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Invested in America

asset management group

May 18, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Investment Company Liquidity Disclosure
File No. S7-04-18

Dear Mr. Fields:

The Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the "**Commission**") on the Commission's proposed amendments to its forms designed to improve the reporting and disclosure of liquidity information by registered open-end investment companies (the "**Proposal**").[2]

We strongly support the Proposal. We believe that the Commission's proposal to replace public disclosure of certain liquidity classification data reported on Form N-PORT with narrative disclosure about the operation and effectiveness of the fund's liquidity risk management program in its annual report will, as intended, enhance investor understanding of fund liquidity and improve fund reporting and disclosure of liquidity information.[3] We also support the proposed additional changes to liquidity

[1] SIFMA AMG is the voice for the buy side within the securities industry and broader financial markets, which serves millions of individual and institutional investors as they save for retirement, education, emergencies, and other investment needs and goals. The AMG's members represent U.S. asset management firms whose combined assets under management exceed $40 trillion. The clients of AMG member firms include, among others, registered investment companies, separate accounts, ERISA plans, and state and local government pension funds. Our members represent a significant and representative cross section of the registered open-end investment companies that are the subject of the Proposal.

[2] Investment Company Liquidity Disclosure, Release No. IC-33046 (Mar. 14, 2018), 83 Fed. Reg. 11905 (Mar. 19, 2018) (the **"Proposing Release"**).

[3] As in the Proposing Release, we use **"fund"** to include open-end management companies, including exchange-traded funds (**"ETFs"**) registered as open-end management companies, and to exclude money market funds.

reporting requirements, which would permit funds to report multiple classifications for a single portfolio holding under certain circumstances and require reporting of information on cash and cash equivalents, although we recommend certain adjustments to those proposals, which we discuss below.

I. Introduction and Executive Summary

A. Background – Rule 22e-4 and the Current Disclosure Requirements

On October 13, 2016, the Commission adopted Rule 22e-4 (**"Rule 22e-4"** or the **"Rule"**) under the Investment Company Act of 1940 (**"1940 Act"**), which requires each fund to adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk ("**Liquidity Risk Program**" or "**Program**").[4] As part of the Program, each fund, other than ETFs that are In-Kind ETFs within the meaning of the Rule,[5] must classify each of the fund's portfolio investments in one of four liquidity categories or **"buckets,"** as a highly liquid investment, moderately liquid investment, less liquid investment, or illiquid investment.

At the same time, the Commission adopted new Form N-PORT, which requires funds to electronically file with the Commission monthly portfolio investment information in structured data format. In connection with the adoption of Rule 22e-4, the Commission incorporated into Form N-PORT a requirement that funds subject to the classification requirement must report the liquidity classification category of each portfolio investment on a nonpublic basis. In addition, Form N-PORT requires those funds to publicly report the aggregate percentage of their portfolio investments that are classified in each of the four categories (**"Portfolio Classification Data"**). Under Form N-PORT as adopted, a fund's Portfolio Classification Data reported for the third month of its fiscal quarter would become publicly available 60 days after the end of the fiscal quarter. Form N-PORT also requires funds subject to the classification requirement to report the percentage of the fund's highly liquid investments that it has segregated to cover or pledged to satisfy margin requirements in connection with derivatives transactions that are classified as moderately liquid investments, less liquid investments, and illiquid investments (**"Derivatives Classification Data"**). The Derivatives Classification Data would become publicly available on the same basis as the Portfolio Classification Data.

The Commission reached its determination to make the Portfolio Classification Data public based on its belief that such data would assist investors in making investment decisions. As the Commission stated in adopting the Rule:

> We expect that many investors will use liquidity reporting information to better understand the liquidity risks associated with a particular fund for purposes of making more informed

[4] Investment Company Liquidity Risk Management Programs, Release Nos. 33-10233, IC-32315 (Oct. 13, 2016), 81 Fed. Reg. 82142 (Nov. 18, 2016) (the **"Adopting Release"**).

[5] An **"In-Kind ETF"** is defined as an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of cash and that publishes its portfolio holdings daily. Rule 22e-4(a)(9).

investment decisions and will benefit from aggregate information about a fund's overall liquidity.[6]

B. Summary of the Proposal and AMG Comments

This section summarizes each element of the Proposal and briefly states AMG's comment on that element. A full discussion of AMG's comments and the reasons therefor is set forth in Section II.

1. Alternative Disclosure Proposal

The Commission is proposing a new requirement that funds disclose information about the operation and effectiveness of their Liquidity Risk Programs in their annual reports to shareholders. This narrative disclosure would replace the current requirement in Form N-PORT that funds publicly disclose the Portfolio Classification Data. As part of this component of the Proposal, the Derivatives Classification Data would still be reported to the Commission on Form N-PORT but would not be made publicly available.

The proposal to rescind the requirement for public disclosure of Portfolio Classification Data is based on concerns about the potential for that information to confuse and mislead investors, without providing investors with information that is useful to their investment decision-making as the Commission had intended. While similar concerns had been voiced during the comment process leading up to adoption of the current requirements, experience gained by both the industry and the staff during the process of implementing Rule 22e-4 has heightened these concerns by demonstrating, as a practical matter, the full extent of the subjectivity and variability of the classification data generated by the Rule 22e-4 classification process.

SIFMA AMG Comment. AMG strongly supports the Commission's alternative disclosure proposal. We believe that narrative disclosure in fund annual reports is a far better way to provide investors with useful and accessible information about fund liquidity than public reporting of Portfolio Classification Data on Form N-PORT in structured format, and avoids the dangers of confusing and misleading investors inherent in the Form N-PORT approach.

2. Multiple Classification Categories

The Commission is proposing amendments to Form N-PORT that would allow funds the option of splitting a portfolio holding into more than one classification category in three specified circumstances. The three specified circumstances involve: (1) differing classifications among sub-advisers; (2) differing liquidity features of holdings within a single position; and (3) "proportionality," which as proposed refers

[6] Adopting Release, *supra* note 4, at 82197.

to classification of a position based on a sale of the entire position, rather than reasonably anticipated trading size.

