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Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

14 January 2016

Re: Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release (Release Nos. 33-9922; IC-31835) Commission File No. S7-16-15

Dear Mr. Fields:

Ernst & Young LLP is pleased to comment on the *Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release* proposal issued by the Securities and Exchange Commission (SEC or Commission). The proposal would require all open-end mutual funds (excluding money market funds) and exchange-traded funds to implement a liquidity risk management program and enhance disclosures about fund liquidity and redemption practices. The proposal also would permit mutual funds to use swing pricing to adjust their net asset value for costs associated with satisfying requests for shareholder purchases or redemptions.

General

The objective of the proposal is to minimize the risk that funds experiencing a high number of redemptions during periods of market turmoil may not be able to satisfy their obligations without negatively affecting their net asset value. We agree that the existing liquidity guidance does not address the challenges posed by the increasingly complex investment strategies funds use today. However, we believe that certain aspects of the proposal to allow swing pricing require clarification to ensure that funds apply it consistently and shareholders understand it.

The proposed rule 22c-1(a)(3) would allow an open-end fund that is not an exchange-traded fund or a money market fund to establish policies and procedures to adjust its net asset value per share (NAV) by a swing factor expressed as a percentage of its net asset value when the level of net purchases or net redemptions exceeds a specified percentage of its net asset value (a swing threshold). Swing pricing policies and procedures would have to specify the swing threshold and describe how the swing factor would be determined. A fund's board, including a majority of independent directors, would have to approve the fund's swing pricing policies and procedures and would need to designate the fund's adviser or officers responsible for administering the swing policies and procedures.

Swing factor and swing threshold

If implemented, swing pricing policies and procedures would affect funds' financial statements and disclosures. Consequently, funds' auditors would be expected to design and perform procedures to address the risk of misstatement related to swing pricing.

We are concerned that users of a fund's financial statements may inappropriately believe that the auditor would also be responsible for assessing the reasonableness of the fund's swing threshold and the swing factor. We don't believe auditors would have this responsibility because a fund's swing threshold and swing factor would be regulatory measures not contemplated within the framework of US GAAP. To determine a fund's swing threshold and swing factor, a fund's board of directors and those responsible for administering the fund's swing policies and procedures would have to exercise significant judgment, and US GAAP does not provide objective criteria that would enable auditors to assess the reasonableness of such judgments. As a result, we believe that the extent of procedures performed by auditors should be limited to gaining an understanding of a fund's swing pricing policies and procedures and verifying that these policies and procedures have been approved by the fund's board and have been consistently applied by the fund throughout the year.

We therefore recommend that the Commission clarify in any adopting release that an auditor's responsibility does not extend to assessing the reasonableness of a fund's swing pricing policies and procedures, including determining whether the amount of a fund's swing threshold and swing factor were reasonable during the year, including at the balance sheet date. We note that we are also sending this letter to officials at the Public Company Accounting Oversight Board (PCAOB) and American Institute of Certified Public Accountants (AICPA) to make them aware of this recommendation.

Reporting NAV, capital share transactions and certain financial highlights in funds' financial statements

As discussed above, the proposal would require that, if a fund's NAV is adjusted pursuant to the fund's swing pricing policies and procedures on the balance sheet date, the fund would report its adjusted NAV on its balance sheet. Furthermore, as indicated in the proposal, capital share transactions disclosed in the statement of changes in net assets would also be based on the adjusted NAV if swing pricing adjustments were made to the fund's NAV during the year. The proposal would also require the fund to report in the per-share operating performance in the financial highlights, the fund's adjusted beginning and ending NAVs and the per-share effect of swing pricing, if applicable. Finally, for the purposes of calculating total return, the proposal would require a fund to use adjusted NAV, if the fund used swing pricing either on the last business day of the prior year or the last business day of the current year, as applicable.

