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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Mutual Fund Window

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) adopts as final, without changes, a proposed rule concerning the Thrift Savings Plan (TSP)'s mutual fund window—which we will make available to TSP participants beginning in June 2022. This final rule establishes a fee designed to guarantee that the availability of the mutual fund window will not indirectly increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window. We are also adopting policies to govern fund transfers to and from the mutual fund window, including a restriction on the amount that a participant may invest through the mutual fund window.

DATES: The effective date is June 1, 2022.

FOR FURTHER INFORMATION CONTACT: Kim Weaver, Office of External Affairs, (202) 465–5220 or Laurissa Stokes, Office of General Counsel, (202) 308–7707. For more information about when and how TSP participants can access the mutual fund window, please visit *www.tsp.gov/new-tsp-features/.*

SUPPLEMENTARY INFORMATION: The FRTIB administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99 335, 100 Stat. 514. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79.

FERSA requires the TSP to offer the following individual investment funds to TSP participants: (1) A Government Securities Investment Fund (G Fund); (2) a Fixed Income Investment Fund (F Fund); (3) a Common Stock Index Investment Fund (C Fund); (4) a Small Cap Stock Index Investment Fund (S Fund); and (5) an International Stock Index Investment Fund (I Fund). 5 U.S.C. 8438(b)(1)(A)–(E).

In addition to these five individual funds, the TSP is statutorily required to offer Lifecycle (L) Funds which are target retirement date portfolios comprised of varying proportions of the five individual funds. 5 U.S.C. 8438(c)(2). These statutorily mandated investment options are referred to as the TSP core funds. The FRTIB does not have discretionary authority to increase or change the types of core funds offered to TSP participants.

I. Background

A. What is a Mutual Fund?

A mutual fund is formed when a special type of corporation called a fund company pools money from many individuals and invests the pooled money in other things such as stocks and bonds. Mutual funds offer individuals the ability to invest in hundreds of different holdings without having to make hundreds of separate purchases themselves. A mutual fund's holdings are picked by a professional money manager—called an investment adviser—who is hired by the fund company. Investors buy shares in mutual funds. Investors (or their brokers) purchase mutual fund shares from the fund company itself (or its broker)—as opposed to purchasing them from other investors (or their brokers) on a secondary market such as the New York Stock Exchange. Each share represents an investor's part ownership in the mutual fund and the net aggregate returns of the mutual fund's investment holdings.

B. What is a Mutual Fund Window?

A mutual fund window is a type of brokerage window. A brokerage window is a retirement plan feature that allows participants to open a brokerage account to put some of their retirement savings in investments that are not curated by their retirement plan's fiduciaries.

Some retirement plans call this feature a ''self-directed brokerage option''. ''Brokerage window'' and ''self-directed brokerage option'' are just two different names for the same feature. This feature is often described as ''self-directed'' because it allows participants to forego some of the protections afforded by fiduciary oversight of investments in exchange for access to a much broader choice of investments.

However, investing through a retirement plan feature is never as ''self-directed'' as investing through a brokerage account outside of a retirement plan. For example, retirement plan participants do not pick their own brokerage firm. Usually, one of the retirement plan's service providers (for example, its plan administrator or record keeper) selects a brokerage firm that will provide brokerage accounts and an online trading platform to the retirement plan's participants via a subcontract.

In addition, certain categories of higher-risk trades that can be made in brokerage accounts outside of a retirement plan are often excluded from brokerage windows. These categories include trading on margin and buying put or call options, futures contracts, or cryptocurrency. Subject only to categorical exclusions such as these, the specific investments available through a retirement plan's brokerage window are typically determined by a cluster of agreements negotiated among the plan's service provider, a brokerage firm, and fund companies.

For the TSP's brokerage window, Congress has excluded all categories of investments except for mutual funds.[1] That is why it is called a mutual fund window. It is a type of brokerage window that is limited to mutual funds.

C. Mutual Funds Versus TSP Core Funds: What is the Difference?

Like mutual funds, the TSP core funds offer investors the ability to pool their money with other investors to purchase a share of a portfolio containing hundreds of investment holdings. The difference is that the TSP core funds are designed specifically for TSP participants. Only TSP participants

[1] *See* Thrift Savings Plan Enhancement Act of 2009, Public Law 111–31, Division B, Title I, sec. 104 (codified at 5 U.S.C. 8438(b)(5)(A)).

can invest in them, and their only goal is to maximize participants' retirement savings. Mutual funds, on the other hand, are designed for the general public. As such, many different types of mutual funds exist to satisfy a wide variety of goals.