SIFMA AMG Comment. AMG supports the multiple classification category proposal, with two proposed adjustments. First, AMG recommends that the "proportionality" option be revised to permit reporting of multiple categories based on reasonably anticipated trading size. Second, AMG requests clarification that classification in multiple categories as permitted by Form N-PORT for all three circumstances identified is contemplated under Rule 22e-4, as well.

3. Reporting of Cash and Cash Equivalents

The Commission is proposing to add to Form N-PORT a new requirement that registrants report as a separate item their holdings of cash and cash equivalents (other than cash equivalents otherwise reported on Form N-PORT).[7] This information reported for the third month of the fund's fiscal quarter would become publicly available 60 days after the end of the quarter.

SIFMA AMG Comment. AMG supports the addition of the reporting requirement, as the Commission believes that it will provide useful information to the Commission as a regulator. AMG believes, however, that from an investor's perspective this new standalone disclosure item (which will aggregate some but not all types of cash equivalents) will lead to confusion, rather than enhance investor understanding of either fund liquidity or risks in general. Accordingly, we recommend that it not be made publicly available.

C. Future Commission Actions

The Proposing Release also discusses, and in some of the questions posed requests comment on, possible future actions by the Commission and its staff. Most significantly, the Proposing Release notes that the Department of the Treasury, in its 2017 Asset Management and Insurance Report, highlighted the importance of robust liquidity risk management programs, but recommended that the Commission embrace a "principles-based approach to liquidity risk management rulemaking and any associated bucketing requirements." The Commission has asked for comment on whether there are advantages to the approach that Treasury recommends; if so, what additional steps the Commission should consider to shift toward a principles-based approach; and the extent to which funds have already implemented the existing classification requirement.

SIFMA AMG Comment. AMG believes, based on the lessons learned from the experience of implementing the existing classification requirement, that there would be significant advantages to a principles-based approach, and recommends that, following adoption of the current Proposal, the Commission propose and seek public comment on replacing the current classification requirement with a

[7] As in the Proposing Release, **"Registrants"** refers to entities required to file Form N-PORT, including all registered management investment companies, other than money market funds and small business investment companies, and all ETFs (regardless of whether they operate as unit investment trusts or management investment companies).

principles-based approach. We believe that the extensive efforts and resources expended by the industry, the Commission, and the staff in developing and implementing Rule 22e-4 will serve as an invaluable base of experience and insight for the development of such a proposal.[8]

II. Discussion of the Proposal

A. Proposal to Replace Public Reporting of Portfolio Classification Data on Form N-PORT with Narrative Liquidity Program Disclosure in Fund Annual Reports

AMG strongly supports the Commission's proposal to replace public reporting of the Portfolio Classification Data on Form N-PORT with a narrative annual report disclosure requirement.[9]

1. Potential for Portfolio Classification Data to Confuse and Mislead Investors

Under the current Form N-PORT reporting requirements, fund liquidity classifications will be made public, at the portfolio level, on a quarterly basis, with a 60-day lag. The Commission decided to make the Portfolio Classification Data public based on its determination that investors will benefit from using this information as a basis for making investment decisions.[10] As discussed below, requiring funds to publicly report these percentages as their "liquidity profile" will encourage investors, and third parties, to make comparisons among funds based on these liquidity profiles as part of the investment decision-making process.

Lessons learned during the 19-month period following adoption of Rule 22e-4, during which our Members have been diligently working on implementing the Liquidity Risk Programs required by the Rule, including the classification requirement, have heightened rather than alleviated concerns that public disclosure of Portfolio Classification Data will harm rather than enhance investor decision-making. Contrary to the Commission's intent, a better understanding of the reasonable expectations for the classification process gained during the 19-month implementation process has demonstrated that public disclosure of Portfolio Classification Data will in fact confuse and mislead investors, without providing them with useful information on which to base investment decisions.

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[8] We note that this recommended future action does not affect the Proposal or the Commission's ability to adopt the Proposal expeditiously.

[9] We also support the proposal to keep Derivatives Classification Data nonpublic, for the reasons stated in the Proposing Release. As the Commission states in the Proposing Release, public disclosure of this percentage of a fund's highly liquid investments would be of limited to no utility to investors without broader context and, therefore, may be confusing. Proposing Release, *supra* note 2, at 11910.

[10] *See supra* note 6 and accompanying text.

We believe that encouraging investors to make investment decisions based on Portfolio Classification Data reported on Form N-PORT departs from the sound investor protection principles that have guided the Commission's regulation of investor disclosure for some 80 years. These principles are:

- Disclosure should be full and fair. It is unlawful to omit information that is material to understanding the context.[11]

- Investor decision-making should not be based on stale or outdated information.[12]

- Information should be available to all, not just those with special access.[13]

Portfolio Classification Data reported on Form N-PORT would be out of step with each of these longstanding investor protection principles. The Commission's proposal to replace the Form N-PORT disclosure with narrative disclosure tailored to each fund would accomplish its goal of enhancing disclosure of liquidity to investors while bringing such enhanced disclosure back within these investor protection principles.

a. Protecting Investors from Materially Incomplete and Out of Context Information

The Portfolio Classification Data reported on Form N-PORT would be materially incomplete, would be presented outside of any context, and would be unaccompanied by any accessible explanation or discussion of the fund's risk profile as a whole.

There are two very real dangers at the heart of the concern about public disclosure of this data.

First, the focus on liquidity data in isolation, relative to other market data points, would distort many mutual fund risk profiles, especially the risk profiles of funds that invest in asset classes where liquidity risk is not material. Yet by highlighting the liquidity risk profile of a fund, the Commission would be sending all mutual fund investors the message that liquidity risk is among the most important risks they face. This exaggerates the real importance to fund investors of focusing on liquidity risk relative to

[11] A disclosure must not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. *See* Securities Act of 1933, §§ 11(a), 12(a)(2), 17(a)(2); Securities Exchange Act of 1934 (**"1934 Act"**), § 9(a)(4); 1940 Act § 34(b); 1934 Act Rule 10b-5(b). In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. 1934 Act Rule 12b-20.

