DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

VIA ELECTRONIC SUBMISSION

February 14, 2023

Ms. Vanessa 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:

Invesco Ltd. ("**Invesco**") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the "**SEC**" or "**Commission**") in opposition to the proposed amendments to Rule 22c-1 ("**Rule 22c-1**") under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), (collectively, the "**Proposal**").[1]

Invesco is a leading independent investment manager with approximately $1,409.2 billion in assets under management as of December 31, 2022. Invesco is a global company focused on investment management, and our services are provided to a wide range of clients throughout the world, including open-end mutual funds, closed-end funds, exchange-traded funds ("**ETFs**"), collective trust funds, UCITS, real estate investment trusts, unit investment trusts and other pooled investment vehicles, as well as separately managed accounts for pensions, endowments, insurance companies and sovereign wealth funds. Invesco's indirect wholly-owned U.S. registered investment adviser subsidiaries, Invesco Advisers, Inc., Invesco Capital Management LLC and Invesco Senior Secured Management, Inc., sponsor and advise mutual funds, ETFs, closed-end funds and unit investment trusts for a broad client base. Additionally, these investment advisers sponsor and manage bank loan mutual funds and ETFs with approximately $10.5 billion in assets under management as of December 31, 2022, making Invesco one of the largest sponsors and advisers of open-end bank loan funds in the industry.

In this letter, Invesco provides comments only to the proposed amendments to Rule 22c-1 under the Investment Company Act. Comments to the liquidity related amendments under Rule 22e-4 of the Investment Company Act and to Form N-PORT reporting described in the Proposing Release are the subject of a separate Invesco letter dated and submitted to the Commission on February 10, 2023. Finally, Invesco notes its support of the comment letters submitted to the Commission by the Investment Company Institute[2]

---

[1] See Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT, Investment Company Act Release No. 34746, 87 Fed. Reg. 77172 (December 16, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-24376.pdf (the "**Proposing Release**").

[2] Comment letter dated and submitted to the Commission on February 14, 2023.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

(the "**ICI**"), the Securities Industry and Financial Markets Association[3] ("**SIFMA**") and the SPARK Institute, Inc.[4] regarding their opposition to the Proposal.

I. <u>Executive Summary</u>

The Proposal would require all open-end funds, excluding money market funds and ETFs, to engage in swing pricing under certain conditions. Open-end funds would be required to establish and implement swing pricing policies and procedures that adjust a fund's current net asset value ("**NAV**") per share by a "swing factor" if the fund has either (i) net redemptions or (ii) net purchases that exceed 2% of the fund's net assets. Within the Proposing Release, the Commission states that by imposing the costs associated with net purchases or net redemptions on the shareholders who are purchasing or redeeming from the fund at that time, "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."[5]

In addition, the Proposal includes amendments to Rule 22c-1 that would require a "hard close" for funds that implement swing pricing. The proposed hard close requirement would provide that a direction to purchase, exchange 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 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.

The Proposal states that to implement the proposed swing pricing requirement, "mutual funds need sufficient net order flow information to determine whether to apply a swing factor, and the size of that swing factor, before they finalize that day's price."[6] Among other things, the Proposal argues that the proposed hard close requirement "would facilitate the more timely receipt of order flow information by requiring that the fund, its transfer agent, or a clearing agency receive all orders that are eligible to receive that day's price before the fund computes its NAV."[7]

Invesco respectfully and strongly opposes mandatory swing pricing for all mutual funds and a hard close for funds that implement swing pricing. Mutual fund shareholders would be materially and detrimentally impacted by the Proposal.

Invesco opposes mandatory swing pricing in its proposed form. The Proposal is informed by the Commission's premise that swing pricing has been used successfully in Europe as an anti-dilution tool. Invesco notes, however, that there are critical differences between the European and U.S. fund markets.

---

[3] Comment letter dated and submitted to the Commission on February 14, 2023.

[4] Comment letter dated and submitted to the Commission on February 14, 2023.

[5] Open-End Fund Liquidity Risk Management Programs and Swing Pricing, 87 Fed. Reg. at 77,199.