II. Historical Context

For many years, TSP participants have voiced a desire to have more investment options. In 2009, Congress passed legislation that authorized, but did not require, the FRTIB to offer a mutual fund window to TSP participants. *Thrift Savings Plan Enhancement Act of 2009,* Public Law 111–31, Division B, Title I, sec. 104 (codified at 5 U.S.C. 8438(b)(5)(A)).

In the same year that Congress authorized the FRTIB to offer a mutual fund window, the FRTIB's Executive Director initiated discussions with the FRTIB Board members and the Employee Thrift Advisory Council (ETAC) [2] about adding a mutual fund window to the TSP. In the April 2009 FRTIB Board meeting, the four Board members in attendance deadlocked on the decision to adopt a resolution in support of the mutual fund window by a vote of two-to-two.[3]

To inform future discussions, the FRTIB assembled a cross-functional team of subject matter experts from its operations, legal, investment, finance, communications, research, and technology offices who spent the next several years studying industry practices, participant preferences, costs, and operational considerations associated with adding a mutual fund window to the TSP. Their research was presented to the FRTIB Board members and ETAC during public meetings in May 2014, November 2014, and July 2015.[4]

In July 2015, the FRTIB Board members voted unanimously in support of adding a mutual fund window to the TSP. The FRTIB Executive Director committed to including a mutual fund window in the scope of services sought the next time the FRTIB recompeted its major service provider contract(s). In August 2019, the FRTIB announced the release of a request for proposals for various recordkeeping and plan administration services, including a mutual fund window. The contract was awarded in November 2020. The FRTIB is currently undergoing a transition to its new service provider(s).

III. Proposed Rule

On January 26, 2022, the FRTIB published a proposed rule with request for public comments in the **Federal Register** (87 FR 3940, January 26, 2022). We proposed to collect an administrative fee of $55 annually from mutual fund window users to guarantee that the availability of the mutual fund window does not indirectly increase the share of TSP administrative expenses borne by participants who choose not to use the mutual fund window. The preamble of the proposed rule informed the public that TSP mutual fund users will also incur other costs such as: (1) An annual maintenance fee of $95, (2) a per trade fee of $28.75, and (3) fees and expenses imposed by the specific mutual fund(s) in which they invest. We explained that these other costs are outside the scope of the proposed rule.

We also proposed several terms and conditions that would govern fund transfers to and from the mutual fund window. For example, the proposed rule would require a minimum initial transfer of $10,000 and limit investments through the window to no more than 25% of the participant's TSP account value. In addition, the proposed rule would count transfers to and from the mutual fund window against an existing limitation on the number of interfund transfers participants are allowed to make per month.

We received feedback from 100 commenters. Their comments fell into ten broad areas of concern, and our response to each concern is provided below.

IV. Response to Public Comments

A. Account Maintenance Fee and Trading Fee

We received 44 comments from participants who believe the $95 annual maintenance fee and a $28.75 per trade fee are not competitive with prices negotiated by other retirement plans. Before addressing these comments, we want to note that the annual maintenance fee and per trade fee were negotiated using the procedures of Federal Acquisition Regulation (FAR) part 15 and were evaluated for reasonableness in accordance with FAR 15.404–1. We also note that this final rule governs only the fees determined by the Executive Director in his role of setting policy to implement specific Congressional directives. Fees negotiated through acquisition procedures are beyond the scope of this final rule.

Nevertheless, we think it is important to address the concerns raised by these commenters. The comments indicate that many TSP participants are under the impression that other retirement plans negotiate free brokerage services. We looked into what have been described as ''free'', ''no-transaction-fee'', and ''zero cost'' mutual fund trades offered to participants in other retirement plans. We found that those prices are often caveated with fine print disclaimers, such as this:

No-Transaction-Fee (NTF) mutual funds are no-load mutual funds for which [brokerage firm] does not charge a transaction fee. NTFs, as well as other funds, have other continuing fees and expenses described in the fund's prospectus. [Brokerage firm] receives remuneration from fund companies for record keeping, shareholder and other administrative services. The amount of remuneration is based in part on the amount of investments in such funds by [brokerage firm] clients.

The remuneration (*i.e.,* fees) that brokerage firms receive from fund companies are treated by the fund companies as fund expenses, which are ultimately passed on to the people who have already invested in the fund. This type of arrangement between a brokerage firm and a fund company is called revenue sharing.

Revenue sharing is not inherently pernicious. In many industries, revenue sharing is like a referral fee that a business owner might pay to compensate a person for bringing a new customer to their business. For most businesses, revenue sharing is a marketing cost borne by the business.

