February 14, 2023

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1010

Submitted via email to rule-comments@sec.gov

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

Dear Ms. Countryman:

Americans for Tax Reform (ATR)[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed rule, entitled, *Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT* (Rule).

The Rule purports to create stronger liquidity risk management of open-end mutual funds and to lessen the dilution of shares held by investors in these funds.[2] However, it is ATR's belief that the SEC is wrongly picking winners and losers by mandating a sea change in how open-end funds operate.

The Rule discriminates against mutual funds by requiring (1) swing pricing on net purchases and net redemptions of shares in a mutual fund, (2) a hard close pricing time, (3) and liquidity requirements that will limit the availability of certain types of mutual funds. The increased costs required to comply with the Rule's provisions will likely be passed down to individual investors and retirees in the form of lower returns.

ATR believes that the amendments made in this Rule are harmful to investor returns, retirees' life savings, and the broader capital markets. ATR opposes the Rule as drafted.

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[1] ATR is a 501(c)(4) nonprofit, taxpayer advocacy organization that opposes all tax increases and expansive government regulation.
[2] Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, 87 Fed. Reg. 77172, https://www.federalregister.gov/documents/2022/12/16/2022-24376/open-end-fund-liquidity-risk-management-programs-and-swing-pricing-form-n-port-reporting.

The Rule's provisions do not apply to money market funds (MMFs) and exchange-traded funds (ETFs). Although ATR sees the value in allowing ETFs and other investment companies to flourish unhindered by excessive regulation, under the Rule, the SEC is explicitly targeting mutual funds. Investors should be allowed to choose the products they prefer without the federal government artificially inflating the attractiveness of some products over others.

Since 1924, investors have been able to buy and sell shares in mutual funds.[3] Mutual funds offer investors liquidity on a daily basis while gaining exposure to underlying debt and equity securities that were previously inaccessible. Unfortunately, the mandated swing pricing and the hard close proposals in the Rule could disincentivize investors to transact daily, defeating the defining purpose of mutual funds as an investment product.

Under the *Administrative Procedure Act* (APA), a court is required to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[4] The Rule may also be found to be unlawful if it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" and it is both "without observance of procedure required by law" or "unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court."[5]

The Rule was never authorized by Congress and lacks the necessary economic analysis to comply with requirements under the APA. As a result of the Supreme Court's ruling in *West Virginia v. EPA*, the SEC's authority to promulgate the rule without Congressional authorization could be a violation of the major questions doctrine.[6]

The Rule's amendments to open-end funds are economically significant and require a thorough cost-benefit analysis.[7] However, the Rule lacks the adequate data to sufficiently analyze the costs of implementing its several provisions.

The changes proposed in the Rule could dramatically harm the more than "102.6 million individual investors in 59.0 million US households" that own mutual funds.[8] The Rule will reduce competition and options for investors. The SEC admits that "smaller funds may become less competitive than larger funds."[9]

The Rule must "maximize net benefits" and "tailor its regulations to impose the least burden on society."[10] The SEC has not proven that the Rule's amendments do so.

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[3] *See,* Mutual Funds and the U.S. Equity Market, https://www.federalreserve.gov/pubs/bulletin/2000/1200lead.pdf.
[4] *See*, Administrative Procedure Act, Pub.L. 79–404, 60 Stat. 237, https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf.
[5] *Id.*
[6] *West Virginia v. EPA* 597 U.S. __ (2022), https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf
[7] E.O. 12866, available at https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf.
[8] Investment Company Institute Factbook, Ch. 3, available at https://www.icifactbook.org/pdf/2022_factbook_ch3.pdf
[9] Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, 87 Fed. Reg. 77287, https://www.sec.gov/rules/proposed/2022/33-11130.pdf
[10] E.O. 13563, available at https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.

