February 7, 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 Reporting—Comments on Proposal to Amend Liquidity Risk Management Rule and Mandate Swing Pricing and a Hard Close [(File No. S7-26-22)]**

Dear Ms. Countryman:

We are the Independent Directors of the JNL Funds (the "Funds"), a variable annuity-based fund group comprising 130 open-end funds with $222.7 billion in assets under management as of December 31, 2022. We appreciate the opportunity to provide comments to the United States Securities and Exchange Commission (the "SEC") on its proposals to make certain revisions to liquidity risk management programs and require swing pricing by open-end funds (the "Proposal"). We find the Proposal concerning for its rigidity, lack of nuance and "one-size-fits-all" approach. We are also alarmed by the Proposal's lack of data to support its conclusions about dilution and late trading in the industry, as well as its self-identified absence of quantifiable information to discern the likely costs (both direct and through reduced investment choice) to shareholders of implementing the measures it suggests.

Background

We believe our perspective, as independent directors, is unique from that of most industry participants for two reasons.

- First, we are independent in spirit and under the law. We take our role as fiduciaries very seriously, and our comments on the Proposal are motivated by what we believe is in the best interests of the investors in our Funds. With this as backdrop, we believe we are in perfect alignment with one of the SEC's key goals: the protection of investors. We have tried to educate ourselves about the implications of the Proposal through education sessions at board meetings, industry webinars, discussions with our Chief Compliance Officer and independent counsel, and reading various analyses of the Proposal.
- Second, we do not represent investors who buy in retail channels. We represent investors who purchase variable annuity products and, through them, invest in our Funds. Our investors purchase through an insurance company (Jackson National Life), which is affiliated with our Funds' investment adviser (Jackson National Asset Management). As such, flows in and out of our Funds move through a framework where investors do not necessarily expect to receive cash or shares on the very day they transact. While their account statements certainly reflect daily activity, the structure of an insurance-based fund

group allows our Funds to take full advantage of certain features of the Investment Company Act and its Rules that are less practical for retail funds to follow. For example, mutual funds are allowed to pay redemption proceeds within seven days of receiving a redemption request. However, from a reputational and competitive perspective, retail funds can ill afford to take seven days to meet redemptions, whereas insurance-based funds can do so without fear of undermining investor confidence. There are other key differences between retail and variable annuity funds of which the SEC is well-aware and that we won't further explore here. Suffice it to note that insurance and retail fund groups have significant operational differences.

A Proposal Without Nuance

The SEC has issued a Proposal that touches on serious and important issues but addresses them with too little data and with too broad a brush. Moreover, the Proposal fails to recognize the different types of fund groups in the industry and instead assumes that what may be an issue for one is an issue for all. It is premised on the notion that a single solution is effective, regardless of product or circumstance. The industry is far more nuanced and deserves proposals which reflect this.

- The Proposal provides no evidence – quantified or qualitative – to suggest that dilution is a problem for funds generally, or for variable annuity funds specifically. The Proposal requires swing pricing as the answer for a purported widespread dilution issue. But, it fails to provide evidence of the extent of issue – it just assumes the issue exists. And, it fails to explore what reasons the industry may have for not having yet pursued swing pricing, which is available today on a voluntary basis.
- As for liquidity risk management, the Proposal fails to reveal where the shortcomings currently lie and with which types of funds (if any). For example, variable annuity funds differ greatly from retail funds in that investors in variable annuity funds are buying the product for long-term, guaranteed income and, as such, as not as quick to leave a fund.

What Does the Proposal "Fix"?

The SEC indicates in the Proposal that mandatory swing pricing is intended "to mitigate dilution of shareholders' interests." It explains that, in light of the market stress experienced in March 2020 in connection with the onset of the COVID-19 pandemic, the SEC reviewed the effectiveness of funds' current tools for limiting dilution, and as a result, has issued the Proposal "to better prepare them for future stressed conditions." But, where is the data? What came of the SEC's review, specifically? What were the deficiencies and how material were they? With respect to its proposed changes to liquidity risk management, the Proposal notes that while the SEC "adopted rules to address concerns about late trading [in 2003], we believe that the hard close proposal, when coupled with our current rules, would more effectively prevent late trading." Late trading is illegal. The practice is prohibited. Regulation has never been the antidote to a breach of law. Enforcement is.

One Size Does Not Fit All

Even if liquidity risk management and dilution *are* issues urgently in need of attention (which we don't believe the Proposal supports), we do not understand why the SEC would pursue a one-size-fits-all approach to address each.

- We believe it is critical that the SEC focus on key operational differences between retail and variable annuity funds. It is likely, if not probable, that both dilution and liquidity are experienced differently in each type of fund complex.
- The liquidity risk management proposal provides inadequate support for why every fund would have to be subject to the same regime. The Proposal would require each Fund to assume the sale of 10% of its portfolio. This is blunt and arbitrary, and fails to account for the fact that different types of funds have different liquidity risks and history of asset flows. We believe it is wrong to apply the same 10% requirement to a U.S. equity fund, a high yield bond fund and an emerging markets fund. Doing so ignores that different fund types have different liquidity needs. It also ignores that the same is true of different investors.
- The Proposal approaches swing pricing in a similarly inflexible manner. A mutual fund would have to establish and implement swing pricing policies and procedures that adjust the fund's NAV by a "swing factor" if the fund has either (i) net redemptions (no threshold) or (ii) net purchases that exceed 2% of the fund's net assets. The SEC has not adequately explained why there is no threshold trigger on net redemptions, why there is a trigger for net subscriptions, why 2% is a reasonable trigger for those, and most importantly, why every single fund must implement the same triggers.