Fund companies are, of course, businesses also. But fund companies are structurally different from other corporations. They typically have no employees, no physical assets, and no tangible products. They are just a collection of contracts relating to pools of money (*i.e.,* funds), and they charge their costs of doing business to the people who have invested in the funds, regardless of how well the funds perform. Their unique corporate structure has led both Congress and the U.S. Supreme Court to conclude that ''the forces of arm's-length bargaining

[2] ETAC is comprised of representatives from Federal and Postal unions and management associations, as well as a representative from the Department of Defense on behalf of uniformed service members. ETAC provides advice on matters relating to TSP investment policies and plan administration.

[3] *See* April 2009 FRTIB Board Meeting Minutes, *available at https://www.frtib.gov/MeetingMinutes/2009/2009Apr.pdf.* Links to attachments accompanying the minutes are embedded in the PDF of the minutes.

[4] *See* May 2014 FRTIB Board Meeting Minutes, *available at https://www.frtib.gov/MeetingMinutes/2014/2014May.pdf;* November 2014 FRTIB Board Meeting Minutes, *available at https://www.frtib.gov/MeetingMinutes/2014/2014Nov.pdf;* July 2015 FRTIB Board Meeting Minutes, *available at https://www.frtib.gov/MeetingMinutes/2015/2015Jul.pdf.* Links to attachments accompanying the minutes are embedded in the PDFs of the minutes.

do not work in the mutual fund industry in the same manner as they do in other sectors of the American economy.'' *Jones* v. *Harris Assocs. L.P.,* 559 U.S. 335, 338 (2010), quoting S. Rep. No. 91–184, at 5 (1969). This does not mean that there is something sinister about the mutual fund industry. It means only that the nature of the product makes the usual distinctions between price, cost, revenue, profit, and quality less clear than they are in other industries.

Fund companies are not required to provide individualized statements to investors, detailing the exact dollar amount of the fund's fees that each investor has indirectly paid. Consequently, revenue sharing between retirement plans, record keepers, brokerage firms, and fund companies can lead to confusing, opaque fee disclosures. Revenue sharing converts explicit fees (*e.g.,* account maintenance fees and transaction fees) into less transparent fees (*e.g.,* fees embedded in the fund's expense ratio). By including the fees in the fund's expense ratio, the return on an investment in that fund is reduced. Most participants in private sector plans have no idea that revenue sharing exists, much less how much it decreases the return of their investments.[5]

The FRTIB values transparency. We believe TSP participants need, and deserve, to see the dollar amount of the fees they pay for their mutual funds. Toward that end, TSP participants will pay account maintenance fees and certain transaction fees directly rather than paying them indirectly through revenue sharing. Furthermore, FRTIB has contractually required the TSP record keeper, their trading platform provider, their broker-dealer(s), and any of their other affiliates or subcontractors to rebate all revenue sharing payments, or any other type of indirect compensation, they receive in connection with participants' mutual fund window investments. The rebates will be credited to participants' mutual fund window accounts. This ensures that the dollar amounts of all fees and expenses borne by TSP participants for services provided in connection with their mutual fund window investments are explicitly disclosed.

B. Concern That Participants Might Be Confused by New Fees

One commenter expressed concern that participants might inadvertently incur fees which can, over time, cause serious damage to their retirement savings. We share this concern. Even small differences in fees can translate into large differences in returns over time. That is why we have chosen to make the fees paid to our service providers explicit at the risk of appearing less competitive than plans that compensate their service providers through revenue sharing arrangements. We intend to provide ongoing communication and education to TSP participants about the impact of fees on their retirement goals. We will also ensure that participants have convenient access to mutual fund prospectuses prior to making investment decisions.[6] In addition, participants will have access to a tool that allows them to sort mutual funds by expense ratio, starting with the lowest expense ratios first.

C. Minimum Core Balance

We received 29 comments opposed to restricting the amount that a participant may invest through the mutual fund window. Under the proposed rule, transfers to a mutual fund window account cannot cause a participant's mutual fund window account balance to exceed 25% of their total TSP balance. In effect, the proposed rule would require participants to maintain 75% of their balance in the TSP core funds.

Some commenters described the minimum core balance as ''punitive'' and suggested that it casts doubt on the FRTIB's sincerity in touting the mutual fund window as a benefit to TSP participants. Others are concerned that this restriction will impede their ability to achieve diversification among the funds in their mutual fund window account. We believe these commenters misunderstand the intended role of the mutual fund window. The mutual fund window enhances the TSP as a supplement to, rather than an alternative to, the core fund options.

