January 27, 2023

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC
20549-1090

Re: **Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT—Comments on Proposal to Mandate Swing Pricing and a Hard Close [(File No. S7-26-22)]**

Dear Ms. Countryman:

We are the Independent Trustees of the Calamos Funds, a complex comprised of 21 open-end funds, seven closed-end funds, one ETF and $30.7 billion in assets under management as of December 31, 2022. We are writing to weigh in on the Commission's proposal to require swing pricing by open-end funds (the "Proposal"). For us, writing a comment letter is unprecedented. We have historically relied on the Commission's pulse on the industry, as well as its open communication with the very entities it regulates, in accepting new or revised regulatory requirements as reasonable. This Proposal, however, seems to reflect neither an understanding of the industry nor industry input. We are gravely concerned about our investors.

As Independent Trustees, we have a special and important place in the fund industry. In the words of former Commission Chairman Arthur Levitt, our sole role is as "watchdogs" for fund shareholders, representing their interests independent of the concerns of any management organization.[1] We are unconflicted and singularly focused on the interests of our investors. With our unique perspective, devoid of politics and uncompromised by management economics, we are particularly well-placed to provide comments that reflect a single purpose: to safeguard the interests of our Fund investors. It is with those investors in mind, that we feel compelled to comment on your Proposal. We fear that its negative impacts will far outweigh any intended benefits.

A. Summary of Proposal

The Commission would *require* all open-end funds, except for money market funds and ETFs [2] ("excluded funds"), to engage in swing pricing under certain conditions. Specifically, an open-end fund, other than an excluded fund, would have to establish and implement swing pricing policies and procedures that adjust the fund's current net asset value (NAV) per share by a "swing factor"

[1] Speech by Chairman Levitt (February 23, 1999), quoting Burks v. Lasker, 441 U.S. 471, 484 (1979).
[2] ETFs would be excluded from the swing pricing requirement because (i) in connection with creation unit transactions, ETFs often impose fees that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution and (ii) swing pricing could impede the effective functioning of an ETF's arbitrage mechanism.

if the fund has either (i) net redemptions (no threshold) or (ii) net purchases that exceed 2% of the fund's net assets. According to the Commission, "swing pricing can more fairly allocate costs, reduce the potential for dilution of investors who are not currently transacting in the fund's shares, and reduce any potential first-mover advantages."[3] To implement swing pricing, the Proposal contemplates the requirement of a "hard close." This would provide that a direction to purchase or redeem a fund's shares is eligible to receive the price established at the current day's NAV, provided that the fund, its designated transfer agent, or a registered securities clearing agency ("designated parties") receive an eligible order before the time the fund has established for calculating its NAV. Purchase and redemption orders received after the time the fund has established for determining the day's NAV would receive the next day's NAV.

B. A Solution in Search of a Problem?

The Proposal states that the proposed amendments are intended "to mitigate dilution of shareholders' interests."[4] It explains that in light of the market stress experienced in March 2020 in connection with the onset of the COVID-19 pandemic, the Commission reviewed the effectiveness of funds' current tools for limiting dilution and has proposed amendments "to help better prepare them for stressed market conditions."[5] *However, the Commission provides no hard data to substantiate its claim that shareholder dilution remains a serious problem*. We understand that, since the Commission made swing pricing available to Independent Trustees as an optional tool, not a single U.S. fund has implemented swing pricing. In failing to explore why this is the case, the Commission's Proposal ignores the fact that Independent Trustees have chosen not to use swing pricing. Shouldn't that have been evaluated, considered and addressed before the Proposal was issued? Where is the evidence of a problem? Where is the determination that a tool that today is optional is insufficient?

C. Investor Costs Ignored

A particularly troublesome part of the Proposal is the Commission's admission that it cannot quantify many of the anticipated costs associated with its swing pricing framework.[6] According to the Commission:

> We are not able to quantify many of the costs associated with the proposed swing pricing framework for several reasons. First, we do not have granular data on the current practices and operating costs for all funds, which might allow us to estimate how their systems would change as a result of the proposed swing pricing requirement. Second, we cannot predict the number of investors that would choose to keep their investments in the mutual fund sector nor the number of investors that would exit mutual funds and instead invest in other fund structures such as ETFs, closed-end funds, or CITs. We also cannot estimate how many funds would choose to upgrade their systems and processes in order to comply with

[3] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. at 77,199.
[4] *Id.* at 77,274.
[5] *Id.* at 77,175.
[6] See *id.* at 77,256.

the proposed swing pricing requirement versus how many funds would instead convert to an ETF or a closed-end structure.[7]

As fiduciaries, we could not begin to consider a course of action that would affect our Fund shareholders without a clear understanding of how they might be economically impacted. How can the Commission proceed on a basis less sound than that? The Commission must provide more extensive economic analysis of the impact of requiring swing pricing and implementing the proposed hard close. Further, it should evaluate and share with the industry its analysis of whether the benefits outweigh the significant harms. Anything less is irresponsible.