[12] The requirement that information not be stale or outdated is a specific illustration of the general principle that disclosures must not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. *See supra* note 11.

[13] This principle underlies much of the securities laws, including the prospectus delivery requirement and the prohibition on insider trading.

other risks that are likely to have a far greater impact on their long-term investment goals, and thus to their decision-making process in selecting funds. Of all the situations over the course of the decades of mutual fund investing in which investors have lost money, or experienced returns that they found disappointing relative to their hopes or expectations, we believe it is fair to say that liquidity risk has played a distinctly minor role.[14] Thus steering investors' attention toward liquidity risk and away from other risks that are more likely to affect their investment is a disservice to the investing public.

Second, as the implementation of Rule 22e-4 has demonstrated, classifications are highly subjective and variable. They are the output of a process that relies heavily on perceived probabilities as well as judgments from portfolio managers and others, based on predictions and extrapolation of data, which are then combined with other judgments from other sources based on similar assumptions. The staff's recognition that classification data will inherently be characterized by subjectivity and variability across funds, by virtue of the number of assumptions used in the classification process and differing approaches to these assumptions, is a theme underlying the interpretive guidance the staff issued in frequently asked questions ("FAQs"), which was the product of extensive investigation by the staff into implementation of the Rule 22e-4 requirements.[15]

Moreover, the presentation of an aggregation of these judgments as a fund's "liquidity profile" will increase rather than reduce the impact of the variability and subjectivity of individual classification determinations. Differences in underlying assumptions and methodologies that can be classification-determinative (for example, those underlying the key elements of reasonably anticipated trading size and price impact) will actually be magnified by aggregation, and thus increase the risk of investor misunderstanding. Investors will have no way of knowing what has gone into the percentages that Form N-PORT would present as the fund's overall liquidity profile, or whether an apparent difference among funds reflects a true difference in their liquidity profiles. And, as many commenters have pointed out,

[14] We are aware of only two instances in the past two decades when the SEC has found it necessary to exercise its authority under Section 22(e) of the 1940 Act to allow a fund to suspend the timely payment of redemptions when doing so would serve the best interests of investors. *See* Third Avenue Trust and Third Avenue Management LLC; Notice of Application and Temporary Order, Release No. IC-31943 (Dec. 16, 2015), 80 Fed. Reg. 79638 (Dec. 22, 2015) (one fund); Reserve Municipal Money-Market Trust, et al.; Notice of Application and Temporary Order, Release No. IC-28466 (Oct. 24, 2008), 73 Fed. Reg. 64993 (Oct. 31, 2008) (one fund and several money market funds). There have also been a small number of cases where funds experienced liquidity difficulties that did not require them to suspend the timely payment of redemptions. Recent cases involve events from 2008, 2001, and 2000, respectively. *David W. Baldt*, Release No. ID-418 (Apr. 21, 2011); *Garrett Van Wagoner*, Release Nos. IA-2281, IC-26579 (Aug. 26, 2004); *Heartland Advisors*, Release Nos. 33-8884, 34-57206, IA-2698, IC-28136 (Jan. 25, 2008). In fact, the instances cited above are a classic illustration of "the exception that proves the rule."

[15] Investment Company Liquidity Risk Management Programs Frequently Asked Questions (Feb. 21, 2018), https://www.sec.gov/investment/investment-company-liquidity-risk-management-programs-faq (**"Liquidity FAQs"**); *see, e.g.*, Q. 5 ("[f]unds—including funds in the same complex—could use differing methodologies and assumptions with respect to the market, trading, and investment-specific characteristics, as well as market depth and reasonably anticipated trade size, and thereby appropriately arrive at different classifications for the same instrument"); Q. 22 ("price impact assumptions are subjective, due to the variety of inputs that may reasonably be used by any fund or portfolio manager").

conservative managers may well assess their holdings as less liquid than aggressive managers, thereby making less risky funds appear to have a riskier liquidity profile, and vice versa.[16]

b. Avoidance of Investor Decision-Making Based on Stale and Out of Date Information

The Commission, for sound public policy and investor protection reasons, has determined that information reported on Form N-PORT will be made public only on a quarterly basis, and not until 60 days after the end of a fund's fiscal quarter.[17] While we support this determination, the necessary consequence is that Portfolio Classification Data would, by its very design, be stale (from 60 to 151 days out of date, depending on when the investor looks at the Form) by the time it would be available to investors. This is especially a concern inasmuch as determinations must be based on "current market conditions," as Rule 22e-4 requires. Current market conditions can change dramatically in the months that will have elapsed before investors could consult the Form N-PORT data. Investors should not be encouraged to rely on a quantitative "liquidity profile" reflecting possibly very different market conditions, again without context or explanation.[18]

c. Ensuring Equal Access to Public Information

The Portfolio Classification Data would be in a structured data format filed with the Commission on EDGAR, and thus readily available only to sophisticated market participants or through intermediaries (whose interests may not be entirely aligned with the investors to whom they provide the data).

In fact, in adopting Form N-PORT, the Commission did not anticipate that many individual investors would analyze data using Form N-PORT, but rather would have access to the data through intermediaries or other parties, such as academics and industry observers.[19] Thus disclosing fund liquidity information, such as Portfolio Classification Data, through Form N-PORT seems more likely to perpetuate than to mitigate informational disparities and to put less sophisticated individual investors at

[16] The Commission has requested comment on whether the use of "explanatory notes" in Form N-PORT could solve the "context" issue. AMG does not believe this is a realistic alternative. First, unlike a narrative discussion that the investor can easily access and understand directly, the structured format of Form N-PORT data does not realistically lend itself to communication with investors. Second, it has taken the industry and the staff together many months of painstaking analysis to understand how the multiple moving parts of the classification methodology work in practice. It would be impossible to effectively convey the hazards of relying on the data to understand fund liquidity, other than by urging the investor to disregard the information.