Other commenters described the minimum core balance as ''paternalistic'' and asked the FRTIB to respect their autonomy when it comes to making financial decisions. We are sympathetic to these requests for more freedom of choice and autonomy. But retirement savings is a context in which autonomy is already constrained. Retirement plans (whether private or government-sponsored) are tax-incentivized programs. People who choose to participate in retirement plans benefit personally from a large tax subsidy. The law mandates some constraints on autonomy to ensure those tax subsidies are effective for their intended purpose. Some constraints arise from the fact that fiduciaries of retirement plans can be sued by participants for exposing participants' retirement savings to too much risk. Consequently, we are compelled to balance requests for more freedom of choice against the risk of damaging the trust placed in us by the vast majority participants who do not have the time it takes to research thousands of complex investment choices.

Several commenters believe that a 40% or 50% minimum core balance would be more reasonable. We understand that many private sector retirement plans offer brokerage windows with lower minimum core balance requirements, and that 50% is very common. However, it is not uncommon among the largest of private sector retirement plans to require participants to maintain 80% of their total balance in core funds.[7] Given the TSP's size, and the extraordinary amount of trust placed in us by more than 6.5 million participants, we believe it is appropriate for the FRTIB's minimum core balance to be near the higher end of the range of minimum core balances that are common in the private sector.

One commenter suggested tying the minimum core balance amount to each individual participant's years of service and gradually decreasing it in increments of 5% per year as the participant's years of service increase. For example, a participant with two years or less of service would be required to maintain a minimum core balance of 75%, a participant with 3 years of service would be required to maintain a minimum core balance of 70%, a participant with 4 years of service would be required to maintain a minimum core balance of 65%, and so on. We believe the enormous

[5] *See* ''401(k) Plans: Increased Educational Outreach and Broader Oversight May Help Reduce Plan Fees'', GAO–12–325 (April 24, 2012), *available at https://www.gao.gov/products/gao-12-325;* ''GAO: How Revenue Sharing Can Work, and Its Potential Impact on Participants' Account Balances'', YouTube, U.S. Government Accountability Office, 24 April 2012, *https://www.youtube.com/watch?v=PIRGduLn59A;* ''401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them'', GAO–21–357 (July 27, 2021), *available at https://www.gao.gov/products/gao-21-357.*

[6] Mutual funds use a document called a prospectus to disclose information about the fund to investors. The U.S. Securities Exchange Commission requires mutual funds to include certain information about the fund's fees and expenses in the prospectus.

[7] ''Understanding Brokerage Windows in Self-Directed Retirement Plans'', Report to Honorable Martin Walsh, Secretary of the Department of Labor, Advisory Council on Employee Welfare and Pension Benefit Plans (2021), at 24, *available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2021-understanding-brokerage-windows-in-self-directed-retirement-plans.pdf.*

administrative complexity of this approach would outweigh any conceivable advantage it could offer.

One commenter suggested the use of messaging and warning banners instead of a minimum core balance requirement to mitigate the potential for participants to invest heavily in undiversified funds. In our experience, messaging campaigns work best when the message is a rule of thumb—simple, universal, and clear. We are concerned that any message simple enough to be effective (such as, ''Don't put all your eggs in one basket'') would be insufficiently nuanced to be accurate in the context of the mutual fund window. Since almost all mutual funds can claim to be ''diversified'' in the sense that they have many different holdings, a simple message about the importance of diversification could be misleading without a host of additional specifications—such as the difference between diversifying within an asset class and diversifying across asset classes.

One commenter asked whether a mutual fund window account balance that, due to earnings, exceeds the 25% restriction will be adjusted (*i.e.,* liquidated) to bring the account to 25% of the participant's total TSP balance. Investment earnings that cause a mutual fund window account balance to exceed 25% of a participant's total TSP balance will be permitted to remain in the mutual fund window account. However, a participant will not be permitted to transfer funds from the core funds to the mutual fund window if the participant's mutual fund window account balance (including earnings) already exceeds the 25% restriction or if the transfer would cause the participant's mutual fund window account balance (including earnings) to exceed the 25% restriction.

D. Fiduciary Oversight

One commenter suggested that mutual funds offered through the window should be ''vetted'' by fiduciaries to ensure that they are prudent investments. Another commenter suggested that the FRTIB should offer a large variety of funds to ensure that there is no appearance of ''favoritism'' toward any mutual funds or fund companies.

TSP participants will have access to approximately 300 mutual fund families. A mutual fund family includes all the separate funds offered by a single fund company. Since each family consists of multiple funds, the total number of funds available to TSP participants will be in the thousands.

