February 10, 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 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 Prudential Insurance Mutual Funds (the "Funds"). We oversee 78 mutual funds representing $145.2 billion in assets under management as of December 31, 2022. We are grateful for the opportunity to provide comments to the United States Securities and Exchange Commission (the "Commission") on its proposals to revise liquidity risk management programs and require mutual funds to implement swing pricing (the "Proposal"). Multiple aspects of the Proposal concern us, as we believe they are likely to materially harm our Funds' investors. We support any regulatory measure that results in a net improvement for the Funds we oversee and for their shareholders. We believe, however, that the "net" positive impact of the Proposal is tenuous at best, and considerably net negative at worst. Given our disinterested perspective as "watchdogs" for the interests of our shareholders, we sincerely hope the Commission gives serious consideration to our concerns. We are convinced that more time is required for the Commission to develop data that explains the full impact of the Proposal on funds and their shareholders. Assuming there is hard data to support the need for reform, we encourage the Commission to develop and propose solutions whose result is not worse than the problems they are intended to address.

Lack of Data

In our role as fiduciaries, we are called to use our business judgment constantly. That often entails weighing pros and cons of various approaches and considering alternatives. Hard data is almost always at the center of this exercise. As we reviewed the Proposal, we were struck by the lack of data provided to substantiate the Commission's claim that there is an investor dilution problem or that there is a need to change the liquidity risk framework currently in effect in the industry. In fact, the Commission even acknowledges that it "do[es] not have specific data about the dilution fund shareholders experienced in March 2020."[1] We take seriously the Commission's goal for funds to "be better prepared for future stressed conditions, which can occur suddenly and

[1] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. 77172, 77178 n. 40 (Dec. 16, 2022).

unexpectedly, and …[to] have well-functioning tools for managing through stress without significantly diluting the interests of their shareholders."[2] But we need more evidence that the Proposal would accomplish that goal. The Commission needs to substantiate its concerns. Without it, we feel compelled to object because we cannot discern why the changes are needed nor whether they are commensurate with the problems they seek to mitigate.

Too Broad a Brush

The Proposal is ambitious in breadth but lacking in appropriate nuance. It treats all fund groups and all funds the same. Its swing pricing and liquidity risk management requirements would apply equally to retail and insurance-based funds, fixed-income and equity funds, emerging markets and U.S. large-cap funds. Yet insurance funds like ours do not suffer the same liquidity pressures that retail products face. Also, within the same fund complex, different types of funds experience different asset flow patterns, which means that some funds require more liquidity than others. Why should every Fund we oversee have to assume the sale of 10% of its portfolio in order to appropriately manage liquidity? We do not think this makes sense. Similarly, to the extent dilution may be an issue, it is likely to present quite differently from one fund to the next. We do not understand why every fund type should be subject to a formulaic swing pricing mechanism that applies on any day when a fund is in net redemptions or when net purchases exceed 2% of fund assets. The Proposal's lack of nuance and flexibility is concerning. Mutual funds are not uniform. Any reforms should be thoughtfully and creatively crafted to appropriately reflect the diversity of products in the industry.

Inequitable Treatment of Shareholders

In its current form, the Proposal would require that any day a fund's net asset value ("NAV") is swung down (if there are net redemptions) or swung up (if net purchases exceed the 2% threshold), all shareholders transacting that day would receive that adjusted NAV. This would erode a defining characteristic of all mutual funds: predictability in how the NAV is calculated. That calculation has been sacrosanct because it is well-understood and ensures that all investors are treated equally. The Proposal exposes today's NAV calculation to the mercurial nature of asset flows, creating illogical and unfair results. We fail to understand why, for example, if a fund is wildly successful and attracts significant assets over the course of several months, shareholders who redeem during that period should receive a higher NAV than those who remain in the fund. Conversely, if a fund is in net redemptions on any given day (possibly because something in the market worried investors or a large institutional investor has decided to reallocate assets), why should investors who purchase that day pay less than what would otherwise be NAV (thereby getting a "discount" not given to those investors already in the fund)? Though the Commission states that "swing pricing can more fairly allocate costs" and "reduce the potential for dilution of investors who are not currently transacting in the fund's shares,"[3] absent clear evidence of a dilution problem in the industry, it seems to us that the Proposal will harm the very investors the Commission says it wants to protect.