[17] *See* Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Oct. 13, 2016), 81 Fed. Reg. 81870, 81908 – 10 (Nov. 18, 2016) (the **"Reporting Modernization Release"**).

[18] The lag in public disclosure of portfolio information is necessary to avoid other harms to investors, such as enabling predatory market behavior. The good reasons for the lag do not, however, mitigate the unfitness of stale information as a basis for investor decision-making.

[19] Reporting Modernization Release, *supra* note 17, at 81873.

the risk of being disadvantaged.[20] Significantly, unlike securities traded in the secondary markets, in which all market participants can be expected to benefit from publicly available information through the efficient market pricing mechanism, mutual fund shares are purchased and sold directly with the fund at net asset value per share. Thus, there is no automatic market mechanism for sophisticated investors' superior understanding of Portfolio Classification Data and its limitations to be transmitted to less sophisticated investors.

2. Narrative Program Disclosure

In order to enhance investor understanding of fund liquidity risk management practices, the Commission is proposing a new requirement for funds to discuss briefly the operation and effectiveness of a fund's Program during the most recently completed fiscal year (**"Narrative Program Disclosure"**). This disclosure would be made in the fund's annual report to shareholders, as part of its management discussion of fund performance (**"MDFP"**), and would complement existing liquidity risk disclosure that funds provide in their prospectus (if it is a principal investment risk of the fund).

Unlike the Form N-PORT data, this narrative disclosure is in the spirit and tradition of the Commission's disclosure principles described above. It would be tailored for the individual fund, which can easily add any information needed to give it context and make it not misleading. The Narrative Program Disclosure would be designed to be read in conjunction with the liquidity risk disclosures in the fund's prospectus, which can be amended or supplemented as needed. We believe the annual report is the appropriate place for this disclosure; a fund's annual report is readily available to all investors, who are far more likely to read an annual report than to seek to analyze Form N-PORT data. Accordingly, we believe the Narrative Program Disclosure, together with the liquidity disclosures required in the fund's prospectus and statement of additional information, will provide investors with appropriate and enhanced information.[21]

The Commission has asked for comment on a number of specific questions relating to the proposed Narrative Program Disclosure, including whether funds should be required to discuss specific elements of

[20] As the Commission noted in the Proposing Release, "third party services, in repackaging this information, may potentially use additional assumptions about the value or proper presentation of liquidity profiles, thereby introducing further subjectivity and variability about which investors may not be aware." Proposing Release, *supra* note 2, at 11910.

[21] This approach would also be more consistent with the liquidity disclosures recommended by the Financial Stability Board (**"FSB"**) and the International Organization of Securities Commissions (**"IOSCO"**). Both FSB and IOSCO state that liquidity disclosures should be proportionate, and FSB specifically warns that in determining the content and frequency of disclosure to investors, it is important to consider the potential for unanticipated consequences from public disclosure of detailed information. FSB, *Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities* 17 (Jan. 12, 2017), http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf; IOSCO, *Recommendations for Liquidity Risk Management for Collective Investment Schemes* 10 – 12 (Feb. 2018), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD590.pdf (**"IOSCO Recommendations"**).

their Program (such as the 15% illiquid investment limit, highly liquid investment minimum (**"HLIM"**), classification process, or specific liquidity risk observations), changes made to the fund's liquidity risk management over the course of the reporting period, or additional information regarding liquidity risks. AMG believes the Proposal strikes the right balance and appropriately provides funds the flexibility to tailor their disclosure in the most meaningful way for their investors. Providing granular requirements would pose the risk of making the disclosure more cumbersome and detailed and thus impede, rather than promote, effective disclosure.

3. Concerns of the Dissenting Commissioners

AMG takes seriously the concerns expressed by two members of the Commission that opposed the Proposal. In separate statements, they explained their concerns with the proposed elimination of the requirement to disclose Portfolio Classification Data.[22]

The fundamental concern of the dissenting Commissioners is that the Proposal will result in a roll-back of transparency, taking back from retail investors basic liquidity information that would be useful for their decision-making. The public reporting that the Proposal would eliminate is described as "clear quantitative data" and likened to the ingredient list on a food label, which the Food and Drug Administration requires to be presented in descending order of predominance,[23] and which consumers can use to decide if they want to purchase the food product. At the same time there is concern that the qualitative discussion proposed as a replacement could be more subjective and even devolve into "meaningless boilerplate." Finally, there is a concern that eliminating the Form N-PORT data will favor institutional investors over retail investors.

We believe these concerns substantially overestimate the objective value of the Portfolio Classification Data and underestimate the value of the proposed narrative disclosure, in terms of their relative usefulness to investors. As described above, the Portfolio Classification Data percentages look clear, objective, and precise, but they are not. Unlike ingredients listed on a food label, the percentages are judgments, not facts. Indeed, it is the impression of clarity, objectivity, and precision – which will inevitably lead to belief in their comparability – that creates the hazard for retail investors. [24]

The closer analogy to an ingredient list would be the fund's portfolio holdings, which funds are already required to provide in far more detail than the Food and Drug Administration requires for food labels.

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[22] Commissioner Robert J. Jackson, Jr., Statement on Proposed Amendments to Public Reporting of Fund Liquidity Information (Mar. 14, 2018), https://www.sec.gov/news/public-statement/statement-johnson-open-meeting-fund-liquidity-2018-03-14; Commissioner Kara M. Stein, Statement on Proposed Amendments to Public Reporting of Fund Liquidity Information (Mar. 14, 2018), https://www.sec.gov/news/public-statement/statement-stein-open-meeting-fund-liquidity-2018-03-14.

[23] 21 C.F.R. § 101.4(a).

[24] As Commissioner Peirce noted in her oral remarks in connection with another proposal, "It's wonderful to quantify things when you can, but often, quantification gives us false security . . . ." Transcript of SEC Open Meeting, SEC Wire (Apr. 18, 2018).

