



February 10, 2023

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

Submitted on-line via <https://www.sec.gov/cgi-bin/ruling-comments>

**Re: Proposed Rule, Securities and Exchange Commission;
Open-End Fund Liquidity Risk Management Programs and Swing Pricing,
Form N-PORT; File No. S7-26-22; RIN 3325-AM98 (November 2, 2022)**

Dear Ms. Countryman:

We respectfully request that the staff of the Securities and Exchange Commission (the "SEC" or "Commission") leave in effect one of the no-action letters under consideration for withdrawal, as stated in the release (the "Release") for the proposed rule entitled "Open-End Fund Liquidity Risk Management Programs and Swing Pricing, Form N-PORT" (the "Proposal").

Section II.G of the Release states that the staff of the Division of Investment Management (the "Staff") is reviewing its no-action letters that address compliance with Rules 22e-4 and 22c-1 under the Investment Company Act of 1940, as amended (the "Company Act"), to determine which of those letters should be withdrawn in connection with the Proposal. Among the no-action letters under consideration for that purpose, according to the Release, is the no-action letter issued to ReFlow Fund, LLC (pub. avail. July 15, 2002) (the "ReFlow Letter").

The ReFlow Letter should remain in effect because it allows the effective functioning of a liquidity service for mutual funds that is consistent with a key objective of the Proposal. ReFlow Fund, LLC, as managed by ReFlow Services, LLC (together, "ReFlow"), has for over 20 years offered an innovative service to mutual funds that helps funds using its services to reduce the impact on shareholders from redemptions by helping those funds avoid selling securities or borrowing cash to satisfy redemptions. ReFlow's services were designed and are currently operated to address one of the same objectives expressed in the Proposal, that is to "mitigate dilution of shareholders' interests" from redemption activity. Since inception, ReFlow has provided over \$17 billion (over \$3 billion in 2022 alone) of capital to participating mutual funds. ReFlow has provided liquidity services to over 100 mutual funds and is currently approved by mutual fund families with hundreds of billions in assets. It has the interest and capacity to serve more fund complexes.

Rescinding the ReFlow letter would substantially impair the manner in which mutual



funds could use ReFlow's redemption services and could reduce the effectiveness of those services.

ReFlow offers to act as a benevolent shareholder of a mutual fund facing a redemption request through what ReFlow refers to as its "Redemption Service." ReFlow stands ready to purchase, for cash, shares of a fund facing net redemptions. ReFlow then holds the shares of the participating fund until such time as the fund can redeem those shares held by ReFlow with no impact or at least reduced impact on remaining shareholders, such as when there are net purchases for that fund or when the fund is able to sell portfolio securities in a more orderly manner based on market conditions. ReFlow may also transact in-kind when it redeems its mutual fund shares, further enhancing the benefits of the liquidity service to participating funds.

The ReFlow Letter provided relief with respect to Rule 22c-1, Section 22(d), Section 18(f) and Rule 12b-1 under the Company Act. For the reasons described in the ReFlow letter, relief from each of those provisions continues to be essential to ReFlow's ability to provide the Redemption Service. In particular, the Release suggests that a no-action letter may be fully or partly withdrawn to the extent it addresses compliance with Rule 22e-4 or Rule 22c-1.

The Release states that withdrawal of the various no-action letters listed in the Release is under consideration by the Staff to the extent needed to implement the hard close for swing pricing.

ReFlow's Redemption Service and relief under Rule 22c-1 would not interfere with a mutual fund's ability to implement swing pricing, as needed or required. The Redemption Service could be regarded as complying in substance with the hard close requirement because ReFlow would have committed directly with the participating fund in advance of the hard close and the calculation of the relevant day's net asset value (NAV) to purchase shares at that day's NAV based on the results of the auction in which the participating fund bids for capital from ReFlow. Although the outcome of the ReFlow auction that produces a purchase order would not yet be known until shortly after the hard close, which necessitates no-action relief with respect to Rule 22c-1, ReFlow has no ability to exercise discretion or affect the outcome of the auction under the rules set for a particular auction. A fund's net flows for a given day, and whether a swing threshold was exceeded for that day, still could be determined by a fund based on the outcome of the auction and the size of the purchase order received from ReFlow as a result of the auction without withdrawing ReFlow's relief under Rule 22c-1.

The same principles apply to ReFlow's redemption of shares previously purchased in a mutual fund. The Redemption Service has specific objective rules about when the redemption occurs, which should be regarded as a prior firm commitment by ReFlow, and for which ReFlow has no ability or discretion to change as to amount or timing after a hard close for the day on which a redemption by ReFlow occurs.

In addition, frequently when ReFlow redeems its mutual fund shares acquired through Redemption Service, it receives its redemption proceeds in-kind. Rather than being forced to liquidate portfolio securities in the open market in order to satisfy a redemption order, a fund



would redeem the shares held by ReFlow in-kind with portfolio securities rather than cash. Because ReFlow can only acquire shares of a participating fund in order to offset net shareholder redemptions we believe that when ReFlow redeems its positions, whether due to net shareholder inflow, ReFlow's reaching the end of its maximum holding period, or at the request of the participating fund, the ReFlow redemption transaction should be conducted at NAV, even if other transactions on that day would be subject to a swung price. Since any ReFlow redemption transaction must have been recently preceded by a purchase to offset shareholder outflow and thus can, by definition, be no worse than net neutral to the fund's liquidity position.


ReFlow encourages the Staff to consider modifying the swing pricing requirement in proposed revised Rule 22c-1 to exclude from application of the swing factor the NAV used for any purchases and redemptions by ReFlow in connection with its Redemption Service. As explained above, this exclusion would not be contrary to the purpose of the Proposal because ReFlow's purchases and redemptions cannot contribute, on an aggregate basis, to any dilution to the fund's remaining shareholders.

For these reasons, we respectfully urge the staff of the Division of Investment Management and the Commission to (a) reconsider the possible withdrawal of the ReFlow Letter and (b) provide an exclusion from the application of a swing factor in proposed Rule 22c-1 to ReFlow transactions made in the provision of its liquidity service, as described in the ReFlow Letter.

Thank you for considering this request.

Sincerely,

ReFlow Services, LLC, as the
Manager of ReFlow Fund, LLC

By: 

William G. White
President and CEO