[6] *Id.* at 77,209.

[7] *Id.*

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

Furthermore, the prescriptiveness of the Proposal is considerably harsher than the European model, which is characterized by its flexibility and is cited by the Commission throughout the Proposal.

A hard close would negatively affect mutual fund investors in several respects. It would lead to delays in trade execution, prolonged market exposure and higher costs for fund shareholders. Investors would not be able to execute fund trades as they do today throughout normal market hours. Intermediaries would have to submit an order to a fund's designated transfer agent, or registered securities clearing agency, before the time the fund has established for calculating its NAV. Accordingly, intermediaries could implement cut-off times as early as 10:00 am ET. This would cause discrepant treatment of investors: those that invest directly with a fund and those that invest via an intermediary.

In addition, implementing a hard close would require significant systems rebuilds across the fund industry, including intermediaries, retirement plan recordkeepers, administrators, custodians, transfer agents, and the industry utility (DTCC). The cost, resources, and effort to build these systems would be significant and costs would ultimately be borne by fund shareholders directly through recordkeeping charges or indirectly through additional fund-level charges.[8]

II. Background on the Pricing Structure of U.S. Funds

Mutual funds offer investors many benefits including investment diversification, economies of scale, professional portfolio management and efficient portfolio trading. In the United States, the primary way that individuals own mutual funds and participate in the capital markets is through their retirement plans. Most individuals purchase mutual funds through their plan sponsors or via financial intermediaries. At Invesco, approximately 80% of fund shareholders invest through financial intermediaries.

Currently, under Rule 22c-1 of the Investment Company Act, investors' orders to buy, exchange or redeem mutual fund shares must be placed before the fund's NAV is determined each day. The time a fund's NAV is determined is generally set to 4:00 p.m. ET, the close of a regular trading session of the New York Stock Exchange (the "**Market Close**"). Orders received after the Market Close are generally executed at the price determined at the next business day's Market Close.

As noted by SIFMA in its comment letter submitted to the Commission, the development of the current U.S. pricing system was structured in large part around the specific needs of investors transacting through financial intermediaries. When varied investment channels emerged, the fund industry adopted systems to accommodate the needs of such channels where intermediaries faced operational hurdles in submitting client orders to mutual funds by the Market Close.

Many, if not most, of the financial intermediaries that Invesco partners with use omnibus accounts to transact in fund shares. When the intermediaries receive investors' orders, they have to collate the orders into one group for "buy" and another for "redeem" and then send the information to the mutual fund at the aggregate omnibus account level. Given the volume of orders, this process can be extremely time-consuming. In 1968, the Commission permitted intermediaries to forward orders to mutual funds after the Market Close, honoring the time the order was placed with the intermediary. Therefore, orders placed with

[8] Costs involved with this Proposal borne by mutual funds also would increase expense ratios, increasing costs to investors. Expenses are a significant consideration for those with a fiduciary duty when there are similar strategies available in other investment vehicles.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

intermediaries would receive that day's price as long as the order is placed with the intermediary by the Market Close cut-off.

Since that time, it has been the expectation of U.S. investors that orders placed before the Market Close (whether directly to the fund or through an intermediary) will receive that day's price. The U.S. pricing system has developed uniquely to accommodate these intermediaries, which have become increasingly important to investors, particularly retail investors, who seek advice in purchasing and redeeming fund shares in support of a more personalized investment strategy. The Proposal would abolish this long-standing expectation and as a result, cause investor confusion

In the U.S., investors and shareholders rely heavily on such financial intermediaries not just to process their purchase and redemption orders, but also for financial education, market research and customer service.[9] The benefits to investors include the receipt of customized investment advice and broad access to products spanning multiple asset managers and investment options that they may otherwise not have capacity to access directly. Implementation of a hard close and swing pricing would add layers of complexity and transactions would take more time and be more complicated as well as reduce the entry points to mutual funds overall - causing investor confusion and negatively impacting shareholders as a result.