The SEC "has relied on factors which Congress has not intended it to consider" and failed to "cogently explain why it has exercised its discretion in a given manner."[11]

The Rule explains that the amendments proposed are a result of stresses in market liquidity during March 2020. The market stress experienced in March 2020 was largely mitigated due to existing liquidity requirements for mutual funds. Moreover, the large sell-off of Treasury bonds may not have been as large as the $260 billion net sale number quoted by policy makers.[12] Surveys conducted by the mutual fund investment management companies found that actual net sales were less than half of what was previously reported.[13]

In many cases a mutual fund does not receive order flow information until after it has calculated its net asset value (NAV). This conflicts with the "hard close" pricing time proposed in the Rule. Under the proposal, an order may only receive the current day's price if the fund, transfer agent, or registered securities clearing agency receives the order prior to the fund calculating its NAV.

Overall, the Rule will likely increase costs on retirees. Households with employer-sponsored retirement plans use intermediaries to transfer order flow information to open-end funds. The imposition of a swing factor combined with the 15% cap on illiquid assets, a 10% set stressed asset trade size, and assumption of a pro rata sale of 10% from each type of portfolio investment (vertical slice) will increase costs on funds and service providers with little to no benefit provided to individual investors and retirees.

Statistics

The negative effects of the Rule on mutual funds would be gargantuan considering the amount of assets held by mutual funds and the large number of U.S. households that own shares. According to the Investment Company Institute (ICI), in December 2022, mutual funds held approximately $22 trillion in assets.[14] At the end of 2021 about 102.6 million individual investors owned mutual funds.[15]

63% of 401(k) plan assets are held in mutual funds. Mutual funds are also "the most commonly used investment vehicles in 529 savings plans."[16] Additionally, there are approximately $12.6 trillion of defined contribution plan and individual retirement account assets invested in mutual funds.[17]

The amount of assets held in mutual is about 80% of the total size of the U.S. gross domestic product.[18]

The pervasive exposure that U.S. households have to mutual funds makes the amendments in the Rule economically significant.

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[11] *Motor Vehicle Manufacturers Ass'n*, 103 S. Ct. at 2856, https://cite.case.law/us/463/29/#p43.
[12] Setting the Record Straight on Bond Mutual Funds' Sales of Treasuries, available at https://www.ici.org/viewpoints/22-view-bondfund-survey-2#_ftnref4.
[13] *Id.*
[14] Setting the Record Straight on Bond Mutual Funds' Sales of Treasuries, available at https://www.ici.org/research/stats/trends_12_22.
[15] Investment Company Factbook, available at https://www.ici.org/system/files/2022-05/2022_factbook.pdf.
[16] Frequently Asked Questions About 529 Plans, available at https://www.ici.org/pubs/faqs/faqs_529.
[17] Investment Company Factbook, available at https://icifactbook.org/pdf/2022_factbook.pdf
[18] Federal Reserve Bank of St. Louis, available at https://fred.stlouisfed.org/series/GDP.

Swing Pricing

ATR strongly opposes the mandatory implementation of swing pricing proposed in the Rule.

There are over 7,000 mutual funds that currently have the option to implement swing pricing under Rule 22c-1(a)(3).[19] However, as the SEC has noted, none of the American funds have chosen to apply swing pricing because the operational costs of doing so would harm returns to investors and retirees' lifesavings.

The SEC's rule fails to explore why funds decided not to implement swing pricing. If a substantive analysis had been conducted, the SEC would better understand the heightened costs this would impose on fund investors.

There is no current market failure for mandatory swing pricing to resolve. However, the SEC has proposed in the Rule that a "swing factor" must be applied to net redemptions (no threshold) and net purchases (if it exceeds 2% of the fund's assets).

Net redemptions will swing down a fund's NAV, so investors purchasing shares of the fund will get a discount. Conversely, on a day of net purchases of more than 2% of the fund's net assets, an investor redeeming shares will receive a price artificially inflated compared to the current NAV.

The distortionary effects of swing pricing could incentivize investors to shift assets toward other investment products like ETFs.