Reporting NAV on the balance sheet

We recognize that if swing pricing adjustments are made by a fund on the balance sheet date, users of the financial statements may find adjusted NAV meaningful, as shareholders would have transacted at the adjusted NAV. However, we believe that the fund's book value NAV (US GAAP NAV), which is the fund's NAV calculated after recording capital share transactions on the balance sheet date at the swing adjusted NAV, may also be meaningful to the users of the financial statements, as this NAV represents the actual net assets attributable to the fund's remaining shareholders at year end. For example, consider a fund that has a December 31 year end and had net redemptions on December 31 that triggered swing pricing. The fund's December 31 NAV before any swing pricing adjustment is $10.00 per share, based on $900,000 in net assets and 90,000 shares outstanding, and the fund's December 31 adjusted NAV after applying a swing factor of 1% is $9.90. After the fund processes net redemption requests received on the balance sheet date for 9,600 shares at a NAV of $9.90, the fund's US GAAP NAV is $10.01.[1] Given the importance of both NAV measures, we recommend that the Commission evaluate (with outreach to users of the financial statements as appropriate) whether presenting two NAVs on the balance sheet would be useful or whether it would cause confusion and consider any alternatives for presenting the information.

Since the unadjusted NAV (i.e., the NAV before any swing pricing adjustments)[2] is a hypothetical measure that does not represent the actual net assets attributable to either the fund's transacting or remaining shareholders at the balance sheet date, we believe that disclosure of the fund's unadjusted NAV on its balance sheet would not be necessary and could cause significant confusion. However, if the Commission determines, based on the outreach suggested above, that the users of the financial statements would find unadjusted NAV meaningful, we believe that unadjusted NAV should be included elsewhere in the financial statements.

Reporting capital share transactions on the statement of changes in net assets

We agree with the Commission that the dollar amount of subscriptions and redemptions disclosed by a fund on its statement of changes in net assets should reflect the actual amounts that would be received by the fund and that would be paid to its shareholders, which would include the effect of swing pricing adjustments. We do not believe a fund should be required to separately disclose the effect of swing pricing on its statement of changes in net assets because doing so would result in the fund presenting subscriptions and redemptions at amounts not actually received from or paid to shareholders.

Reporting per-share operating performance in the financial highlights

We agree with the Commission's proposed amendments to Item 13 of Form N-1A, which would require a fund to include in its disclosures of per-share operating performance in the financial highlights the per-share effect of any amounts retained by the fund pursuant to its swing pricing policies and procedures, if applicable. However, we believe that the Commission should align the per-share presentation requirements with the balance sheet presentation determined appropriate based on the evaluation and outreach suggested above. Specifically, if the Commission concludes that a fund should present only its adjusted NAV on its balance sheet, we believe the fund should present in the per-share operating performance its adjusted NAVs, as beginning and ending NAVs, consistent with the proposed

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1 $10.01 NAV = $804,960 in net assets/80,400 shares outstanding. $804,960 in net assets = $900,000 unadjusted net assets – (9,600 net shares redeemed * $9.90 swing adjusted NAV). 80,400 shares outstanding = 90,000 shares prior to redemption – 9,600 shares redeemed.

2 $10.00 NAV in the hypothetical fact pattern described above.

requirements.[3] If, however, the Commission concludes that a fund should present only its US GAAP NAV or both its US GAAP NAV and adjusted NAV on its balance sheet, we believe the fund should present in the per-share operating performance its US GAAP NAVs, as beginning and ending NAVs, rather than its adjusted NAVs[4] and disclose the adjusted ending NAV, if applicable, as a separate line item below ending NAV.[5] We believe the fund should include an explanation of the differences between ending US GAAP NAV and ending adjusted NAV in the notes to the financial statements.

Reporting total return in the financial highlights

We recognize that users of the financial statements may find meaningful the total return of the fund calculated by using the fund's swing adjusted NAV, if applicable, as the initial investment made calculated on the last business day before the first day of the period and as the redemption price calculated on the last business day of the period, because shareholders would have transacted at swing adjusted NAV.[6] However, we believe that the total return based on the US GAAP NAV[7] may also be useful information for a shareholder who was invested in the fund for the entire year.

We also recognize that total return calculated based on a fund's unadjusted NAV[8] may provide useful information about the performance of the fund's portfolio and may provide for better comparability of performance with other funds that do not use swing pricing or with other funds that either have different swing policies and procedures or that have swing pricing thresholds that were not triggered on the same dates as the fund's swing pricing thresholds were triggered. However, since total return calculated based on unadjusted NAV is a hypothetical measure that is not derived from the NAV at which shareholders would have transacted or the US GAAP NAV attributable to the fund's remaining shareholders, we believe that, if presented, it should be included outside of the fund's audited financial statements and not be subject to audit.