The Proposal would dramatically impact shareholder access to varied investment options by treating direct investors differently than those that invest via an intermediary. The Proposal would disrupt the relationships between mutual funds and their extensive intermediary networks (including retirement plan recordkeepers and college savings plans which are NAV dependent). Importantly, the Proposal would materially disrupt shareholders' ability to purchase and sell fund shares on a timely basis. Invesco is further concerned that the Proposal would impact the transparency of order execution and cause investor confusion resulting from varied cut-off times across different fund families and intermediaries.[10] Investors may face furthers delays in settlement, undermining investor confidence, causing potential distrust and likely harming investors that may no longer have prompt access to their redemption proceeds.

III. Swing Pricing Requirement

Invesco strongly opposes the mandatory swing pricing amendments of the Proposal. The Commission cites the European model in the Proposing Release; however, Invesco believes the European model cannot be successfully replicated in the U.S. because of various structural differences between the U.S. and the European markets. Additionally, the European swing pricing framework operates on the flexibility and discretion afforded to its funds. This flexibility and discretion are absent from the Commission's Proposal. Without flexibility, swing pricing would be extremely difficult, if not impossible, to implement.

---

[9] In 2021, 81% of mutual fund-owning households held funds inside employer-sponsored retirement plans. *See* Inv. Co. Inst., 2022 Investment Company Fact Book 123 (2022), https://www.icifactbook.org/. For households owning mutual funds outside employer-sponsored retirement plans, 79% owned funds purchased with the help of an intermediary. *Id.* at 124.

[10] Invesco notes that other transactions would be impacted by a hard close, including, but not limited to, processing dividends, plan loans, fund-of-fund rebalances and exchanges, and dollar value redemptions.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

A. Daily Flow Information

For swing pricing to be legally and operationally workable in the U.S., funds must have complete (or high confidence in a near-complete) daily flow information around the time they begin calculating their NAV per share (as previously mentioned, this is typically at 4 pm ET). In most cases, funds do not have even a majority of their daily flow information as of 4 pm ET.

The Commission suggests that indicative flows could be useful in this regard, which would require that intermediaries calculate an estimate for what they anticipate the given flows for a particular day to be either before the fund's pricing time or a set time thereafter. This would require a significant set of systems changes for intermediaries and increase risk for both funds and intermediaries by requiring extra steps in their daily workflows (e.g., a reconciliation of estimates to actual figures).

The Commission also suggests that funds could estimate flows, using models that incorporate the information available to them (e.g., they could use flows received by a pre-established time as well as historical order flow information). But the accuracy of these estimates will depend in large part on the percentage of flows a fund actually receives, compared to those that are still outstanding as of the time the fund must strike its NAV. In times of stress, arguably when there is more dilution risk, the predictive accuracy of these models may weaken, leading to heightened risks.

It is important to note that retirement savings plans invest primarily in very large, low cost, mutual funds, including index funds, low-cost active funds, and large target date funds. These funds rarely experience the kind of redemptions that would necessitate a swing in price. The goal of swing pricing is to allocate transaction costs fairly; this is not a significant problem to retirement and college tuition savers, who both make regular contributions and take regular distributions. These measured and methodical contributions and distributions over a lifetime are likely to be modestly impacted by single volatility events. Whatever gains there may be, those gains are significantly less than the costs, both in terms of costs to implement and ongoing costs of an earlier cut-off and multiple-day delays in processing contributions, distributions, loans, and investment allocations.

B. Comparison to European Model is Misplaced

The Commission relies heavily on what it views as the success of the European model in its support of a mandatory and prescriptive swing pricing regime. However, we believe the European experience cannot be replicated in the U.S. because of various structural differences between the U.S. and the European markets. Additionally, the critical essence of the European swing pricing framework that allows it to operate—the flexibility and discretion afforded funds in its operation—is absent from the Commission's Proposal. Without flexibility, swing pricing would be extremely difficult if not impossible to implement. Currently, Invesco uses swing pricing in Europe. Importantly, however, swing pricing regulatory regimes in Europe provide flexibility to asset managers. European market trade flow further facilitates swing pricing.

