

February 14, 2023

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

**Re: Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting – Comment on Proposal (File No. S7-26-22)**

Dear Ms. Countryman:

I am Chairman and an independent member of the board of trustees (the “Board”) of the Northern Funds (“Funds”).<sup>1</sup> On behalf of the independent trustees of the Board, I am pleased to comment to the Securities and Exchange Commission (the “Commission”) on proposed amendments to open-end fund liquidity risk management programs and swing pricing under the Investment Company Act of 1940 (the “Act”) and the rules and forms thereunder (the “Proposed Amendments”).<sup>2</sup>

The Funds, a complex comprised of 39 open-end funds and two money market funds, had approximately \$42.1 billion in net assets (excluding the money market funds) as of December 31, 2022. As independent trustees, it is unusual for us to submit a comment letter to the Commission. Given the substantial negative impact that the Proposed Amendments would have on shareholders of our Funds, however, we felt compelled to voice our concerns.

The Current Framework Adequately Protects the Funds’ Shareholders

While the independent trustees support the Commission’s objective of protecting our Funds’ shareholders against dilution, we believe that the Proposed Amendments to the existing liquidity risk management framework are unnecessary and that imposing swing pricing and the related hard close will impose substantial costs, including fundamental changes in fund and intermediary processes, that far outweigh any incremental benefits.

In 2016, the Commission adopted Rule 22e-4 under the Act (the “Liquidity Rule”), which requires open-end funds to adopt and implement liquidity risk management programs and

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<sup>1</sup> The Board consists of eight persons, seven independent trustees and one trustee who is an officer and employee of Northern Trust Investments Inc. (“NTI”), the Funds’ investment adviser. The Board also oversees the Northern Institutional Funds, a complex comprised solely of money market funds.

<sup>2</sup> Proposed Rule on Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Fed. Reg. 77,172 (Dec. 16, 2022).

establishes a robust liquidity framework.<sup>3</sup> In 2018, the Commission adopted amendments that were designed to improve the reporting and disclosure of liquidity information by open-end funds.<sup>4</sup>

Consistent with the Liquidity Rule, the Funds have adopted and implemented a comprehensive liquidity risk management program and liquidity framework, which includes, among other things, regular reporting to the Board. Our experience to date is that the liquidity risk management program has functioned as intended, and the Funds have in the past and continue to be able to meet requests for redemption without dilution of remaining investors' interests in the Funds.

The Proposed Amendments would mandate swing pricing for all mutual funds (other than excluded funds and feeder funds). This one-size-fits-all solution is inappropriate to our Funds, which are highly liquid and have not experienced significant dilution as a result of transactions. Moreover, a hard close is fundamentally unfair to shareholders as it would create inconsistent treatment of shareholders within funds, as shareholders may receive different prices based on which intermediary they invest through. Retirement investors would be particularly negatively impacted as retirement plan recordkeepers' systems generally do not initiate batch processing until a fund's final net asset value ("NAV") is received or until final NAVs are received for all funds offered on their platforms, and their investors likely would be unable to access same-day pricing.

In addition, investors expect a mutual fund to provide same-day pricing (consistent with Section 22 of the Act), and the Proposed Amendments confound these expectations. The Proposed Amendments also would subject investors who cannot receive same-day pricing to risk of loss, particularly during periods of market volatility.

To comply with the proposed hard close requirement, funds, fund service providers and intermediaries would need to make significant changes to their business practices, including updating their computer systems, altering their batch processes, or integrating new technologies that facilitate faster order submission (*i.e.*, before 4 p.m. ET). Some intermediaries may be unwilling or unable to make the necessary changes, and even those that make the changes are likely to pass on the costs of such changes, which ultimately will be borne by fund shareholders.

In sum, the Proposed Amendments would entail significant costs that would be passed to mutual fund shareholders. Intermediaries may not be willing to work with mutual funds. Retirement platforms will be particularly impacted. Shareholders may be subject to increased market risk vis-à-vis other investment products (for example, less regulated and more expensive wrap accounts or unregulated collective investment trusts). As a result, the mutual fund product will no longer serve many of its intended functions that investors seek and value, and mutual funds may no longer be viewed by investors as an attractive investment vehicle to help manage their investing needs.

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<sup>3</sup> See Investment Company Liquidity Risk Management Programs, 81 Fed. Reg. 82142 (Nov. 18, 2016) ("2016 Release").

<sup>4</sup> See Investment Company Liquidity Disclosure, SEC Release No. IC-33142 (June 28, 2018).

We understand that others in the industry, including the Independent Directors Council, Mutual Fund Directors Forum and NTI, are submitting comment letters highlighting similar concerns, and we urge the Commission to seriously consider these comments and reassess and balance the need for such fundamental changes in light of the lack of clear evidence of significant dilution and the substantial negative impact the Proposed Amendments would have on fund shareholders, including our Funds' shareholders.

If the Commission Moves Forward, it Should Re-Affirm the Board's Oversight Role

In adopting Rule 22e-4, the Commission explicitly stated that the role of a board in overseeing the liquidity risk management framework is one of oversight, and that directors will exercise their reasonable business judgment in this oversight function.<sup>5</sup> If the Commission amends the current liquidity risk management framework, the Commission should be mindful of the board's oversight role, and not expand the role of directors in a manner that makes them responsible for making determinations about liquidity risk or swing pricing. We encourage the Commission to re-affirm that, in performing their oversight duties, the Commission believes that directors should continue to receive the protection of the business judgment rule. We further encourage the Commission to recognize that, subject to a board's oversight responsibilities, a board reasonably may rely on other parties, such as the fund's investment adviser, swing pricing administrator or other parties deemed appropriate by the board, without limitation, in fulfilling its responsibilities.

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In closing, and on behalf of the independent trustees of the Northern Funds, I appreciate the opportunity to submit the foregoing comments. If you have any questions, please feel free to contact our counsel, Sara Crovitz at [REDACTED].

Sincerely,

/s/ Thomas A. Kloet

Thomas A. Kloet  
Chairman of the Board  
Northern Funds

cc: Other Trustees

Therese M. Bobek  
Ingrid LaMae A. de Jongh  
Mark G. Doll  
David R. Martin  
Cynthia R. Plouché  
Mary Jacobs Skinner

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<sup>5</sup> See 2016 Release, 81 Fed. Reg. at 82,212.

NTI

Darek Wojnar

Peter Ewing

SEC Commissioners and Staff

The Honorable Gary Gensler

The Honorable Jaime Lizarraga

The Honorable Caroline A. Crenshaw

The Honorable Hester M. Peirce

The Honorable Mark Uyeda

William A. Birdthistle, Director, Division of Investment Management