In 2015, the SEC acknowledged the negative implications of mandating swing pricing. In a notice of proposed rulemaking for open-end funds, the SEC stated that "the potential disadvantages of swing pricing...include increased performance volatility and the fact that the precise impact of swing pricing on particular purchase and redemption requests would not be known in advance and thus may not be fully transparent to investors. In addition, the swing factor used by a fund on a particular day may not capture all costs incurred by the fund resulting from purchases or redemptions that day."[20]

The SEC also previously acknowledged that swing pricing can be costly to individual investors. For example, "a small investor's redemption request would not create any significant liquidity costs for the fund on its own, but if this investor were to redeem on the same day that the fund's net redemptions are high, his or her redemption proceeds would be reduced by the NAV adjustment."[21] The SEC explicitly conveyed concerns that a fund "would incur one-time costs to develop and implement the policies and procedures, as well as ongoing costs relating to administration of the

[19] Trends in Mutual Fund Investing, December 2022, available at https://www.ici.org/research/stats/trends_12_22

[20] *See*, Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, 80 Fed. Reg. 62330, https://www.federalregister.gov/documents/2015/10/15/2015-24507/open-end-fund-liquidity-risk-management-programs-swing-pricing-re-opening-of-comment-period-for.

[21] *Id.*

policies and procedures. Those costs will directly impact the fund and may indirectly impact fund investors if the fund passes along its costs to investors through increased fees."[22]

Now, the SEC wants to require swing pricing for all mutual funds, contradicting prior policy. A "reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy" or else the new agency policy will be found to be arbitrary and capricious.[23] No reasoned explanation has been proposed by the SEC.

The new policy is also based on unreliable data. The SEC claims in one footnote that prior to issuing the Rule, they did not "have specific data about the dilution fund shareholders experienced in Mar[ch] 2020."[24] Dilution of non-transacting shareholders in March 2020, which is the SEC's entire justification for the swing pricing requirement, has not been proven. This admission undermines the SEC's entire reasoning for the swing pricing mandate.

Another footnote in the Rule explains that the data used to show share dilution from a lack of swing pricing is based on observations from funds in Europe. The footnote states that "To our knowledge, such data on fund dilution are not available for the U.S. and we solicit data that could enable quantification of the benefits of swing pricing."[25] The rule admits that the data necessary to conduct a thorough economic analysis of the cost and benefits of mandated swing pricing is unavailable. Without the data it is not possible to understand how swing pricing would affect the dilution of shares held in American-run funds.

The SEC clearly states that "these estimates from other jurisdictions may be based on fund transaction cost components that differ from the U.S., such as those associated with government taxes and levies."[26]

The data does not apply to the United States and offers no empirical evidence of how swing pricing would affect U.S. funds.

The white paper cited by the SEC observes, for example, that France has a financial transaction tax (FTT) the cost of which is incorporated in the swing factors for Undertakings for the Collective Investment in Transferable Securities (UCITSs) as regulated by the European Union. The U.S. does not impose a FTT tantamount to the French levy. It is imprudent and fallacious to compare costs imposed on open-end fund order flows in the EU versus the U.S. and subsequently determine that the swing pricing regulations imposed in the EU should be applied to American-based funds.

There is no reason to apply new restrictions on mutual funds when U.S. funds have already been outperforming EU funds without swing pricing.[27]

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[22] *Id.* at 62367

[23] *FCC* 489 F.3d 444, https://www.law.cornell.edu/supct/html/07-582.ZO.html.

[24] *See*, n.40, available at https://www.federalregister.gov/documents/2022/12/16/2022-24376/open-end-fund-liquidity-risk-management-programs-and-swing-pricing-form-n-port-reporting.

[25] *See*, n.478 available at https://www.federalregister.gov/documents/2022/12/16/2022-24376/open-end-fund-liquidity-risk-management-programs-and-swing-pricing-form-n-port-reporting.

[26] 87 Fed. Reg. 77257

[27] *Mutual funds efficiency comparison between U.S. and Europe*, available at https://go.gale.com/ps/i.do?id=GALE%7CA410139618&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=1936699X&p=AONE&sw=w&userGroupName=anon%7E65b4b9a2

The SEC is making changes to existing rules prior to soliciting the necessary data needed to compile a proper cost-benefit analysis for swing pricing. The cost-benefit analysis provided in the Rule lacks the necessary data and quantitative analysis required to pass the procedures required under the APA.