Swing pricing may be commonly used in Europe, but there are several key differences between the European and U.S. systems that make swing pricing more difficult to implement in the U.S. Those differences include:

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

- European funds have larger percentages of institutional investors.[11] The U.S. is more heavily retail and retirement-plan oriented. The European fund industry is not comparable to the complex, diverse and sheer size of the U.S. defined contribution system;
- European funds receive full flow information every day;
- Europe generally does not have the kind of omnibus recordkeeping services that are analogous to those developed in the U.S.;
- Europe has several hours between fund cut-off times for receiving trades and when the NAV is calculated (NAV published much later in evening). This sequencing and timing is critical to accurate application of swing pricing;
- Europe does not have as many products that are dependent on the production of a NAV (which products compose a large part of the US market) nor the diversity of fund companies;
- In Europe, trades must be received by the transfer agent to be deemed in good order. In the U.S., there is use of an agency model. Accordingly, trades are deemed in good order when received by an intermediary or recordkeeper. Moving away from an agency model could cause confusing delays and negative consequences to investors; and
- Europe does not have the complexities of managing as many time zones as the U.S.

As a matter of policy, the 2022 proposal is significantly more onerous than the Commission's 2016 amendments.[12] The 2016 amendments were a codification of swing pricing practices in Europe (Luxembourg UCITS in particular). Those amendments permitted funds to set their own swing thresholds, tacitly recognizing that de minimis amounts of dilution were not materially impactful. By contrast, the Proposal's degree of prescription deviates significantly from any other regulatory framework on swing pricing. The Commission approvingly cites Europe's experience with swing pricing; yet departs dramatically from the regulatory approaches taken there.[13]

IV. **Hard Close Requirement**

Invesco opposes the hard close requirement because it would upend a mutual fund ecosystem on which investors rely and cause market-wide disruption. Invesco recognizes that the Commission believes that a hard close requirement is necessary to facilitate its goal of implementing swing pricing in order to ensure that transaction costs are appropriately priced into a mutual fund's NAV. As further discussed below,

---

[11] *Compare Asset Market Share of Institutional Clients vs Retail Clients in Europe 2013-2020*, STATISTA (May 23, 2020), https://www.statista.com/statistics/368484/europe-market-share-institutional-retail-clients/ (finding that between 2013 and 2020, 75% of the European market was made up of institutional investors), with Inv. Co. Inst., 2022, Fact Book, supra note 23, at 48 (finding that in 2021, retail investors held 88% of the $27.0 trillion in U.S. mutual fund net assets).

[12] Investment Company Swing Pricing, Securities Act Release No. 10,234, Investment Company Act Release No. 32,316, 81 Fed. Reg. 82,084 (Nov. 18, 2016).

[13] Anti-dilution tools available in Europe include swing pricing, anti-dilution levies, dual pricing, redemption fees, in-kind redemptions, temporary borrowing, suspensions and redemption gates, among others. See generally Inv. Co. Inst., Report, supra note 43.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

Invesco believes that the harm, disruption and costs associated with implementing a hard close vastly outweigh any benefits.

A. Harmful and Discrepant Treatment of Fund Investors

A hard close would harm fund investors and result in discrepant investor treatment. Those who invest directly with a mutual fund would receive a given day's NAV at 4 p.m. ET, while participants in retirement plans, investors in qualified tuition savings plans and those that invest through financial intermediaries would be subject to an earlier cut-off time. Accordingly, such investors would be pushed out of the market much earlier in the day than those investing directly with a fund. Transaction instructions would need to be cut off many hours before a fund's 4 p.m. cut-off time and the processing of the trades could take multiple additional days than they do today.[14]

i. Harmful Impact to Retail Investors

If a hard close were adopted, investors holding mutual fund shares through intermediaries would be at a competitive disadvantage relative to direct investors.[15] Investors who purchase and redeem fund shares through intermediaries or through retirement accounts would be at an informational disadvantage. An earlier cutoff for investors that transact through intermediaries is problematic because these investors would not be able to benefit from late-breaking market information (arising after the cut-off but before the Market Close). This would create a “last-mover advantage.” That is, investors who can buy directly from the funds and can wait to place their orders until immediately before the Market Close can reap the benefit of whatever information becomes available after intermediary investors have had to place their orders for the day. This asymmetry in information can be exploited, to the harm of those who cannot have their contributions, distributions, and account reallocations processed at the same time as other fund investors.

