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January 13, 2016

VIA EMAIL

Mr. Brent Fields
Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Proposed New Rule and Amendments Relating to Open-End Fund Liquidity Risk Management Programs and Swing Pricing (File No. S7-16-15 (Release)) [1]

Dear Mr. Fields:

On behalf of Eaton Vance Corp. and its affiliates (collectively, Eaton Vance),[2] I write to comment on the Release and the proposals therein to adopt a new rule and amendments to existing rules to (i) require all registered open-end funds other than money market funds to establish and maintain liquidity risk management programs (Liquidity Risk Management Proposal) and (ii) permit certain types of open-end funds to adopt "swing pricing" (Swing Pricing Proposal).

Eaton Vance appreciates the opportunity to comment on the proposals set forth in the Release. We support the Commission's goal to promote effective liquidity risk management throughout the open-end fund industry to reduce the risk that funds might fail to meet their

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1 Unless otherwise noted, capitalized terms used in this letter have the same meaning as in the Release.

2 Eaton Vance is one of the oldest investment management firms in the United States, with a history dating back to 1924. Eaton Vance and its affiliates managed $311.4 billion in assets as of October 31, 2015, offering individuals and institutions a broad array of investment strategies and wealth management solutions. Eaton Vance provides investment advisory and administrative services to U.S. registered investment companies through its subsidiaries Eaton Vance Management and Boston Management and Research. Our affiliate NextShares Solutions LLC owns the intellectual property underlying exchange-traded managed funds (branded as NextShares™) and is seeking to commercialize NextShares through licensing and services agreements with fund sponsors. The first exemptive order permitting the offering of NextShares was issued to Eaton Vance Management and related parties on December 2, 2014.

redemption obligations. We also appreciate the importance of addressing the dilution of shareholder interests that can arise from fund inflows and outflows, and applaud the Commission's attention to this topic. While supporting their objectives, we nonetheless have significant concerns about both the Liquidity Management Proposal and Swing Pricing Proposal. As set forth below, we favor adoption of the Liquidity Management Proposal in revised form but believe the Swing Pricing Proposal should not be adopted.

Liquidity Management Proposal

As noted in the Release, daily redeemability is a defining feature of open-end management investment companies. Meeting shareholder redemptions is essential to the ongoing viability of any open-end fund. We believe that, taken as a whole, the fund industry has historically managed liquidity risk quite well. Apart from a few outliers, open-end funds have successfully met redemptions on a consistent daily basis, even during notably stressed market conditions. This reflects the fact that liquidity management is an integral element of the ongoing management of open-end funds as practiced by an overwhelming majority of investment managers.

We support the Commission's initiative to require open-end funds to adopt liquidity risk management programs and believe such requirements should apply equally to all open-end funds (including those that are exchange-traded) other than money market funds. While supporting this initiative, we join those commenters[3] urging the Commission to modify the Liquidity Management Proposal to make it less prescriptive, permitting fund sponsors to develop and implement more flexible programs that are designed to address each fund's particular liquidity profile, subject to appropriate board oversight.[4] Such a risk-based approach would require managers to assess fund liquidity characteristics and to design and implement liquidity management programs for each fund that are appropriate for the particular fund.

[3] Eaton Vance is a member firm of the Investment Company Institute (ICI) and generally supports the views about the Liquidity Management Proposal expressed by the ICI in its comment letter (ICI Letter) except as discussed herein.

[4] We note that the Commission has adopted less prescriptive rules in the past with successful results. Rule 38a-1 under the Investment Company Act of 1940, as amended (1940 Act), for example, requires funds to adopt and implement policies and procedures that are reasonably designed to prevent violation of the federal securities laws, but permits individual funds to tailor the design of the program to their particular characteristics and risks. We encourage the Commission to take a similar approach with respect to fund liquidity risk management.

As detailed below, we oppose the proposed asset classification regime (and its premise that classifications should be based on a fund's expected ability to sell securities without materially moving their prices)[5] and the three-day liquid asset minimum.[6] We believe that, in combination with the proposed public disclosure requirements, those elements of the proposal would (i) impose a burdensome and ineffectual "one-size-fits-all" compliance regime on the management of a complex, multifaceted and fund-specific risk factor, (ii) provide investors with potentially inaccurate and misleading measures of funds' ability to meet redemptions and, by extension, a false sense of comparability between funds and (iii) possibly raise undue concerns among investors about funds' ability to meet redemptions, thereby adding to fund liquidity risk and potentially destabilizing financial markets during periods of stress.