The SEC is "not able to quantify many of the costs associated with the proposed swing pricing framework."[28] The agency does "not have granular data on the current practices and operating costs for all funds," and it also "cannot predict the number of investors that would choose to keep their investments in the mutual fund sector nor the number of investors that would exit mutual funds and instead invest in other fund structures such as ETFs, closed-end funds, or CITs."[29]

The SEC has put the cart before the horse in promulgating the Rule.

If net redemptions exceed 1%, open-end funds would be required to consider the transaction costs of selling "a pro rata amount of its portfolio investments."[30] This pro rata share is referred to as the "vertical slice." Instead of considering the specific investments the fund would buy or sell, they would be "required to assume it would purchase or sell a pro rata amount of each investment in its portfolio" to fulfill redemptions.[31]

The SEC claims that the vertical slice assumption "is designed to recognize the potential longer-term costs of reducing a fund's liquidity and would more fairly reflect the costs imposed by redeeming or purchasing investors."[32] It is hard to imagine how this arbitrary calculation is better at predicting longer-term costs when a portfolio manager would almost never buy or sell a pro rata amount of each investment to meet redemptions. This could result in an overestimation of the swing factor and unnecessarily harm investors redeeming shares (during a net redemption) or purchasing shares (during a net purchase that exceeds 2% of the fund's NAV).

Hard Close

ATR is opposed to the Rule's proposed "hard close" pricing time.

Current regulations allow investors to receive the current day's price if an intermediary (e.g., retirement plan recordkeepers or brokerage firms) receives the order before the fund's pricing time, which is usually 4 p.m. Eastern Standard Time (EST). Intermediaries will generally send orders to mutual funds after 4 p.m. EST.

The Rule proposes amendments to Rule 22c-1 to impose a "hard close" for order flow information. Under the Rule, funds would be required to select a "pricing time" at which the fund would calculate its NAV (likely 4 p.m. EST). A purchase or redemption order may only receive the current day's NAV if the fund, its designated transfer agent, or a registered securities clearing agency receives the order before the pricing time.

[28] 87 Fed. Reg. 77256
[29] 87 Fed. Reg. 77256
[30] 87 Fed. Reg. 77184
[31] 87 Fed. Reg. 77205
[32] 87 Fed. Reg. 77258

The increased costs from altering the order flow information to comply with the hard close will significantly affect retirees. In 2021, 81% of U.S. households purchased mutual fund shares through employer-sponsored retirement plans (e.g., defined contribution plans and employer-sponsored individual retirement accounts).[33] Only 18% of U.S. households purchased shares of mutual directly from the funds.[34]

Most U.S. households could see increased costs because intermediaries will bear the burden of setting internal deadlines and changes in operations to meet the new hard close requirement. Intermediaries may have to spend significant amounts of money to reconstruct their hardware and software architecture, which could make mutual funds less attractive to investors and drive investors away toward other investment products.

The costs of implementing the hard close will likely be significant for intermediaries. The SEC states that, "In response to the proposed hard close requirement, funds and intermediaries would need to make significant changes to their business practices, including updating their computer systems, altering their batch processes, or integrating new technologies that facilitate faster order submission. Intermediaries would need to reengineer their systems to ensure disseminated order information reaches the transfer agent or Fund/SERV before 4 p.m., unless they determine to process fund orders at the next day's price as a matter of practice."[35]

The SEC understands "that retirement plan recordkeepers may face particular challenges with adhering to the proposed hard close requirement."[36] For example, "The hard close requirement may disadvantage certain investors that do not have a choice in their intermediary, if it precludes them from responding to market events after a specific cut-off time that is earlier than 4 p.m. ET or lengthens the amount of time for completing certain types of transactions...compared to investors that submit orders directly to funds."[37]

The SEC also acknowledges "that retirement plan recordkeepers would need to substantially update or alter their processes and systems to accommodate the proposed hard close requirement to submit orders more quickly."[38]

Instead of working with Congress, the SEC consulted with foreign regulators to influence their decision to impose a hard close on open-end fund trading.[39]

The hard close proposed in the Rule is predicated on the usage of swing pricing. The SEC's "hard close proposal is designed to support the proposed swing pricing amendments by facilitating the more timely receipt of fund order flow information."[40] There is no inherent benefit to the hard close, except to better inform swing pricing, which will be burdensome to implement and increase costs on fund investors in the form of new fees.