Intermediaries would have to set different cut-off times for different client bases and potentially for different fund families. For example, an intermediary could manage trades for institutional clients up until a time very close to the Market Close, while a retirement investor might have to submit instructions to their retirement plan intermediary much earlier. Some investors hold mutual fund shares in multiple fund families and make exchanges across fund families on a same-day basis through batch and net trades. Fund families could vary significantly on their respective cut-off times. It would be unjust if investors if were forced to choose between using an intermediary or to invest directly to have until 4 p.m. to submit their orders. This potential system of implementation of different cut-off times for different client bases and fund families would create risk of investor confusion since this type of structure does not currently exist.

---

[14] The Proposing Release states “because of advances in technology, it seems likely that intermediaries would set cut-off times that are only incrementally earlier than current cut-off times.” Proposing Release, supra note 5, at 77,213. Invesco believes this is unlikely and that cut-off times for intermediaries will likely be hours before fund cut-off times.

[15] Inv. Co. Inst., Fact Book, supra note 23. Only a small percentage of retail mutual fund investors hold assets directly with fund families, which allows them to place trades up to the Market Close. In contrast, institutional investors are more likely to have direct fund investments. The hard close is not likely to impact the ability of direct investors to place trades up until the close of the market unless fund families establish earlier cut-offs to aggregate direct retail trades.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

In the Proposing Release, the Commission notes that most fund shareholders are long-term investors and consequently that most fund orders are not time sensitive.[16] Investors, however, would lose control over their own investment timing. This is particularly meaningful in a time of market volatility: being locked out of the market for another day limits the agency of shareholders to control their investment decisions. During periods of volatility, delays in the receipt of redemption proceeds could be particularly harmful.

The Proposal further states that "[f]or those investors who place a premium on being able to place orders up until 3:59 p.m. ET, they generally could place orders with the fund's transfer agent to retain this option."[17] For the substantial proportion of retail investors who own shares through retirement plans or intermediaries, this option is structurally not available. For example, employees have no choice with regard to retirement plans and holding shares through an intermediary is the only way to facilitate exchanges and re-allocations across fund families.

Furthermore, it is likely that different intermediaries would impose different cut-off times for investors based on their own ability to process and transmit data to the mutual funds by the Market Close. This could result in investors having to keep track of different order cut-off times if investing through multiple intermediaries (for example, through an advisory account or a retirement plan). At a minimum, there is a risk of confusion within the system of different cut-offs that does not currently exist. Intermediaries would no longer be able to process exchanges on behalf of their retail customers between different fund families because the NAV of the first leg of the exchange could not be established by the time at which the order for the second leg would need to placed. The consequence for these investors would be that their second part of the exchange would be exposed to market movements for an extra day.

We also note the implications for investors and financial advisors in the Pacific time zone, as well as in Alaska and Hawaii. If cut-offs move to mid-day Eastern time, those in western-U.S. time zones would have a much narrower window each morning to submit mutual fund orders. At present, such investors and those supporting them have more than half a day to conduct business. The Proposal would potentially cause such investors to evaluate market developments after their market close, monitor news from overseas markets during the night, and be prepared to make and execute decisions before 9 a.m. Pacific time.

ii. Harmful Impact to Retirement Investors

Currently, retirement plan participants have access to plan administration services that allow participants to submit investment instructions relating to their plan investment options up until the Market Close and receive the price determined for mutual fund shares as of the Market Close on that day. This allows participants to make their investment decisions based on current market information on a basis similar to that available to retail investors who submit instructions directly to a mutual fund or its transfer agent. This is possible only because plan recordkeepers and administrators receiving investment

[16] Proposing Release. at 77,212.

[17] Proposing Release, supra note 5, at 77,213.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

instructions from participants are permitted to process and transmit participants' investment instructions to funds or their transfer agents after the Market Close.

