

**MEMO# 35552**

December 19, 2023

# **ICI Draft Comment Letter on SEC Liquidity Proposal's Impact on Funds Investing in Bank Loans; Comments Due by December 21 at 12:00 pm ET**

[35552]

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TO: Liquidity Rule Implementation Working Group  
SEC Rules Committee

Small Funds Committee RE: ICI Draft Comment Letter on SEC Liquidity Proposal's Impact on Funds Investing in Bank Loans; Comments Due by December 21 at 12:00 pm ET

Linked below is a draft ICI comment letter that expresses serious concerns with how the SEC's proposed amendments to the liquidity rule<sup>[1]</sup> would affect mutual funds and ETFs investing in bank loans. This letter does not make any new policy recommendations. Rather, this letter elaborates on points made about bank loan funds in our February comment letter.<sup>[2]</sup> Please provide any comments you may have ([matt.thornton@ici.org](mailto:matt.thornton@ici.org)) by Thursday at 12:00 pm ET; we intend to file by the end of the week.

If adopted, the proposed liquidity rule amendments would eliminate funds investing primarily in bank loans ("bank loan funds"), a category that long has been beneficial to retail investors, especially in rising interest rate environments. While the amendments would be fatal to these funds, they also would adversely affect other funds that hold bank loans. In their 20+ year history, bank loan funds have operated successfully within the open-end fund regulatory structure—to date, no bank loan fund has suspended redemptions. Bank loan funds also have helped facilitate capital formation.

History, practice, presence of a sound existing regulatory framework, and potential negative impacts to retail investors (including, for current fund investors, transaction and other costs, tax liability, and any losses from forced selling due to redemptions and liquidations of these funds) and other market participants from these proposed amendments all weigh strongly against adoption. In addition, we do not believe that the SEC has the authority to impose onerous constraints on portfolio construction that would create a de facto prohibition on an existing fund category.

In this letter, we:

- provide data on funds' exposure to and experience with bank loans;
- assess the proposal and explain why it would render continued operation of bank loan funds impossible;
- consider the proposal's underlying statutory authority and economic analysis;
- offer alternative policy recommendations that would further mitigate the funds' liquidity risk while still preserving their core features; and
- set forth the likely consequences of adopting these amendments as proposed.

Matthew Thornton  
Associate General Counsel

**Notes**

[1] [Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting](#), SEC Release No. 33-11130, 87 Fed. Reg. 77172 (Dec. 16, 2022).

[2] Available at <https://www.sec.gov/comments/s7-26-22/s72622-20157306-325651.pdf>.

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