We also oppose the proposed requirement that funds publicly disclose their liquidity classifications and three-day liquid asset minimums (as opposed to discussing them privately with their boards or reporting them to the Commission in non-public filings) because, among other things, this disclosure could mislead investors (as noted above) and reveal important information about a fund's portfolio strategy and positioning to third parties, potentially exposing a fund to predatory trading activity if the fund is seen as vulnerable to liquidity risks. We also note that certain requirements of the Liquidity Management Proposal will be difficult, if not impossible, to meet in the current environment. Compiling required information with respect to shareholder concentration, for example, would require the extensive cooperation of broker-dealers and other intermediaries whose customers invest in funds on an omnibus basis. If this part of the Liquidity Management Proposal is implemented, the Commission should mandate the reporting to funds of shareholder concentration by omnibus intermediaries to enable funds to comply.

In the following sections, we provide further commentary on various aspects of the Liquidity Management Proposal.

I. Classification Regime

Proposed Rule 22e-4 would require funds to classify, disclose and periodically review the estimated liquidity of each portfolio position using six prescribed classification categories that are based on "the number of days within which a fund's position in a portfolio asset (or portions of a position in a particular asset) would be convertible to cash *at a price that does not materially affect the value of that asset immediately prior to sale"* (emphasis added).[7] The Release solicits comment on the appropriateness of this standard. As noted above, we believe that basing liquidity categories on a fund's expected ability to convert portfolio positions to cash without materially moving their prices is misguided, failing to take account of basic market realities and providing little information of value relevant to a fund's ability to meet redemptions.

5 Proposed Rule 22e-4(b)(2)(i).

6 Proposed Rule 22e-4(b)(2)(iv)(A).

7 Proposed Rule 22e-4(b)(2)(i).

Prices of individual securities, and securities markets as a whole, trade up and down based principally on the current balance of supply and demand. When there is an imbalance of motivated buyers over motivated sellers, prices rise. When motivated sellers are more present in the market than motivated buyers, prices decline. We believe fund shareholders understand these market realities (which are commonly disclosed in fund prospectuses), and do not operate under the mistaken impression that a fund's net asset value (NAV) is somehow disconnected from the markets in which the fund invests. For the same reason that a fund cannot accurately predict how much the sale of a given position will cause the position's price to move without knowing the market circumstances at time of sale, a fund cannot accurately predict how much of a position can be sold without materially affecting its price. While not a very satisfactory answer, the truth is that it all depends on what else is happening in the market at the time of sale. The proposed six-bucket liquidity classification regime included in the Liquidity Management Proposal attempts to impose a degree of precision in the measurement and classification of liquidity that is far greater than the underlying market reality.

A liquidity classification regime based on the estimated time to convert a position to cash without materially moving its price also would not provide shareholders with useful information. Rather, disclosure of this information could provide a distorted impression of a fund's capacity to meet redemptions, potentially causing shareholder alarm, or even panic, during stressed market conditions. Consider an equity mutual fund holding a diversified portfolio of large-cap stocks. Funds of that description, even the very largest, historically have met net shareholder redemptions without disruption, including during periods of significant market stress. Yet the holdings of such a fund would likely be spread across the six-bucket liquidity risk spectrum under the proposed classification regime. Only small portions of the fund's portfolio positions would likely fall into the first three categories, which comprise positions that may be converted to cash within seven days. One can imagine the nervous reaction of an unsophisticated investor to these disclosures, especially in stressed market conditions, even for a fund that historically has not experienced difficulty meeting its redemption obligations and is unlikely to have difficulty going forward. By raising alarm bells unnecessarily, the overly pessimistic picture of liquidity painted by the proposed classification regime could inadvertently have a destabilizing effect on funds and, by extension, the financial markets generally, during periods of market stress.