These holdings, not the assessments of the holdings' liquidity, are the funds' true ingredients. Funds provide this information in detail in their annual and semiannual reports to shareholders and in their quarterly schedules of portfolio holdings, currently made on Form N-Q but in the future to be made on Form N-PORT.[25]

As to the value of narrative disclosure, this has been central to Commission disclosure policy from the inception of the federal securities laws, and should not be dismissed as a mere opportunity to generate "boilerplate." With respect to the proposed annual report disclosure, there may indeed be a fair amount of commonality in the Narrative Program Disclosures provided by many funds, where, because of the nature of the funds and the market environments in which they operate, liquidity challenges are few and the impact of liquidity risk small. This does not at all mean that the disclosures will be either boilerplate or meaningless. For funds that face significant liquidity challenges, it can be expected that the Narrative Program Disclosure would provide meaningful insight into the manner in which the fund manages its liquidity risk, especially when taken together with the information in the fund's registration statement, as the Proposal contemplates. It seems fair to assume (and the Liquidity Risk Program requirement necessarily implies) that such funds will not all face the same challenges or address them in the same way, and their Narrative Program Disclosures therefore will necessarily show meaningful variations if they are to comply with the requirements of Form N-1A. A failure to accurately provide material disclosures carries with it significant liabilities. The Narrative Program Disclosure requirement should force outlier funds, like the Third Avenue Focused Credit Fund often referred to in this context, to be transparent about their portfolio liquidity directly to investors. Bringing those situations into the sunlight is and should be the focus of the Commission's reporting and disclosure program.

Finally, we do not agree that replacement of the public Portfolio Classification Data on Form N-PORT with narrative annual report disclosure would benefit institutional investors at the expense of retail investors. On the contrary, it is more likely that institutions would seek to access and use the structured format data on Form N-PORT than would retail investors.[26] Thus, if anything, replacing structured data with an annual report narrative would place retail investors on a more equal rather than less equal footing with institutional investors in terms of their access to fund liquidity information.

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[25] In fact, these disclosures, which are much more than an ingredient list, provide very substantial information on the nature of a fund's holdings. For example, the schedule of portfolio holdings is categorized by the type of investment and the related industry, country, or geographic region of the investment, and restricted securities are identified and additional information is provided about them. Regulation S-X, Items 12-12 to 12-14. Note that these disclosures are consistent with the liquidity disclosure recommendation from IOSCO, which suggests disclosing holdings of various asset classes/types of securities or detailed holdings of individual securities in order to allow investors to assess the liquidity risk attached to the fund. IOSCO Recommendations, *supra* note 21.

[26] *See supra* notes 19 – 20 and accompanying text.

Accordingly, while we agree with the dissenting Commissioners that shareholders deserve basic information about the liquidity of their holdings, we believe that the Proposal furthers rather than detracts from this goal.[27]

4. Logistical Modifications

While we support the proposed replacement of Form N-PORT Portfolio Classification Data with Narrative Program Disclosure in annual reports, we recommend that the Narrative Program Disclosure requirement be adjusted to address two logistical issues.

Timing. The disclosure is to be for the most recently completed fiscal year. The Proposing Release suggests that the disclosure requirement is unlikely to create significant additional burdens, as there is an existing requirement in the Rule for the Program administrator to prepare a report that addresses the operation of the Program over the last year and its adequacy and effectiveness.[28] However, the Program administrator's report typically will not cover the fund's fiscal year. Funds in the same complex often have different fiscal years, to ease the task of fund administration and reporting, while, for similar reasons, fund complexes may wish to consider liquidity risk management reports for all of the funds in the complex at the same time. Requiring the disclosure to coincide with each fund's fiscal year would force many complexes to engage in multiple Program reviews on a year-round basis, a process that could add considerable burdens with no improvement in the review process for any given fund. In order to maximize efficiency and mitigate additional burdens, therefore, we recommend that the twelve-month period covered by the disclosure not be required to coincide with the fund's fiscal year.

Placement. AMG supports the proposal to include the Narrative Program Disclosure in the annual report. However, we believe it may be better included in a location other than the MDFP. Instructions for the MDFP indicate that it is intended to be a discussion of the factors that materially affected the

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[27] As Commissioner Stein has forcefully stated in another context, not all disclosures are created equal, and a disclosure's form and content can be critical to how effectively it serves its purpose:

> Throughout its history, the Commission has placed reliance on full and fair disclosure as a component of its investor protection mandate. When it's done well, fair and objective disclosure is fundamental to sound decision-making. Relevant and reliable information allows the public to make informed decisions about what to purchase—whether it's a type of car, a type of milk, a type of stock, or in the case at hand, the type of financial professional to hire. Simply put, good disclosure empowers a person to decide for him or herself the appropriate course of action. However, disclosure must have the appropriate form and content. And it must be presented at the appropriate time for it to be meaningful and effective.

Commissioner Kara M. Stein, Statement on Proposals Relating to Regulation Best Interest, Form CRS, Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers (Apr. 18, 2018), https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818.

[28] Proposing Release, *supra* note 2, at 11910 n.39 (citing Rule 22e-4(b)(2)(iii)).

fund's performance during the most recently completed fiscal year.[29] For most funds, however, the fund's Program will not have had a material effect on the fund's performance. In addition, if our recommendation on timing is accepted, the Narrative Program Disclosure may not necessarily be for the same twelve-month period as the fund's fiscal year.[30] Accordingly, we believe this disclosure should be made elsewhere in the annual report (or, if it is closer in time, in the semiannual report). We would contemplate that funds would have flexibility as to the location of this disclosure within the shareholder report, although the Commission may wish to designate an appropriate heading, such as "Operation of Liquidity Risk Management Program."[31]

B. Proposed Amendments to Liquidity Reporting Requirements

1. Multiple Classification Categories

The Commission proposes to amend Form N-PORT to allow funds the option to split a portfolio holding into more than one classification category in three specified circumstances. Absent the proposed amendment, Form N-PORT requires a fund to classify each holding into a single liquidity bucket. The proposal is prompted by questions that have arisen in the course of fund efforts to implement Rule 22e-4 and the related reporting requirements, and which funds have shared with the staff.