Given the importance of all three total return measures, we recommend that the Commission evaluate (through outreach to users of the financial statements as appropriate) which total return measure(s) in the financial highlights could be useful or could cause confusion and consider any alternatives for presenting the information.

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3 For example, in the hypothetical fact pattern described above, the fund would use $9.90 as its ending NAV in its per-share operating performance in the financial highlights.

4 For example, in the hypothetical fact pattern described above, the fund would use $10.01 as its ending NAV in its per-share operating performance in the financial highlights.

5 For example, in the hypothetical fact pattern described above, the fund would present $9.90 as a separate line item in its per-share operating performance below ending NAV. This proposed presentation is conceptually consistent with the one currently required for closed-end funds. Item 4 of Form N-2 requires closed-end funds to present in the per-share operating performance both the net asset value at the end of the period and the per-share market value at the end of the period, which is a transaction price.

6 In the example described above, the fund would use $9.90 as its ending NAV in the total return calculation in the financial highlights.

7 In the example described above, the fund would use $10.01 as its NAV calculated on the last business day in the total return calculation in the financial highlights.

8 In the example described above, $10.00 would be the fund's unadjusted ending NAV.

Adjusting NAV for trade date activity

Rule 2a-4 under the Investment Company Act of 1940 permits a fund to reflect in its "current net asset value" used to compute the NAV at which shareholders transact (i.e., transaction NAV) any changes in the fund's holdings of portfolio securities or in its number of outstanding shares resulting from distributions, redemptions and repurchases on the first business day following the trade date (commonly referred to as T+1). However, for financial reporting purposes, US GAAP requires an investment company to record security purchases and sales and capital share transactions as of the trade date.[9]

Therefore, for financial reporting purposes, a fund is currently required to make certain trade date adjustments that could result in the fund's transaction NAV differing from the NAV reported in a fund's financial statements prepared in accordance with US GAAP. These trade date adjustments also currently result in a fund recording capital share transactions in its financial statements that ordinarily would not be reflected in the fund's books and records until T+1.

As discussed above, the proposal would require that, if a fund's NAV has been adjusted pursuant to a fund's swing pricing policies and procedures, the fund would report its adjusted NAV on its balance sheet. The proposal also states that "for purposes of reporting the NAV in a fund's statement of assets and liabilities, a fund using swing pricing should consider its 'purchase price' or 'redemption price' on a particular day to be its NAV as adjusted pursuant to its swing pricing policies and procedures." This could be interpreted to mean that, for financial reporting purposes, the Commission does not expect funds to make trade date adjustments for portfolio transactions or capital share transactions occurring on the balance sheet date.

We recommend that the Commission clarify whether a fund that does not reflect investment transactions or capital transactions in its transaction NAV until T+1 should include the effect of any investment transactions and capital share transactions occurring on the balance sheet date in its financial statements. If the Commission believes the fund's financial statements should reflect trade date adjustments at the balance sheet date, the Commission should also consider clarifying whether the fund's financial highlights should reflect such trade date adjustments.

Reporting NAV on balance sheet

The proposal would amend §210.6-04.19, as follows: "*Net assets applicable to outstanding units of capital*. State the net asset value per share as adjusted pursuant to swing pricing policies and procedures, if applicable." That language implies that a fund would not be required to disclose NAV on the balance sheet at all, if swing pricing is not used. We do not believe the Commission intended to only require NAV to be presented on the balance sheet if swing pricing is used, and we recommend that the Commission use this language instead: "*Net assets applicable to outstanding units of capital*. State the net asset value per share, but if swing pricing is used, state the net asset value per share as adjusted pursuant to swing pricing policies and procedures." If the Commission determines that a fund

[9] *See* Financial Accounting Standards Board Accounting Standards Codification (ASC) 946-320-25-1 and ASC 946-20-25-7.

should present on its balance sheet both its US GAAP NAV and its adjusted NAV, we recommend that the Commission use this language: "*Net assets applicable to outstanding units of capital.* State the net asset value per share, but if swing pricing is used, also state the net asset value per share as adjusted pursuant to swing pricing policies and procedures."

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst & Young LLP

Copies to: James R. Doty, Chairman, PCAOB
Lewis H. Ferguson, Board Member, PCAOB
Jeanette M. Franzel, Board Member, PCAOB
Jay D. Hanson, Board Member, PCAOB
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