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[2] *Id*. at 77183.
[3] *Id*. at 77199.

Greater Risk for Funds-of-Funds

Funds-of-funds are efficient asset allocation vehicles, which provide increased diversification with the agility to move quickly into or out of broad swaths of asset classes, industry sectors and specific markets. Over the years, they have been popular investment vehicles among our shareholders. The Proposal would greatly impact their efficiency and expose them to unnecessary market risk. Today, a fund-of-funds is able to pass through to its underlying funds, on the same day, its own purchase and redemption activity. Under the Proposal's so called "hard close" requirement, an underlying fund could only apply the daily NAV to orders received prior to 4:00 p.m. on that day. This means that the "top" fund would either (i) have to submit a purchase or redemption order to an underlying fund before the close of markets and before the "top" fund knows what its own purchase and redemption activity is on that day, or (ii) wait until the market closes on that day, discern what its net flows are and then transact in the underlying fund at the next day's NAV. The uncertainty and inefficiencies created by a hard close as applied to fund-of-funds arrangements is evident to us and of great concern.

Diminished Offerings

We are somewhat perplexed by the Commission's suggested elimination of the "less liquid" bucket from its previously adopted liquidity risk management framework. Today, there are four buckets: "highly liquid," "moderately liquid," "less liquid" and "illiquid." The first two categories represent securities that can be sold in no more than seven days at the price at which they are carried and without materially affecting the market in those securities. The last category encompasses, as the name suggests, securities that are not liquid. Most mutual funds can hold up to 15% of their assets in illiquid securities. If the Commission eliminates the "less liquid" category, it will mean that all securities other than those which a fund can sell within seven days will be subject to the 15% cap. Won't this mean the demise of emerging market funds, bank loan funds and similar investment vehicles which have historically played an important role in investor diversification? If these types of funds have somehow failed to adhere to sound liquidity management practices, then we urge the Commission to propose reforms that address those challenges. Killing them outright hardly seems like a good outcome for investors.

Unknowns: Fund Flows and Costs

In its Proposal, the Commission notes that it 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 . . . CITs."[4] We are absolutely befuddled by the notion that our industry's principal regulator would issue any proposal that could result in investors flocking to less regulated products. It is counterintuitive. The Commission owes it to our Fund investors to explain what is so broken about mutual funds that makes it palatable for reforms to drive assets to CITs. We think it is shortsighted.

We are further confounded by the Commission's admission that is not "able to quantify many of the costs associated with the proposed swing pricing framework" and that it does not "have

[4] *Id*. at 77256.

granular data on the current practices and operating costs for all funds, which might allow [it] to estimate how their systems would change as a result of the proposed swing pricing requirement."[5] If that is the case, why issue a proposal? Regulatory action must engage in no less rigorous a cost-benefit analysis than we have to undertake as Independent Directors. We could ill afford to embark on any initiative, or to otherwise seek to fulfill our fiduciary obligations as Independent Directors, without trying to understand the potential costs to our shareholders. We ask you not to act in haste; rather, we ask that you take the time needed to carefully weigh the pros and cons of this or any other proposal, particularly the costs.

Conclusion

We recognize that underlying the Proposal is a set of potentially serious concerns. But we ask that the Commission provide more than conclusory statements. Reforms as significant as those set forth in the Proposal deserve it. The Commission should present detailed data that underscores why any changes to address dilution and liquidity risk management are needed in the first place. In addition, assuming reform is needed, we encourage the Commission to engage thoughtfully and deliberately with the industry so that it can consider changes that reflect the complexity of today's mutual fund offerings. In the end, we hope that any proposal issued by the Commission is calibrated to apply appropriately to different types of funds and does not cause more harm than good.

We thank you for the opportunity to comment.

Sincerely,

_/s/ Thomas M. O'Brien ___________________________

Thomas M. O'Brien, Independent Board Chair, Prudential Insurance Funds

On behalf of:

Susan D. Austin	Kay Ryan Booth
Sherry S. Barrat	Stephen M. Chipman
Jessica M. Bibliowicz	Robert F. Gunia

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

[5] *Id*.

Mr. William A. Birdthistle, Director, Division of Investment Management, U.S. Securities and Exchange Commission