We also believe that the proposed classification regime would draw distinctions between funds purportedly based on liquidity risk that bear little relation to the funds' relative abilities to satisfy redemptions, yielding confusing or even misleading results. Rather than providing a standard of comparability to assist shareholders in evaluating funds' relative liquidity risk, the proposed classification regime could obscure funds' true capacities to satisfy redemptions by applying inconsistent calculations or misleading metrics to their portfolios. For example, a large U.S. equity fund holding large-cap stocks might appear less liquid than a small-cap equity fund of much smaller size, depending upon how the liquidity metrics are applied for the two funds, even though the large-cap fund may have an easier time liquidating its holdings to meet redemptions than the small-cap fund. In addition, because determinations of securities positions' liquidity are inherently subjective, two funds of substantially similar size with the same or similar holdings may have very different publicly disclosed liquidity profiles, based on the assessments of position liquidity by their respective sponsors.

Basing liquidity classifications on specific estimated time periods to convert positions to cash also makes the liquidity evaluations overly subjective and conjectural, thereby exposing funds and their boards to second guessing. The Commission notes in the Release its intention to use funds' liquidity classifications to identify outliers and "determine whether further inquiry is appropriate."[8] Third parties with the benefit of 20/20 hindsight, such as the plaintiffs' bar, may well second-guess funds with soundly determined liquidity classifications based on information obtained after reasonable inquiry, but which prove inaccurate. The number of classifications, and the unnecessarily prescriptive precision required, increase the likelihood of second guessing and associated costs and risks to fund investors and fund sponsors alike.

We urge the Commission not to require funds to adopt the proposed classification regime, but rather to allow each fund, as part of its board-approved liquidity risk management program, to develop and apply its own liquidity metrics based on the fund's individual liquidity risk profile. If the Commission feels a prescriptive rule is necessary, we endorse the simplified three-bucket ("highly liquid assets," "illiquid assets"[9] and "assets that are neither highly liquid nor illiquid") approach advanced by the ICI, which does not include consideration of estimated time periods for converting positions to cash. We also urge the Commission not to require funds to publicly disclose their liquidity risk classifications and instead safeguard shareholder interests and market stability by limiting disclosure to fund boards and the Commission.

If a specified bucketing approach to liquidity disclosure is adopted, we urge the Commission to amend the proposed definition of "liquidity risk" by deleting the phrase "without materially affecting the fund's net asset value." Including this standard in the definition of liquidity risk only serves to make liquidity determinations more subjective and more exposed to second guessing. As described above, how much of a position can be sold without causing its price to fall by a material amount is a function of market conditions at the time of sale. If a fund is the only motivated seller and there are many motivated buyers in the market at the same time, the cost to sell will be small, possibly even negative. If the opposite is true, actual selling costs may be much higher than would reasonably have been predicted without knowing market circumstances at the time of sale. Unfortunately, no liquidity cost measurement system exists, or is foreseeable to come into existence, to enable funds to accurately categorize the liquidity risks of their holdings to the degree of precision prescribed in the Liquidity Management Proposal.

II. 15% Limit on Illiquid Assets

We support the clarification and codification of the Commission's existing guidance with respect to the 15% limit on illiquid assets in open-end funds included in the Liquidity Management Proposal. The limit applies to assets that may not be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to them by the fund. For purposes of this definition, a fund does not need to consider the size of the fund's position in the asset or settlement periods. We believe this reflects an appropriate approach to liquidity

8 Release at page 69.

9 Referred to in the Release as "15% Standard Assets."

determination, and has served as an appropriate safeguard against liquidity risk to date. However, we suggest using a different defined term for these assets, as the use of the word "standard" to describe assets that are deemed illiquid and limited to 15% of fund assets strikes us as counter-intuitive and potentially misleading. In our judgment, a better approach would be to continue describing these assets as "illiquid."

III. Minimum Investments in Three-Day Liquid Assets

Proposed Rule 22e-4 would require each fund to determine a "three-day liquid asset minimum," defined as the minimum percentage of the fund's net assets to be invested in three-day liquid assets.[10] As proposed, a fund's percentage must be based on certain prescribed factors, including an assessment of short- and long-term cash flow projections, the investment strategy and liquidity of the fund's portfolio assets, and the use of borrowings and derivatives for investment purposes. A fund's board would be required to approve its three-day liquid asset minimum, and a fund would be required to maintain a written record of how its minimum was determined.[11]

While we agree that, as a matter of sound management, fund advisers should be mindful of the amount of liquid assets that is reasonable for a fund to maintain in light of the net redemptions reasonably likely to be incurred and other fund cash flow considerations, we strongly believe that neither funds nor their shareholders would be well-served by a hard percentage limitation. By restricting portfolio investment flexibility whenever a fund falls below its prescribed limit, imposition of a three-day liquid asset minimum could adversely affect fund returns, even during periods in which the fund faces little or no actual liquidity demands.