The specified circumstances under which it is proposed that funds would have the option of reporting multiple classifications for the same investment are: (1) if a fund has multiple sub-advisers with differing liquidity views; (2) if portions of the position have differing liquidity features that justify treating the portions separately; or (3) if the fund chooses to classify the position through evaluation of how long it would take to liquidate the entire position (rather than basing it on the sizes it would reasonably anticipate trading). Funds that choose this option would be required to indicate which of the three circumstances is applicable. In circumstances (1) and (2) (but not (3)), the fund would classify using the reasonably anticipated trade size for each portion of the position.

Form N-PORT Reporting. AMG supports the option to report multiple classifications in the circumstances set forth in circumstances (1) and (2), as proposed, and agrees with the rationales set forth in the Proposing Release. With respect to circumstance (1), the option of classifying positions in multiple categories to reflect differences in liquidity classification views among different sub-advisers managing separate sleeves of a fund would avoid the need for costly reconciliation, as well as provide

[29] The instructions state: "Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser." Form N-1A, Item 27(b)(7)(i).

[30] If the Commission determines to leave the Narrative Program Disclosure in the MDFP, we recommend that the Commission provide explicit clarification that compliance with this disclosure requirement does not mean that liquidity is necessarily material to performance. We also recommend that the Commission provide guidance in the adopting release that some funds, such as highly liquid funds with diverse investor bases, may have relatively minimal material information to disclose regarding their Programs.

[31] We note that funds should be able to include this disclosure in the MDFP if they believe it is appropriate to do so.

the Commission with potentially useful information about each sub-adviser's view of the asset's liquidity. With respect to circumstance (2), the multiple classification option could be used to better reflect the situation where portions of a single security may have different liquidity-affecting features that justify the fund treating the holding as two or more separate investments for liquidity classification purposes. For example, as the Proposing Release explains, a put option on a portion (but not all) of an asset held by the fund may significantly affect the liquidity characteristics of the portion of the asset subject to the put, resulting in two different classifications. AMG also supports the proposal that the fund should classify using the reasonably anticipated trade size for each portion of the position.

With respect to circumstance (3), AMG supports the option for funds to apply a proportionality approach to classification, but believes that funds using this approach should be permitted to base it on liquidation of the "reasonably anticipated trading size" methodology required by Rule 22e-4, rather than an assumed liquidation of the whole position. Under this approach, for example, if a position had a reasonably anticipated trading size of $10 million, and the fund could convert $7 million to cash within three business days without significantly changing the market value of the investment, but converting the remaining $3 million to cash would require four to seven calendar days, then 70% of the position would be a highly liquid investment but the remaining 30% would be a moderately liquid investment. We believe this approach would appropriately distinguish between a position that could achieve a relatively high degree of liquidity with a smaller trading size and a position that realistically cannot be quickly traded even with a smaller trading size. In contrast, an assumed liquidation of the entire position can imply that a fund is less liquid than is really the case, because funds normally do not have to sell entire positions to meet redemption needs.

The Commission did not adopt this approach out of concern that it would potentially result in inaccurate classifications that may not fully reflect the liquidity of a fund's investments.[32] We do not agree that use of reasonably anticipated trading sizes for this approach, as Rule 22e-4 generally prescribes for all classifications, would result in inaccurate classifications in this particular circumstance. Rather using the reasonably anticipated trading size approach would lead to more consistency in how multiple classifications are used in all three circumstances.

AMG also supports the Commission's proposal to include multiple classifications as an option, rather than a requirement. While these uses of multiple classifications, including proportionality, may be useful to some funds, we do not believe that all funds should be required to engage in them.

Application of Rule 22e-4. Finally, AMG requests clarification that classification in multiple categories as permitted by Form N-PORT is contemplated under Rule 22e-4, as well. AMG believes that this is the intent of the Proposal, as a different conclusion would eliminate the potential benefits of providing multiple classification reporting as an option on which the Proposal relies. Also, to the extent a fund believes that the multiple classifications better reflect the liquidity characterization of its holdings, that judgment should be incorporated into those elements of its Program that hinge on classification

[32] Proposing Release, *supra* note 2, at 11913 n.61.

determinations (for example, its compliance with the Program's HLIM and 15% provisions), not just its reporting obligations. Rule 22e-4 by its terms does not expressly require that each investment must be classified in one bucket, however, there is a statement to that effect in the Adopting Release.[33] We believe that this could be appropriately clarified as applied to these circumstances when the Commission adopts the Proposal. We also note that this approach would be consistent with the interpretive guidance provided by the staff that permits more than one classification category when a fund has multiple sub-advisers with differing liquidity views.[34]

2. Disclosure of Cash and Certain Cash Equivalents

The Commission is proposing to add to Form N-PORT a new disclosure item that would aggregate a fund's holdings of (1) cash and (2) the subset of cash equivalents that are not otherwise reported in Parts C and D of the Form. Cash equivalents that are reported as investments on Form N-PORT would not be included in this item. This disclosure item would be made publicly available each quarter, together with other Form N-PORT data that is publicly disclosed.

To explain the Commission's reasoning for proposing this new disclosure, Form N-PORT in its current form does not require funds to report, as a separate item, the amount of cash and cash equivalents held by the fund. Some, but not all, cash equivalents, such as shares of money market funds, are reported in the schedule of portfolio investments in Part C of the Form, which requires funds to report certain information on its investments on an investment-by-investment basis. Cash equivalents that are securities and not reported in Part C may also be reported in Part D (miscellaneous securities). However, the Commission observes that cash and certain cash equivalents are not considered investments for Form N-PORT reporting purposes and therefore will not be reported in Part C as investments or in Part D as miscellaneous securities. Part B.1 of Form N-PORT (assets and liabilities), which requires information about a registrant's assets and liabilities, also does not require specific disclosure of a registrant's holdings of cash and cash equivalents.