We have taken measures toward ensuring that our record keeper and brokerage firm are not motivated by conflicts of interest or other misaligned incentives that could influence which funds or fund families they make available to TSP participants. Many retirement plan record keepers also own subsidiaries that are fund companies or that provide investment management services to fund companies. It is common for these record keepers to design investment menus and exercise influence on retirement plan participants in a manner that benefits their subsidiaries. We have mitigated such conflicts of interests by hiring a record keeper that is not in the business of selling mutual funds.

We intend to monitor for practices that might intentionally or unintentionally nudge participants to choose more expensive funds (or share classes) over less expensive funds (or share classes) with similar risk/return attributes. Toward that end, we have contractually guaranteed ourselves a say in the choice architecture of the digital interface through which participants choose mutual funds (*e.g.,* the order in which choices are displayed and the language used to frame the choices). We will also ensure that if a mutual fund has a share class that gives preferential treatment to institutional investors (*e.g.,* money managers, insurance companies, investment banks, commercial trusts, endowment funds, and hedge funds), those institutional share classes will be made available to TSP participants.

We will not, however, evaluate or monitor any of the mutual funds to ensure that they are prudent investments. This mirrors the practice of private sector retirement plans.[8] Fiduciary oversight of thousands of funds would place unreasonable cost and resource burdens on the FRTIB. Those cost increases could disadvantage TSP participants relative to participants of private sector retirement plans—whose fiduciaries do not evaluate or monitor investments offered through brokerage windows except in extraordinary circumstances. We are also concerned that the potential for appearing to favor some fund companies over others could raise novel issues under government ethics and contracting laws; and could run counter to the spirit of a myriad of provisions in the Federal Employees' Retirement System Act that are designed to insulate the TSP from political involvement.

We considered the less costly, less complicated alternative of implementing a screen whereby the FRTIB would adopt criteria (*e.g.,* expense ratio of 1.00% or below) and restrict the window to those mutual funds that meet the FRTIB's criteria. But we have decided against any screening criteria because we are concerned it would blur the distinction between funds that are fully endorsed by fiduciaries (*i.e,* the TSP's core funds) and funds that only meet certain minimum thresholds established by fiduciaries. Participants who only want simple choices that are fully endorsed by the FRTIB may feel overwhelmed or misled if we make it hard to distinguish between the level of fiduciary involvement in TSP core funds and the level of fiduciary involvement in the funds offered through the mutual fund window. In view of this concern, we believe that the vast majority of TSP participants will be better served by a clear, frequent, prominent, and unequivocal warning that the FRTIB does not provide fiduciary oversight of the mutual funds offered through the window.

Participants who prefer funds that are overseen by FRTIB fiduciaries should invest in the TSP core funds.

E. Other Investment Options

Several commenters suggested that, instead of mutual funds, the FRTIB should offer individual stocks, individual bonds, or exchange-traded funds through the brokerage window. By law, mutual funds are the only type of investment the FRTIB is permitted to offer through the brokerage window.[9] Mutual funds offer certain advantages over purchasing individual stocks and bonds, such as built-in professional management; and they are the most common type of investment in private sector 401(k) retirement plans. Although exchange-traded funds offer similar advantages, they are not—technically speaking—mutual funds.[10]

[8] ''Understanding Brokerage Windows in Self-Directed Retirement Plans'', Report to Honorable Martin Walsh, Secretary of the Department of Labor, Advisory Council on Employee Welfare and Pension Benefit Plans (2021), at 47, *available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2021-understanding-brokerage-windows-in-self-directed-retirement-plans.pdf* (''Investments accessible through a brokerage window are not routinely monitored by plan fiduciaries, and most experts conclude that, except perhaps in extraordinary circumstances, plan fiduciaries are not obligated to monitor brokerage window investments nor do their fiduciary duties apply with respect to those investments.'').

[9] *See* Thrift Savings Plan Enhancement Act of 2009, Public Law 111–31, Division B, Title I, sec. 104 (codified at 5 U.S.C. 8438(b)(5)(A)).

[10] *See* ''Mutual Funds and Exchange-Traded Funds (ETFs)—A Guide for Investors, U.S. Securities Exchange Commission'', *available at https://www.sec.gov/reportspubs/investor-publications/investorpubsinwsmfhtm.html.*

F. Objections to Offering a Mutual Fund Window

Several commenters objected to the fact that the FRTIB is offering a mutual fund window at all. Others believe that the mutual fund window should be a lower priority than other possible improvements to the TSP. The decision to offer a mutual fund window was made by a vote of the FRTIB Board members in July 2015 and, therefore, is not the subject of this regulation.