Moreover, different fund boards naturally will have different appetites for risk, and therefore would likely approve different three-day liquid asset minimums, even for similarly managed funds. The "cash drag" that could result from imposing higher three-day liquid asset minimums could harm the relative performance of funds with conservative three-day liquid asset minimums, potentially pushing investors towards funds that apply lower three-day liquid asset minimums.

We urge the Commission to allow each fund's manager the flexibility to determine, subject to board oversight, the level of liquid assets that is appropriate for the fund, or to permit fund boards to establish and monitor liquid asset levels for individual funds, rather than imposing hard limits. If a three-day liquid asset minimum is adopted, we urge the Commission to amend

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[10] Three-day liquid assets are defined as any cash held by a fund and any position of a fund in an asset (or portion of the fund's position in an asset) that the fund believes is convertible into cash within three business days at a price that does not materially affect the value of that asset immediately prior to sale. *See* Proposed Rule 22e-4(a)(8).

[11] We also question the Commission's authority to adopt rules that effectively override Congressional action establishing the seven-day redemption timeframe for open-end funds set forth in Section 22(e) of the 1940 Act.

the proposed definition of "three-day liquid assets" by deleting the phrase "at a price that does not materially affect the value of that asset immediately prior to sale." As in the definition of "liquidity risk," including this phrase in the definition of three-day liquid assets makes fund liquidity determinations more subjective and more subject to after-the-fact second guessing.

If the Commission adopts a requirement for open-end funds to maintain minimum holdings of three-day liquid assets, we also urge the Commission not to require funds to publicly disclose their three-day liquid asset minimums or current percentage holdings of fund assets deemed three-day liquid. Like public disclosure of a fund's percentage holdings in each liquidity classification, disclosing information about a fund's three-day liquid assets could interfere with its investment strategy and promote unwarranted, and potentially destabilizing, redemption activity by fund shareholders. Disclosing this information publicly could also make a fund susceptible to predatory activity by other market participants seeking to take advantage of perceived distress.

Swing Pricing Proposal

As described in the Release, the Swing Pricing Proposal would permit, but not require, open-end funds (except for money market funds and ETFs) to adopt policies and procedures providing for fund capital transactions (i.e., shareholder purchases and redemptions) to be effected at prices that vary from NAV by a prescribed "swing factor" whenever the fund's daily net purchases or redemptions exceed a specified percentage of the fund's net assets that is defined as the "swing threshold." For a fund adopting swing pricing, on days when purchases of fund shares exceed redemptions by at least the swing threshold, the fund's purchases and redemptions would be priced at NAV plus the applicable swing factor. When the fund's daily redemptions exceed purchases of shares by at least the swing threshold, purchases and redemptions would be priced at NAV less the applicable swing factor.

The Swing Pricing Proposal recognizes that open-end funds incur trading and other costs in connection with shareholder inflows and outflows, which costs reduce fund returns and dilute the interests of continuing fund shareholders. By permitting the adoption of swing pricing, the Commission seeks to provide funds with "an effective tool to prevent fund dilution and promote fairness among its shareholders."[12] The Commission notes that swing pricing "could also act as a deterrent against redemptions motivated by any first-mover advantage."[13]

The Commission observes that open-end funds are currently permitted to use redemption fees (limited to two percent) and purchase fees to mitigate dilution arising from shareholder transaction activity, but notes that implementing such fees "requires coordination with the fund's service providers, which could entail operational complexity." On balance, the Commission

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[12] Release at page 190.

[13] Release at page 334.

believes that "the operational costs and difficulty of imposing a [redemption or purchase] fee would be significantly higher than those associated with swing pricing" because, in swing pricing, "the NAV adjustment would occur pursuant to the fund's own procedures."[14]

Key provisions of the Swing Pricing Proposal include:

- *Policies and Procedures*. A fund adopting swing pricing would be required to establish and implement policies and procedures governing the development and application of swing thresholds and swing factors.
- *Board review and approval*. The fund's board, including a majority of the independent directors, would be required to approve the fund's swing pricing policies and procedures, along with any material changes over time. The fund's board also would designate the fund's investment adviser or officers responsible for administering the swing pricing policies and procedures.
- *Reporting*. For purposes of performance reporting, calculation of performance-based advisory fees and presentation of financial statements, fund valuations would be adjusted from NAV to reflect swing pricing in effect.
- *Recordkeeping*. A fund that uses swing pricing would be required to create and maintain a record supporting each computation of an adjustment to NAV based on the fund's swing pricing policies and procedures.