Cash held by a fund is a highly liquid investment under rule 22e-4, and the percentage of the fund's assets held in cash would have been included in the Portfolio Classification Data (as a component of the percentage of the fund's holdings classified as highly liquid investments) that the Commission's disclosure proposal would eliminate. Absent the Portfolio Classification Data indicating the percentage of the fund's assets held in highly liquid investments, the Commission states that it may not be able to effectively monitor whether a fund is compliant with its HLIM unless it knows the amount of cash held by the fund.[35] The Commission also believes that the additional disclosure of cash and cash equivalents

[33] Adopting Release, *supra* note 4, at 82182.

[34] Liquidity FAQs, *supra* note 15, Q. 7.

[35] The Commission believes that monitoring HLIM compliance will be more difficult absent reporting of the Portfolio Classification Data, which would be eliminated under the Proposal. This Data would have included the portfolio percentage for all highly liquid investments, including cash and cash equivalents.

not otherwise identified on the Form will provide more complete information that will be useful to the Commission in analyzing a fund's HLIM, as well as trends regarding the amount of cash being held, which also correlates to other activities the fund is experiencing, including net inflows and outflows.[36]

We support the Commission's proposal to require reporting on Form N-PORT of a separate item that includes both cash and the subset of cash equivalents that are not reported as investments. We appreciate that this information may be useful to the Commission in order to assess HLIM compliance, in that it provides all the components for the Commission to assess a fund's highly liquid investments.

We recommend, however, that this information not be made public. While the proposed item, which would include cash and only those cash equivalents that are not otherwise reported, may be useful to the Commission for monitoring HLIM compliance, it would be confusing to investors. They will not understand which cash equivalents will be included and which will be excluded from the number. Different funds will use different types of cash equivalents, some of which will be reported on Form N-PORT as investments and thus excluded in this number, and some of which will not be reported as investments and thus will be included. As a result, the category of "cash and cash equivalents that are not reported as investments" will cause variations in the number based on a reporting technicality that is not transparent to investors, rather than a genuine liquidity concept that could help them make investment decisions.[37] In addition, testing cash and otherwise unreported cash equivalents at a single point in time risks creating the illusion that the fund is cash-rich, or cash-poor, due to the fortuitous timing of investor purchases and redemptions. Accordingly, we believe that public disclosure would be neither necessary nor appropriate in the public interest or for the protection of investors.[38]

C. Compliance Dates

The Commission proposes to align the compliance dates for the proposed amendments to Forms N-PORT and N-1A with the revised compliance dates the Commission adopted for Form N-PORT in December 2017. Pursuant to the December action, the Form N-PORT filing obligation will apply (i) for larger fund groups, with the Form N-PORT filing for the month ending March 31, 2019, which will be due by April 30, 2019, and (ii) for smaller fund groups, with the Form N-PORT filing for the month ending March 31, 2020, which will be due by April 30, 2020.[39] The Commission believes that aligning

[36] While technically some cash equivalents are not reported as investments on Form N-PORT, clearly they are intended to be included in the highly liquid investments bucket. The Adopting Release stated, "Assets eligible for inclusion in a fund's highly liquid investment minimum could include a broad variety of securities, as well as cash and cash equivalents." Adopting Release, *supra* note 4, at 82235.

[37] The Commission also recognizes that the characterization of certain holdings as cash equivalents involves a degree of judgment; the Proposing Release refers to certain categories of investments that "could be reasonably considered" or "could reasonably be categorized" by some registrants as cash equivalents. Proposing Release, *supra* note 2, at 11913.

[38] *See* 1940 Act § 45(a).

[39] *See* Investment Company Reporting Modernization, Release Nos. 33-10442, 34-82241, IC-32936 (Dec. 8, 2017), 82 Fed. Reg. 58731 (Dec. 14, 2017). During an interim period from June 1, 2018, to April 1, 2019, larger fund groups will be subject to a reporting obligation that they will satisfy by maintaining in their records the information that is required to be included in Form N-PORT. *Id.* at 58733; 1940 Act Rule 30b1-9(T).

the compliance date for all liquidity-related reporting requirements will allow funds to holistically implement all liquidity reporting and disclosure requirements at the same time and may make the requirements less burdensome.

We note that these requirements will not be entirely aligned, because compliance with the liquidity-related provisions of Form N-PORT by larger fund groups has been extended to June 1, 2019 (*i.e.*, larger fund groups will first comply with the liquidity-related provision of Form N-PORT in their filings for the month ending June 30, 2019, which is due by July 30, 2019).[40] We believe, therefore, that June 1, 2019, would be a more appropriate compliance date for larger fund groups to comply with the amendments to Form N-PORT. In light of the existing extension, the only effect of this later compliance date would be on the new Item B.2.f. requirement to report cash and cash equivalents not reported in Parts C and D. Because the purpose of the cash and cash equivalents reporting requirement is to aid the Commission in assessing compliance with the HLIM requirement, it makes sense for this requirement to take effect at the same time as the other liquidity-related reporting requirements. In addition, some of our Members advise that this additional time is needed in order to make necessary changes to data feeds and technology in order to comply with the new cash and cash equivalents reporting requirement.

The proposed amendment to Form N-1A would require a discussion of the operation and effectiveness of the Fund's Liquidity Risk Program for a one-year period, and funds will not yet have had their Liquidity Risk Programs in effect for one year at those compliance dates. The compliance date for Rule 22e-4 is December 1, 2018, for larger fund groups, and June 1, 2019, for smaller fund groups.[41] Accordingly, we believe that compliance with the Narrative Program Disclosure required by Form N-1A should not be required until the annual report for the first fiscal year ending on or after December 1, 2019, for larger fund groups, and June 1, 2020, for smaller fund groups.

III. Future Actions

A. The Treasury Report

In connection with the proposal to replace public reporting of Portfolio Classification Data on Form N-PORT with Narrative Program Disclosure in fund annual reports, the Commission noted that the October 2017 Asset Management and Insurance Report by the Department of the Treasury highlighted the importance of robust liquidity risk management programs, but recommended that the Commission embrace a "principles-based approach to liquidity risk management rulemaking and associated bucketing

[40] *See* Investment Company Liquidity Risk Management Programs; Commission Guidance for In-Kind ETFs, Release No. IC–33010 (Feb. 22, 2018), 83 Fed. Reg. 8342 (Feb. 27, 2018).