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[33] Investment Company Factbook 2022, Ch.7, available at http://www.icifactbook.org/pdf/2022_factbook_ch7.pdf.
[34] *Id.*
[35] 87 Fed. Reg. 77212
[36] 87 Fed. Reg. 77212
[37] 87 Fed. Reg. 77261
[38] 87 Fed. Reg. 77212
[39] 87 Fed. Reg. 77209
[40] Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, available at https://www.sec.gov/rules/proposed/2022/33-11130.pdf#page128.

There is a lack of empirical evidence showing the benefits of a hard close outweigh the costs. The SEC is "not able to quantify many of the costs of the hard close requirement."[41] The agency does "not have granular data related to the current practices and operating costs for each intermediary type, both those that are regulated by the Commission and those that are not." It is also inestimable as to "how many intermediaries will choose to upgrade their systems and processes in order to maintain their ability to offer mutual funds to the client, how many intermediaries will choose to impose an earlier cut-off time for investor orders, and the number of intermediaries that will retain their existing systems and order cut-off times and offer products that would not be subject to the proposed hard close requirement, such as CITs, ETFs, or closed-end funds in place of mutual funds."[42] The SEC also "cannot predict how many investors will respond to changes that intermediaries may implement in response to the hard close requirement by divesting from the mutual fund sector."[43]

Without the necessary data to understand the negative repercussions that may result from the provisions in the Rule, the economic analysis is insufficient. The SEC's implementation of the hard close requirement is arbitrary and capricious and fails to follow the procedures outlined in the APA.

Liquidity Risk Management

ATR opposes the new liquidity classifications because of its intent to discriminate against less liquid underlying assets without any evidence that the amendments will significantly benefit investors or ward off future liquidity crunches.

The Rule proposes amendments to Rule 22e-4 that could force certain open-end funds to significantly reduce or eliminate "less liquid" investments, such as bank loans, that under the Rule, will likely be reclassified as "illiquid" and be subjected to the 15% cap on illiquid investments.

Under Rule 22e-4 open-end funds already employ the use of liquidity risk management programs to ameliorate the risk of large redemption activity.[44] The liquidity risk management programs rule, which became effective in 2017, required that "each fund [e]stablish a written liquidity risk management program. A fund's liquidity risk management program broadly requires a fund to assess, manage and review the fund's liquidity risk; to classify the liquidity of each of the fund's portfolio investments; to determine a highly liquid investment minimum (except for funds that hold primarily highly liquid investments); and to limit illiquid investments to 15% of fund investments."[45] This highly detailed set of regulations was "designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders."[46]

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[41] 87 Fed. Reg. 77261
[42] *Id.*
[43] *Id.*
[44] *See*, Investment Company Liquidity Risk Management Programs, available at https://www.federalregister.gov/documents/2016/11/18/2016-25348/investment-company-liquidity-risk-management-programs.
[45] 81 Fed. Reg. 82229
[46] 81 Fed. Reg. 82142

The Rule's uniform restrictions on liquidity requirements for open-end funds will likely increase costs on fund investors and limit the option for higher return investments. While bank loan funds may be less liquid, they offer higher returns for investors who want a more diversified and more aggressive investing strategy. They also offer a hedge against changes in interest rates because the underlying loans pay interest based on a floating rate. The reclassification of liquid assets will likely eliminate the use of bank loan funds because instead of counting as "less liquid" they will now be considered "illiquid." If bank loan funds disappear, this could deter banks from offering the same amount of below investment-grade floating rate loans and siphon liquidity away from business entities that may rely on certain banks to take greater risks in offering capital. Selling the illiquid securities could exacerbate market illiquidity during times of stress.[47]

Under the Rule, bank loan funds will become unusable. The 15% limit on illiquid investments in an open-end fund will disqualify bank loan funds from operating. The top five bank loan funds, according to U.S. News & World Report, invest at least 80% of their net assets in "floating rate loans" and other floating rate debt securities.[48] The changes in the Rule appear to be specifically designed to target bank loan funds and terminate them as an option for investors.