As noted above, we recognize the potential dilution of shareholder interests that can arise from fund trading in connection with shareholder inflows and outflows, and applaud the Commission's attention to this important topic. We do, however, see significant deficiencies in the Swing Pricing Proposal and believe that it should not be adopted for the reasons set forth below.

I. Sizing Flow-Related Trading Costs

As background to consideration of the Swing Pricing Proposal, the Commission may wish to know the findings of what we believe is the most comprehensive study of the flow-related trading costs (and other structural costs) of actively managed mutual funds.[15] The study (Study) was conducted by the Eaton Vance Investment Analytics and Risk Measurement group in 2014 in support of the pending launch of NextShares™ exchange-traded managed funds (NextShares).[16]

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14 Release at page 346.

15 See "Avoidable Structural Costs of Actively Managed Mutual Funds, NextShares Solutions LLC, November 2014, available at www.NextShares.com/whitepaper.

16 Similar to ETFs, NextShares will seek to minimize fund flow-related trading costs by issuing and redeeming shares in creation units by or through authorized participants, using primarily in kind transfers and imposing transaction fees on purchases and redemptions to offset associated fund costs. We do not believe NextShares and ETFs should be subject to swing pricing because they employ different (and demonstrably better, in our view) means to address shareholder dilution in connection with fund capital activity.

In the Study, flow-related trading costs were evaluated for the broad universe of U.S., international and global equity mutual funds for the years 2007 through 2013, covering approximately 1,200 to 2,100 funds for the various years. A fund's flow-related trading costs for each year were estimated by first estimating the amount of fund trading attributable to shareholder inflows and outflows, and then estimating the average cost (commissions, bid-ask spread and market impact) of the fund's flow-related trades in that period.

Consistent with the objective of the Swing Pricing Proposal, the Study found that flow-related purchases and sales of investments by mutual funds can result in meaningful fund costs. Over the Study period, the equal-weighted (EW) average annual flow-related trading costs of actively managed equity mutual funds ranged from a high of 39 basis points[17] of fund average net assets in 2008 to a low of 17 basis points of net assets in 2010 and 2012. Over the entire seven-year period, the EW average of all studied funds was 26 basis points and the asset-weighted (AW) average was 20 basis points annually. Variability among funds was high, with yearly average standard deviations of 43 basis points EW and 27 basis points AW. We conclude from the Study results that shareholder capital activity meaningfully impacts the performance of most mutual funds.[18]

II. Impediments to Implementing Swing Pricing

As described above, a central premise underlying the Swing Pricing Proposal is that swing pricing is an operationally easier alternative to redemption fees and purchase fees as a means for offsetting fund costs in connection with shareholder capital activity. Based on our analysis, we are convinced that the opposite is true—that funds will actually require a *greater level of cooperation* with service providers and *more significant modifications* to established share processing systems and procedures to accommodate swing pricing than is required to implement fund redemption fees and purchase fees.

To institute swing pricing, a fund must obtain reasonably accurate daily fund flow information prior to the time the fund's flows are required to be evaluated versus the swing pricing threshold to determine if fund transaction prices should be adjusted from NAV. As detailed in the ICI Letter, this requirement is completely at odds with established workflows and timeframes by which funds (i) use market prices (and fair values, as necessary) to value their assets and calculate their NAVs and (ii) receive daily orders from broker-dealers, bank trust departments, retirement record-keepers and other intermediaries that process the vast majority of mutual fund capital transactions. As workflows exist today, intermediaries require receipt of daily closing fund NAVs prior to determining customer orders. This is because knowing a fund's NAV is essential for an intermediary to translate the value of customer orders expressed in share

17 One basis point equals 0.01 percent.

18 The Study found that the drag on fund performance from holding cash (cash drag) is also significant, averaging 22 basis points EW and 26 basis points AW for the studied funds over the period. One of our concerns with the Liquidity Management Proposal is that its adoption would likely result in funds maintaining higher average cash balances, increasing cash drag. In our opinion, the Commission should be as concerned about the cash drag effects of fund liquidity management as it is with minimizing flow-related trading costs because the two have similar shareholder dilution impact.

amounts or as percentages of holdings into dollar amounts. It's a conundrum: to implement swing pricing, fund pricing agents must know aggregate daily net flows prior to striking NAVs and determining swing pricing adjustments; yet fund intermediaries must know fund transaction prices to size their orders, which determine daily net flows. Without significant changes to current fund and intermediary operations and sizable investments to modify associated systems, swing pricing is not operational in the U.S.