Our Funds are not homogeneous. Neither are our shareholders. They have access to a broad and varied set of investment options, and they, more than anyone, deserve regulatory action that is nuanced and flexible. Rather than regulating through a single, blunt approach, we urge the SEC to spend more time developing a proposal that reflects a greater level of refinement and sophistication that recognizes the varying characteristics of the industry it regulates. This is what would be in the best interest of our Fund shareholders and, we believe, in the best interest of the broader industry.

Diminution of Investor Choice

The Proposal's rigid, prescriptive measures risk decreasing the investment choices available to investors. For example, the Proposal suggests eliminating the "less liquid" bucket from the current liquidity risk management framework. Eliminating the "less liquid" bucket means that the 15% limit on "illiquid securities" would not only apply to illiquid securities, but also to securities that currently fall in the "less liquid" bucket. The Proposal seeks to replace the existing nuanced liquidity risk management program with a version in which the fund industry is left with a binary choice: either a security can be converted to cash in seven days or less (that is, if the security is "highly" or "moderately" liquid) or the security is altogether illiquid. There surely is an in-between.

We fail to understand what ailment the elimination of the "less liquid" bucket will cure. The Proposal does not quantify or explain how today's practices fall short. What we do know is that, if adopted, these reforms would serve to eliminate some of the very funds our shareholders have invested in over the years. Bank loan funds, emerging markets funds and many other funds that have significant allocations of investments in the less liquid bucket would cease to exist. Given that the SEC has offered only conclusions but no data (or even anecdotal evidence of harm to shareholders) in support of these proposed changes, we wonder if its real aim is to eliminate funds whose liquidity profile the SEC simply does not like. If so, it would be more efficient (not to mention more transparent) if the SEC just said that. If, on the other hand, the SEC is truly motivated by a desire to improve liquidity in funds, it would be helpful for it to explain where the current liquidity risk management framework is failing in the first place.

<u>Disadvantages to Investors in Fund-of-Fund Arrangements</u>

We are concerned about the effect the Proposal would have on our Funds-of-Funds. The Proposal would introduce a delay for each "top" Fund in making allocations to its underlying Funds. Currently, as the Proposal acknowledges, an underlying fund in a fund of funds structure may not receive purchase or redemption orders from "top" funds until well after 4 p.m. The orders submitted by "top" funds to their underlying funds receive same day pricing. The hard close requirement would force a "top" fund to communicate to its underlying funds the specific amount of its subscriptions or redemptions before the "top" fund actually knows its own net subscriptions or redemptions, which, of course, is not practical and is harmful to shareholders. As a result, a "top" fund would be forced to wait until the following day to adjust its holdings of underlying funds in light of its own net redemptions or subscriptions from the prior day. This would expose shareholders invested in one of our Fund-of-Funds to an extra day of market fluctuations. We do not believe that is fair. We note that master-feeder funds have received special treatment under the Proposal and ask the SEC to consider similar treatment for funds-of-funds.

<u>Unquantified Costs, Mutual Fund Net Outflows and Migration to Less Regulated Products</u>

As if the disruption and harm to our investors that we have outlined above were not sufficiently concerning, the SEC acknowledges that (i) it has no way of knowing the costs that would result from its proposed changes, (ii) those changes could lead to mutual fund outflows, and (iii) investors could turn to less regulated products. Specifically, we note the following language in the Proposal:

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

We believe it is unacceptable that the SEC would release a proposal with so many self-acknowledged shortcomings. There must be extensive economic analysis of the Proposal's implications. There must be more consideration of differences between fund types and within the mutual fund industry. Further, more detail is needed on whether investors are likely to flock to less regulated vehicles or would be left with fewer choices for their investments – such outcomes cannot be in the best interests of investors.

Conclusion

We are deeply concerned with many aspects of the Proposal. In the interest of brevity, we have not summarized them all here. However, we cannot in good conscience support a Proposal that leaves so many questions, several of them fundamental, unanswered. Consistent with our fiduciary duty to our investors, we cannot support a Proposal that will increase costs and decrease choice and that fails to acknowledge that the mutual funds and the mutual fund industry are not homogeneous. We urge the SEC to undertake more detailed diligence and to engage the fund industry in a dialogue so that we can all better understand the extent and nature of dilution and liquidity risks in mutual funds, the pros and cons of all possible solutions, and their attendant costs. Thank you for the opportunity to comment.

Sincerely,

/s/ Edward C. Wood
Edward C. Wood, Independent Chair of the Board, JNL Funds

On behalf of:

Eric O. Anyah
Michael J. Bouchard
Ellen Carnahan
John W. Gillespie
William R. Rybak
Mark S. Wehrle
Patricia A. Woodworth

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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