D. <u>The Proposal Is Harmful to Shareholders</u>

1. Intermediated investors will become second class citizens

For over 50 years, it has been the universal expectation of U.S. shareholders that orders placed before 4:00 p.m. (whether directly to the fund or through an intermediary) will receive that day's price. In recognition of the unique challenges faced by intermediaries to sort and collate investors' orders and to allow shareholders to place orders through these intermediaries up to the same 4:00 p.m. cut-off time afforded to direct investors, the Commission permitted intermediaries to forward orders to mutual funds after the 4:00 p.m. close, honoring the time the order was placed with the intermediary.[8] The Commission now seeks to upend this expectation, choosing to do away with the level playing field it previously established.

As previously noted, about 98.8% of the shareholders in our open-end Funds invest through intermediaries. If the Proposal is implemented, the vast majority of the investors we represent will become second class citizens. Intermediaries will have to establish earlier cut-off times for their retail customer trades so that they can submit aggregated trades to our fund family by 4:00 p.m. An earlier cutoff for a subset of shareholders means that they will not benefit from late-breaking market information (arising after the cut-off but before 4:00 p.m.). Since when has it been in the interest of investors to make decisions with less information?

2. "Bargain" prices for some on the backs of most

The Proposal will require that a fund's current NAV be adjusted by a swing factor on any day that the fund has net redemptions. When a fund has net redemptions, the NAV will be "swung down" such that redeeming shareholders will receive a price lower than NAV for their shares and purchasing shareholders will pay a lower price for shares as compared to the current NAV. The Commission has argued that the operation of these swung prices will reduce the potential for dilution of shareholders who are not currently transacting in the fund's shares. The Commission does not acknowledge, however, that allowing purchasers to buy shares of a fund at a price lower than NAV will disadvantage long-term shareholders by, in effect, creating a discount for only certain purchasers. These shareholders will get a bargain. A similar problem arises in a net

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[7] *Id.*

[8] *See* Staff Interpretive Position Relating to Rule 22c-1, Investment Company Act Release No. 5569 (Dec. 27, 1968) (Rule 22c-1 "contemplates that the time of receipt of the order by the retail dealer is controlling" for purposes of determining the price obtained by the dealer).

subscription scenario: when net purchases exceed 2% of a fund's net assets, the current NAV will be "swung up" (*i.e.,* increased). Because the same swung price is applied on a given day to both purchasing and redeeming shareholders, shareholders that redeem on a day where the NAV is swung up will receive a price higher than current NAV, unfairly favoring those shareholders to the detriment of those shareholders who remain in the fund.

3. Promise of Same-Day Pricing Disappears

The Proposal's hard close requirement will eviscerate the same-day pricing model upon which mutual fund shareholders have come to rely. In an attempt to minimize this devastating effect, the Commission states that because "[m]ost fund shareholders are long-term investors, . . . we believe most fund orders are not time sensitive."[9] The Commission's belief is mistaken. The ability to receive same-day pricing on any order submitted before the fund's NAV is struck is not only a hallmark of mutual funds, it is the very characteristic which drives shareholder confidence in the product. Particularly in times of market volatility, the promise of same-day pricing allows shareholders to control their own destiny on their own timeline. Delaying pricing by even a single day hinders this freedom to transact at will.

E. Conclusion

We encourage the Commission to take more time and conscientiously evaluate the Proposal. As currently envisioned, the reforms would irreparably harm our investors. In particular, the disadvantages to retail investors investing through intermediaries deserve more than the cursory treatment they received in the Proposal. We encourage the Commission to undertake widespread engagement with mutual fund industry participants on all aspects of its Proposal. Much more work is needed to understand the nature of dilution in the industry and to consider the pros and cons of any actions intended to mitigate dilution. It would be a mistake to adopt measures intended to protect fund shareholders that, in fact, cause more harm than good.

Sincerely,

/s/ John E. Neal
John E. Neal, Lead Independent Trustee, Calamos Funds

On behalf of:

Virginia G. Breen
William R. Rybak
Karen L. Stuckey
Christopher M. Toub
Lloyd A. Wennlund

[9] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. at 77,213.

cc: The Hon. Gary Gensler, Chair, U.S. Securities and Exchange Commission
The Hon. Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
The Hon. Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
The Hon. Mark T. Uyeda, Commissioner, U.S. Securities and Exchange Commission
The Hon. Jaime Lizárraga, Commissioner, U.S. Securities and Exchange Commission
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