[41] The compliance date for the classification-related provisions of the Rule, including the HLIM, has been extended to June 1, 2019, for larger fund groups, and December 1, 2019, for smaller fund groups. *See id.* Since compliance with the main requirements of the Rule will be required upon the original compliance dates, however, we believe those are the relevant dates for purposes of the Narrative Program Disclosure.

requirements."[42] The Proposing Release noted that market participants will continue to gather insights as liquidity risk management programs are implemented, and can provide comments to the Commission as they do so. The Proposing Release further stated that the staff will monitor the information received and report to the Commission what steps, if any, the staff recommends in light of commenter experiences.

The Commission specifically requested comment on the following questions with respect to the Treasury Report:

> Are there advantages to the approach that Treasury recommends? If so, what additional steps, if any, should we consider to shift toward a principles-based approach? To what extent have funds already implemented the existing liquidity classification requirement?[43]

We provide our views on these questions in turn.

There are significant advantages to the approach that Treasury recommends.

AMG believes, based on the lessons learned from implementing the classification requirement as currently prescribed in Rule 22e-4, that there would be significant advantages to the approach Treasury recommends.[44] These advantages fall in three main categories, relating to: (1) recognition of unanticipated problems experienced with the current classification requirement in practice; (2) encouragement of classification methods that would provide meaningful assistance to fund liquidity risk management practices; and (3) avoidance of costs to fund investors that do not bring commensurate benefits.

First, as discussed above, the data generated by the current classification methodology will reflect significant subjectivity, which undermines its usefulness for comparison among funds. While this is most important as a reason to avoid public consumption of the information for investor decision-making, the same issues raise concerns about the usefulness of the data for regulators as well. We recognize that the Commission believes that liquidity classification information would be valuable to it in its oversight of the fund industry. We believe that in light of the concerns about the current requirement that have

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[42] U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Asset Management and Insurance* 32 – 35, 153 (Oct. 2017), https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.

[43] Proposing Release, *supra* note 2, at 11912.

[44] We note that two Commissioners indicated their openness to reconsideration of the classification requirement and described the failure to do so as a missed opportunity. Commissioner Hester M. Peirce, Statement on Proposed Amendments to Public Reporting of Fund Liquidity Information (Mar. 14, 2018), https://www.sec.gov/news/public-statement/statement-peirce-open-meeting-fund-liquidity-2018-03-14a; Commissioner Michael S. Piwowar, Statement at Open Meeting on Investment Company Liquidity Disclosure (Mar. 14, 2018), https://www.sec.gov/news/public-statement/statement-piwowar-open-meeting-fund-liquidity-2018-03-14.

emerged in implementation, the data that funds would generate from a principles-based approach, with appropriate explanation to the Commission, would equally if not better serve that purpose.

Second, as a result of what many of our Members view as the now demonstrated limitations in the current Rule 22e-4 classification methodology, Rule 22e-4 classifications are widely expected to be used primarily to satisfy Form N-PORT reporting requirements, and not as a primary tool for liquidity risk management. For this reason, funds would be better served by focusing their attention on classification methods that can be incorporated into their liquidity risk management practices and can serve as a useful tool in that endeavor. A principles-based approach would thus better accomplish the Commission's fundamental goal in adopting Rule 22e-4, to promote effective liquidity risk management throughout the industry.

Third, the current requirement imposes significant costs on funds that will ultimately be borne by investors and diminish the returns they seek for their long-term retirement and other financial goals. The implementation experience has demonstrated that these costs are more extensive and that the benefits are more uncertain than originally expected.

All of these considerations lead to the conclusion that a principles-based approach to classification would have significant advantages.

Appropriate steps to shift toward a principles-based approach.

The Commission and its staff have demonstrated a strong commitment to effective liquidity risk management, both through the rulemaking initiative that culminated in Rule 22e-4 and through active engagement with the industry that led to the constructive steps of delaying the compliance date for the classification requirement and the current Proposal. We believe that continuing this commitment would involve prompt adoption of the Proposal, followed by putting out for comment a proposal that would replace the current classification requirement with a principles-based classification approach.

Implementation efforts to date will assist and expedite a rulemaking for a principles-based approach.

Funds to date have invested substantial time and resources in their efforts to implement the classification requirement. Significantly, the Commission and its staff have also dedicated their time and resources both to understanding fund liquidity risk management in general and to the operation of the Rule 22e-4 classification requirement in particular. We believe these efforts by both the industry and the Commission and its staff, and the lessons learned from the experience, can lay the groundwork for the Commission's development and proposal of a principles-based approach on a fully informed and expeditious basis.

B. One-Year Review and Reconsideration of Public Dissemination Question

The Proposing Release also states that by June 2020, the staff from the Divisions of Investment Management and Economic and Risk Analysis will provide to the Commission an analysis of the granular fund-specific liquidity classification data that the Commission will commence receiving from Form N-PORT filings on a confidential basis in June 2019, together with a staff recommendation

addressing whether and, if so, how there should be public dissemination of fund-specific liquidity classification information.

Given the subjectivity and variability embedded in the classification process, AMG believes the reasons against public dissemination of Liquidity Classification Data will be no less compelling in 2020 than they are now. Accordingly, AMG does not believe that a study of granular fund-specific liquidity classification data provided to the Commission can reasonably be expected to support a conclusion that this information should be made available for investor decision-making through public dissemination.

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SIFMA AMG sincerely appreciates the opportunity to comment and your consideration of these views. We stand ready to provide any additional information or assistance that the Commission might find useful. Please do not hesitate to contact either Timothy Cameron at 202-962-7447 or tcameron@sifma.org or Lindsey Keljo at 202-962-7312 or lkeljo@sifma.org with any questions.

Sincerely,

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