Nevertheless, we wish to assure these commenters that the FRTIB is also adding a host of other new features which are consistent with many of the priorities these commenters have articulated. We do not believe that satisfying the diverse preferences of the TSP's 6.5 million participants must be a zero-sum game. We are confident we can offer a mutual fund window for participants who want it at no cost to participants who don't, while also offering many other new features that participants with other priorities will appreciate. For information about other new features, we invite TSP participants to view *https://www.tsp.gov/new-tsp-features/.*

Some commenters suggested that, instead of offering a mutual fund window, the FRTIB should expand the number of its core funds or should select indexes that allow for more diversification within its individual core funds. The FRTIB does not have the statutory authority to expand its core fund options. Only Congress can do that, and Congress authorized a mutual fund window instead of adding more funds to the TSP's core fund menu. Congress has historically found that offering a small core menu of low-cost, passively-managed funds is most conducive to promoting the integrity of the Thrift Savings Fund.[11]

The FRTIB periodically hires professional investment consultants to evaluate the diversification of the TSP's core fund menu compared to the menus of other retirement plans and to perform benchmark studies of the TSP's individual core funds. We invite TSP participants to view these studies at *https://www.frtib.gov/ReadingRoom/.*

G. Administrative Fee

We received 6 comments relating to the $55 administrative fee. Four commenters supported the fee and two commenters objected to it.

One commenter suggested that a $25-$30 fee would be more reasonable. This commenter did not offer a rationale for why $25-$30 would be more reasonable or suggest an alternative means of deriving an appropriate fee amount. Another commenter suggested that all TSP participants should share in the cost of the mutual fund window. We believe this suggestion would conflict with an explicit Congressional directive to ''ensure that any expenses charged for use of the mutual fund window are borne solely by participants that use such window.'' 5 U.S.C. 8438 (b)(5)(B). We are, therefore, adopting the proposed rule as final without substantive change.

H. Number of Interfund Transfers

We received 22 comments objecting to an existing rule that allows only two interfund transfers per month. We proposed that the transfer from a participant's TSP account to their mutual fund window account, or vice versa, will count toward the existing monthly limit on interfund transfers. Trading within the mutual fund window will be restricted only by fees and rules that may be imposed by the mutual funds in which participants choose to invest.

None of the commenters addressed the application of the FRTIB's existing rule to transfers to and from the mutual fund window. Instead, the commenters objected, more generally, to the existing rule as it currently applies to the TSP's core funds.

We sought public comments on the existing rule long ago. We published it as a final rule in April 2008.[12] Every comment about interfund transfers provided in response to our mutual fund window proposed rule was thoroughly addressed in the preamble of the 2008 final rule. We are not revisiting the existing rule. We, therefore, believe these comments are outside the scope of the final rule that we are publishing today.

The purpose of the existing rule is to prevent a small number of TSP participants who pursue ''market timing'' active investment strategies from diluting the earnings of other TSP participants and adversely affecting the ability of TSP investment managers to replicate the performance of selected indexes as required by law. The rationales for the existing rule are equally applicable to transfers to and from the mutual fund window. We are, therefore, are adopting the proposal as final without change.

I. Minimum Initial Transfer

We received 3 comments objecting to our proposal to require a $10,000 minimum initial fund transfer to the mutual fund window. As explained in our proposed rule, the combination of the $10,000 initial fund transfer requirement and the 75% minimum core balance requirement means that an account must have at least $40,000 to be eligible to take advantage of the mutual fund window. The purpose of this requirement is to ensure that participants have some investment experience before they confront additional risks and expenses that may be associated with using the mutual fund window.

Two commenters expressed concern that the minimum initial transfer requirement would prohibit new employees from accessing the mutual fund window. One commenter pointed out that, with today's highly mobile workforce, many new TSP participants may have gained sufficient investment experience from retirement assets they have invested elsewhere. We note that new employees can roll over money into the TSP from other retirement plans to meet the $10,000 minimum initial fund transfer requirement. We believe the ability to roll other retirement investments into the TSP is sufficient to address the concern that experienced investors who are new Federal employees will not be able to access the mutual fund window.

Two commenters stated that the minimum initial fund transfer amount is higher than the industry norm. Brokerage firms often impose minimum initial fund transfer requirements for the purpose of ensuring that the cost of servicing a large number of small investments does not exceed the revenue the brokerage firm requires to offer its services. The FRTIB's minimum initial fund transfer requirement serves a very different purpose, which makes a comparison to industry norms inapposite. We are, therefore, adopting the proposed rule as final without change.