The Commission observes in the Release that swing pricing has been successfully implemented in Luxembourg and certain other European jurisdictions. Again as detailed in the ICI Letter, there are notable differences in the operating models and distribution infrastructure of these jurisdictions versus the U.S. that allow swing pricing to function in those places, while precluding its use here. Among other distinctions, European funds typically have a much longer window between the market close and when NAVs are required to be disseminated (typically the following morning) and appear to have a lower prevalence of share-based and percentage-based transactions, reducing the need for prior communications of fund NAVs to size customer orders.

III. Investor Protection Issues in Connection with the Swing Pricing Proposal

The Release states that the Swing Pricing Proposal is designed to help a fund "promote fairness among all its shareholders,"[19] which presumably includes not only continuing shareholders, but also shareholders engaged in buying and selling shares. We believe that the Swing Pricing Proposal raises significant fairness and investor protection issues for transacting shareholders. As proposed, the Swing Pricing Proposal in effect permits funds (i) to issue and redeem shares at transaction prices that deviate, by an amount that is not subject to any cap, from current fund NAV, (ii) not to disclose to transacting shareholders or others (either before or after the fact) the amount by which transaction prices vary from NAV (swing factor) and (iii) not to disclose to transacting shareholders or others the fund circumstances justifying the adjustment to share transaction prices from NAV (swing threshold). In addition, the proposal imposes no explicit duty on fund sponsors or fund boards to limit adjustments from NAV to amounts that are reasonable in relation to the estimated fund costs associated with the capital activity giving rise to the swing adjustment. No requirement also appears to exist for fund sponsors and fund boards to balance the conflicting interests of continuing shareholders (benefiting from low swing thresholds and high swing factors) versus transacting shareholders (benefitting from high swing thresholds and low swing factors).

Despite the apparent acceptance of similar swing pricing regimes in other jurisdictions, we consider the lack of transparency and potentially disparate treatment of different groups of fund shareholders to be at odds with the Commission's investor protection mandate and the expressed goal of the Swing Pricing Proposal to promote fairness among *all* fund shareholders. Exposing transacting shareholders to undisclosed and uncapped transaction costs that may bear little or no relation to the associated fund costs does not strike us as a fair deal.

[19] Release at page 190.

IV. Truth in Labelling; Fund Performance Measurement; Manager Incentives

Under the Swing Pricing Proposal, a fund that adjusts its transaction prices from NAV by a swing factor would characterize the adjusted transaction prices as "NAV" and would be required to base reported fund performance (including for calculation of performance-based advisory fees) on adjusted NAVs that reflect the applicable swing factor. We see several problems with this proposed approach. First, it would cause reported NAVs of funds that apply swing pricing to vary from the "plain English" definition of net asset value, violating principles of transparency and truth in labelling. Second, using adjusted NAVs for performance reporting purposes introduces additional volatility to measures of fund performance, unrelated to the actual volatility of a fund's underlying investments. Third, using adjusted NAVs to measure fund performance and to determine performance-based advisory fees could incentivize managers to seek to influence end-of-period capital activity (or the swing factors and swing thresholds applied at period ends) to alter calculated fund performance. It should be recognized that the fund performance benefits (even as measured using unadjusted NAVs) of swing pricing will incentivize managers to adopt aggressive swing pricing policies (low swing threshold, high swing factor), potentially imposing costs on transacting fund shareholders that far exceed the associated costs of their activity to the fund.