Although investors should understand the bank loan funds offer higher risk than other debt mutual funds, they are also vital to the capital structure of American companies. The loans "account for a sizable share of lending to non-financial corporations, amounting to about 50% of total commercial loans, and they are typically used to finance important economic activity, such as mergers and acquisitions, leveraged buyouts, business recapitalizations, and business expansions."[49]

Bank loans promote liquidity for companies and specific business activities that might not occur without the availability of bank loan mutual funds to buy them and service a secondary market. From March 2021-March 2022, bank loan fund returns "outperformed those of nearly every other category of taxable-debt investments...including high-yield and highly rated bond funds."[50] The Rule's amendments could remove these funds as an important tool for business capital and stable investor returns.

There is no quantifiable reason for the change, and no authorization from Congress has directed the SEC to pursue this shift in reclassifying assets. Systematic disqualification of certain funds is the antithesis of facilitating capital formation.

This action will reduce choices for investors.

There is a dearth of empirical evidence that shows the benefits of the liquidity risk management requirements outweigh the costs. The SEC "cannot predict how many funds would respond to the proposed changes to the liquidity risk management program by changing their portfolio allocation in order to be compliant with the proposed highly liquid investment minimum and the 15% limit on the illiquid investments and how many funds may choose to convert to the closed-end form or cease

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[47] *The Consequences of Fund-level Liquidity Requirements*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4081278

[48] U.S. News & World Report, available at https://money.usnews.com/funds/mutual-funds/rankings/bank-loan.

[49] *Monetary Policy and the Run Risk of Loan Funds*, available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1008.pdf

[50] *Investors Slow Push Into Bank-Loan Funds*, available at https://www.wsj.com/articles/investors-slow-push-into-bank-loan-funds-11647509402.

to exist."[51] The agency also "cannot predict how many investors would decide to exit open-end funds in a response to the portfolio allocation changes that funds may implement as a result of the proposed amendments to the liquidity risk management."[52]

The Rule would also require an open-end fund to change the benchmark for determining liquidity classifications.[53] Mutual funds would have to classify portfolio investments by measuring "the number of days in which the investment is reasonably expected to be convertible to U.S. dollars without significantly changing the market value of the investment, while assuming the sale of 10% of the fund's net assets by reducing each investment by 10%."[54] This calculation may force funds to reclassify certain investments as illiquid assets. If the amount of illiquid assets exceeds the 15% threshold, then the funds would have to sell off the illiquid assets thus reducing returns for investors. The SEC admits that the changes "may lead some funds to rebalance their portfolio holdings to comply with the proposed changes, which could negatively affect the performance of these funds."[55] The hypothetical 10% stress test could artificially deflate the true liquidity of a highly liquid fund and divert investment toward alternative products.

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As drafted the Rule will increase costs on mutual funds, which will subsequently pass costs down to retirees and individual investors. It is ATR's belief that the provisions in the Rule expand the government regulation of mutual funds to a point where many will become inoperable. The Rule will reduce competition among funds and limit options for investors without any clear quantitative evidence proving that the requirements will improve liquidity during times of increased market stress.

The Rule also fails to provide a substantive economic analysis that is needed to comply with the laws and regulations undergirding the APA. In its current form the Rule would likely be found to be arbitrary and capricious.

ATR appreciates the opportunity to comment on the Rule. If you have any questions or need any additional information, please contact Bryan Bashur at [redacted].

Sincerely,

Americans for Tax Reform

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[51] 87 Fed. Reg. 77250
[52] 87 Fed. Reg. 77250
[53] 87 Fed. Reg. 77187
[54] *Id.*
[55] *Id.*