J. Miscellaneous

One commenter suggested that the proposed rule relies on outdated survey results concerning the preferences of TSP participants. We believe this commenter misunderstood the purpose for which we cited 2008 survey results in the proposed rule. We cited 2008 survey results merely to provide

[11] Federal Employees' Retirement System Act of 1986, Public Law 99–335, H.R. CONF. REP. 99–606, 1986 U.S.C.C.A.N. 1508 (''Most importantly, the three funds authorized in the legislation are passively managed funds, not subject to political manipulation. A great deal of concern was raised about the possibility of political manipulation of large pools of thrift plan money. This legislation was designed to preclude that possibility.'').

[12] *Participants' Choices of TSP Funds,* 73 FR 22049 (April 24, 2008), *available at https://www.federalregister.gov/documents/2008/04/24/E8-8957/participants-choices-of-tsp-funds.*

chronological historical context for the evolution of the legislation that authorized the FRTIB to offer a mutual fund window and the FRTIB's subsequent decision to exercise that authority. For a thorough account of all the research and deliberation behind the FRTIB's 2015 decision to offer a mutual fund window, we invite TSP participants to view the May 2014, November 2014, and July 2015 Board meeting materials at *https://www.frtib.gov/MeetingMinutes/.*

One commenter asked if a participant must set up two mutual fund window accounts if a participant wants to invest both traditional and Roth contributions. Nothing in the proposed rule or this final rule requires a participant set up two mutual fund window accounts for this purpose. A participant can transfer both traditional and Roth contributions into the same mutual fund window account.

One commenter asked, with respect to the mutual fund window, how the FRTIB would address future legislation that might restrict investing in certain foreign countries and how the FRTIB would implement such legislation. The FRTIB will comply with legislation enacted by Congress that applies to the TSP. The manner in which we would implement such legislation depends on the specific legislation.

One commenter considered the process of investing through the mutual fund window too cumbersome and suggested we make a money market sweep fund available within the TSP so participants would not have to invest in a core fund prior to transferring money to the mutual fund window. To make the TSP's recordkeeping more efficient and keep costs low for all participants, the record keeper, through a brokerage firm, will handle all operations of the mutual fund window, including the sweep fund that will receive transfers from the core funds. Having the TSP operate the sweep fund would negate the efficiency gains that come from outsourcing the operation of the mutual fund window to the record keeper and brokerage firm.

One commenter asked why participants cannot invest their employee contributions directly into the mutual fund window. Allowing direct contributions to the mutual fund window would require creating linkages between hundreds of government payroll offices and the mutual fund window, which again, would undermine the efficiency gains that come from outsourcing the operation of the mutual fund window.

Many commenters objected to the 12 p.m. eastern time cutoff for transferring amounts to and from the mutual fund window. The 12 p.m. eastern time cutoff for all TSP transactions is set forth in 5 CFR 1601.32 and was not a subject of the proposed mutual fund window regulation. Therefore, the comments are beyond the scope of this regulation. Nevertheless, we will address the concerns.

Since the TSP went to a daily valuation in 2003, we have required that transactions must be requested before 12 p.m. eastern time to post on the same day. For transactions requested at or after 12 p.m. eastern time, the transaction will post the next business day. The 12 p.m. eastern cutoff is necessary to allow the TSP to begin the investment transaction cycle which, given the size of the TSP and number of transactions it processes each day, is a multipart and complex process. Because the transfer into and out of the mutual fund window will involve the sale or purchase of TSP funds, such transfers are also subject to the 12 p.m. eastern time cutoff. Transactions within the mutual fund window (*i.e.,* purchase and sale of mutual funds) are generally subject to a 4 p.m. eastern time cutoff. Some mutual funds may have earlier purchase cutoff times prior to the 4 p.m. eastern time cutoff, which would be disclosed by fund.

V. Final Rule

For reasons explained above, the FRTIB is adopting the proposed rule as final, without any substantive changes. Although the comments received did not cause us to make changes to the proposed rule, we did carefully consider all comments received. We have appreciated the opportunity to review and respond to comments from participants who take an active interest in the TSP and wish to offer suggestions. The comment process allowed us to address any misunderstandings about the mutual fund window, to learn if there are unanticipated legal or policy impediments to the proposal, and to hear suggestions about how better to implement the mutual fund window.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation will primarily affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

This regulation does not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the FRTIB submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICE OF TSP FUNDS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8438, 8474(b)(5) and (c)(1).

■ 2. Add subpart F to read as follows:

Subpart F—Mutual Fund Window

Sec.

§ 1601.51 Applicability.

This subpart applies only to the transfer of amounts between the TSP core funds and the mutual fund window; it does not apply to the investment of future deposits, which is covered in subpart B of this part, or fund reallocations or fund transfers among the TSP core funds, which is covered in subpart C of this part.

