702.

[30] *Id*. at n. 707.

[31] *Id*. at n. 759.

[32] *Id.* at 62348-49.

[33] *Id.* at 62349.

[34] *Id.*

If it would be helpful to discuss our specific or general views on the Proposal, please contact Richard Foster at [redacted]; or Felicia Smith at [redacted]. We appreciate your consideration and look forward to working with you on this important matter.

Sincerely yours,

Rich Foster

Richard Foster
Senior Vice President and Senior Counsel
for Regulatory and Legal Affairs
Financial Services Roundtable

With a copy to:

The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar
Members, *United States Securities and Exchange Commission*

Sarah G. ten Siethoff, Assistant Director
Sarah A. Buescher, Branch Chief
Melissa S. Gainor, Senior Special Counsel
Naseem Nixon, Senior Counsel
Amanda Hollander Wagner, Senior Counsel
Staff, *United States Securities and Exchange Commission*