V. Effect of Swing Pricing on Investor Behavior

As noted above, one of the potential benefits of swing pricing noted in the Release is to deter shareholder redemptions that might be motivated by perceived first-mover advantages. Seemingly, how this would work is that a fund investor who is aware of the fund's use of swing pricing might be deterred from redeeming on days when he or she believes that, on balance, other fund investors are likely to be net redeemers, because redeeming fund shares on such a day could generate redemption proceeds of less than NAV due to the effect of swing pricing. Investors who are interested in buying a fund might be especially motivated to do so on days when the fund is thought likely to experience net redemptions, because purchases of fund shares on such days could be at prices below NAV due to swing pricing.

If applied in a sufficiently transparent manner, we believe that a fund's use of swing pricing could motivate investors to engage in more stabilizing purchase and redemption patterns—encouraging more purchases and fewer redemptions of fund shares on days of perceived flow weakness and, conversely, encouraging fewer purchases and more redemptions of shares on days of perceived flow strength. The resulting dampening of the volatility of daily net flows would benefit funds and their continuing shareholders by reducing flow-related trading and associated fund costs.

Among other deficiencies we see in the Swing Pricing Proposal as presented, limited transparency reduces the likelihood that funds will experience a dampening of daily flow volatility by adopting swing pricing. If investors cannot see or reasonably estimate the relationship between fund NAV and transaction prices as adjusted for swing pricing, they will not respond by altering their purchase and redemption activity in a stabilizing direction.

VI. Conclusions and Recommendations Regarding Swing Pricing

For the reasons described above, we believe the Swing Pricing Proposal should not be adopted. Due to operational issues, swing pricing is unlikely to see meaningful use, certainly among broadly distributed funds. Even if the operational impediments to the adoption of swing pricing could be overcome, we do not believe adoption in the manner proposed would be in the best interests of investors. The lack of transparency and inadequate safeguards to protect the interests of transacting shareholders raise investor protection issues that, in our judgment, outweigh the benefits of offsetting fund flow-related trading costs and possibly inducing more stable investor flows.

Relevant to the consideration of the Swing Pricing Proposal is the potential availability of alternative means for achieving the proposal's objectives. Although operational issues interfere with broad adoption of redemption and purchase fees, we believe the operational hurdles for swing pricing are even greater. It should be noted that ETFs and NextShares both incorporate workable and highly effective mechanisms to mitigate and offset flow-related fund trading costs and associated shareholder dilution, which we view as one the principal benefits of these structures.[20]

We urge the Commission not to adopt the Swing Pricing Proposal. If the Commission wishes to pursue adoption, we strongly encourage a significant reworking of the proposal to address the operational impediments, investor protection concerns and other issues identified above, followed by a subsequent public comment period prior to adoption.

IV. Redemption Settlement Periods

The Release includes a discussion of the evolution of settlement periods and redemption practices in the securities markets. It notes that the 1993 adoption of Rule 15c6-1 under the Securities Exchange Act of 1934, as amended, established a three-day settlement period for broker-dealer trades, shortening the informal five-day settlement period that had been standard prior to the rule's adoption. The Release notes that mutual funds that are sold through broker-dealers have to meet redemption requests within three business days because Rule 15c6-1 applies. Indeed, many redemptions are now effectively obligated to be settled within one business day by the requirements of financial intermediaries.

An effective business requirement to meet mutual fund redemptions on a next-day basis makes little sense while a three-day standard settlement period applies to broker-traded securities. Although not included in the Release, we urge the Commission to consider adopting a rule applicable to financial intermediaries that limits permissible minimum settlement periods for

[20] NextShares offer the added benefit of providing buyers and sellers of shares with full transparency of their transaction costs; because all secondary market NextShares trades will be priced at fund NAV plus or minus a disclosed premium/discount (trading cost) determined in the market when the trade executes. To further protect the interests of buyers and sellers of shares, NextShares funds are required to limit the transaction fees imposed on direct share transactions (which give rise to investor trading costs) to amounts determined to be appropriate to defray the associated fund costs. We view NextShares as a far superior approach to addressing the objectives of the Swing Pricing Proposal than the proposal itself.

mutual fund redemptions to no less than the standard settlement period that applies to broker-traded securities, currently three business days. Aligning mutual fund settlement periods with the standard settlement periods of most fund holdings would certainly help address the liquidity concerns underlying the Liquidity Management Proposal.

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Eaton Vance appreciates the opportunity to comment on the Liquidity Management Proposal, Swing Pricing Proposal and related issues. If you have any questions or wish to discuss the above comments further, please feel free to contact me at [redacted].

Sincerely,

Payson F. Swaffield, CFA