§ 1601.52 Fund transfers.

(a) *Fund transfers into mutual fund window.* A participant may elect to make one or more fund transfers to the mutual fund window from the portion of his or her TSP balance invested in the TSP core funds, subject to the following rules:

(1) The participant must establish a mutual fund window account that is separate from his or her TSP account. A participant with more than one TSP account may establish a separate mutual fund window account for each TSP account, and the limitations and fees described in subpart will apply separately to each account;

(2) If the participant does not have an acknowledgment of risk on file as of the date of his or her initial fund transfer request to the mutual fund window, the participant must complete an acknowledgment of risk for the fund transfer to be processed;

(3) Fund transfers must be made in whole dollar increments (percentages are not permitted);

(4) The following limitations must be satisfied:

(i) A participant's initial fund transfer into his or her mutual fund window account must be at least $10,000 and may not exceed 25 percent of the participant's TSP account balance, as of the date of such transfer; and

(ii) Subsequent fund transfers into a participant's mutual fund window account may not cause the balance in the participant's mutual fund window account to exceed 25 percent of the participant's total TSP balance, as of the date of any such transfer;

(5) Each fund transfer into the mutual fund window counts toward the monthly limit set forth in § 1601.32(b);

(6) Amounts transferred to a participant's mutual fund window account will initially be invested in a sweep money market fund. Subsequently, the participant may direct the investment of the transferred amounts into any mutual fund(s) that are available through the mutual fund window;

(7) Fund transfers are subject to the fees set forth in § 1601.53; and

(8) A participant may not withdraw funds directly from his or her mutual fund window account. To make a withdrawal, the participant must elect a fund transfer back to the TSP core funds as described in paragraph (b) of this section. Upon completion of such fund transfer, the participant may make a withdrawal in accordance with 5 CFR part 1650.

(b) *Fund transfers back to TSP core funds.* A participant may elect to make a fund transfer to the TSP core funds from amounts invested in his or her mutual fund window account, subject to the following rules:

(1) Fund transfers must be made in whole dollar increments (percentages are not permitted);

(2) Amounts to be transferred from a participant's mutual fund window account to the TSP core funds must first be transferred to the sweep money market fund. Subsequently, the participant may direct the investment of the transferred amounts into the TSP core funds;

(3) Each fund transfer back to the TSP core funds from the mutual fund window account counts toward the monthly limit set forth in § 1601.32(b); except, however, that a participant may always elect a fund transfer from the mutual fund window account to the G Fund; and

(4) Fund transfers are subject to the fees set forth in § 1601.53.

(c) *Forced transfers.* The TSP record keeper will force a transfer from the participant's mutual fund window account to the TSP core funds in the following situations, and subject to the following rules:

(1) A forced transfer may occur if the balance invested in the TSP core funds is insufficient to cover:

(i) Amounts necessary to comply with a court order, legal process, or levy described in 5 CFR part 1653;

(ii) A beneficiary asset transfer;

(iii) A required minimum distribution;

(iv) An automatic cash out distribution; or

(v) Any other payment or transfer that the Board is required by law to make from the participant's TSP account balance;

(2) The amount of the forced transfer shall be equal to the amount of the insufficiency described in paragraph (c)(1) of this section, plus $1,000; except, however, that if the participant's mutual fund window account balance is less than $25,000, the entire mutual fund window account balance shall be transferred to the TSP core funds;

(3) Forced transfers shall be liquidated from the participant's mutual fund window account first from amounts held in the sweep money market fund; and then from amounts invested in mutual funds, beginning with the position with the highest balance;

(4) Forced transfers from a participant's mutual fund window account to the TSP core funds shall be invested according to the participant's existing contribution allocation; and

(5) The participant shall be responsible for any fees incurred as a result of the forced transfer.

§ 1601.53 Fees.

(a) The Board will allocate a portion of the TSP's administrative expenses to mutual fund users by charging an administrative fee of $55.00 annually. The amount of this fee will be redetermined once every three years by multiplying the average mutual fund window account balance by the TSP administrative expense ratio, as of the date of redetermination.

(b) The fee described in paragraph (a) of this section is in addition to any mutual fund window account maintenance fees, trading fees, and fees and expenses associated with the specific mutual fund(s) in which the participant chooses to invest.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0084; Project Identifier MCAI–2020–01312–A; Amendment 39–22012; AD 2022–08–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. This AD was prompted by a failure of the dual ethernet communication channel on a dual-channel data concentration and processing unit, which triggered the opening of electronic circuit breakers that caused several unintended system activations. This AD requires installing a software (SW) upgrade to the utility management system (UMS), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 14, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 14, 2022.