Implementing a hard close would disrupt and upend this timeline. To allow plan recordkeepers to complete omnibus accounting in time to submit trades to mutual funds by the Market Close, plan administrators would need to implement earlier cut-off times for plan trades, meaning plan participants would need to finalize their investment decisions much earlier on each trading day. As discussed previously, this would give an advantage to those who can buy or sell directly from the fund. For example, if cut-off times were set at noon for plan participants, direct investors would have an advantage if there were developments in the market between a noon cut-off and NAV strike time at the Market Close Alternatively, orders in retirement savings plans would have to be processed using the following day's NAV.

These disadvantages would likely be unacceptable to retirement plan administrators and would drive administrators to move client assets out of mutual funds and into alternative and perhaps unregulated vehicles, significantly impacting the industry and harming shareholders' access to mutual funds. Although the Commission suggested in the Proposing Release that retirement plan administrators could update or alter their processes and systems to accommodate the proposed hard close requirement, Invesco believes this expectation greatly underestimates the cost to retirement plan administrators to rebuild their entire systems.

In addition, individual investors' rebalancing of retirement assets between mutual funds would have to occur over two days (or more), resulting in retirement assets being out of the market for a day. As studies have shown, missing out on just one day of market activity can significantly impact the performance of a portfolio. In a rebalance (most of which are done automatically), the recordkeeper would have to submit sales on Day 1, wait to receive the NAV and redemption amount on Day 2, and then submit the trade. However, significant variations in the market could cause imprecise rebalancing, and force subsequent trades to rebalance back to the client's requested allocation. One account can have many transactions throughout the course of a trading day. In the case of rebalance instructions, this may result in several different purchase and sell orders. This activity is repeated across thousands, even millions, of accounts at a given intermediary, representing millions of daily individual transaction instructions. Efficiencies allowed by daily trading through 401(k) and similar plans have substantially eliminated legal and fiduciary issues relating to plan funds that are held uninvested for short periods of time. Delays in participant transaction processing would result in more plan funds held uninvested, which will have costs that build up over time. The built-up costs of retirement savings held uninvested will harm participants and generate costs which could overwhelm any purported savings from swing pricing.

Similarly, the hard close also would result in participants no longer being able to exchange from one investment to another without being out of the market for at least one day. Retirement plan recordkeepers would no longer be able to manage trading activity by batching up and processing exchange orders based on a fund's NAV later in the evening. Instead, recordkeepers would have to process the two sides of the transaction over two days, meaning plan participants would be out of the market for an extra day. Unlike other investors who may be able to invest directly in a fund if they want same day pricing, retirement plans would have no choice but to receive delayed pricing for their mutual fund investments and negatively impact the portability of their investment.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

The outcomes described above could lead some retirement plans to materially shift to other investment vehicles, including investment vehicles outside the purview of the Commission. Invesco is concerned that such a shift away from mutual funds could result in narrower investment options and the loss of investment opportunities. Retirement plan service providers and financial intermediaries may opt to only offer in-house managed investment products because it would be much easier to process trades on proprietary products. This significantly limits choice and reduces competition.

Invesco is further concerned about potential delays to an investor's receipt of investment proceeds. Retirees especially depend on access to their retirement savings for living and health expenses; a hard close will delay access to funds by multiple days. Similarly, parents and caregivers paying for educational expenses could also experience a delay in receiving funds from 529 college-savings plans.

B. Complex and Costly Changes to Existing Trade Processing Systems

The implementation of a hard close would require complex and costly changes to existing trade processing procedures. Today, purchase and redemption orders are deemed to be in good order if they are received by a fund's designated agent (typically an intermediary or retirement plan recordkeeper) before a fund's cut-off time. Under the Proposal, an order to purchase or redeem a fund's shares would be executed at the current day's price only if the fund, its transfer agent, or a registered securities clearing agency receives the order before the pricing time as of which the fund calculates its NAV.

In the Proposing Release, the Commission acknowledges the challenges facing retirement plan recordkeepers in order to adhere to a hard close and recognizes that recordkeepers will be required to make significant changes to their business practices in order to accommodate a hard close. The Commission, however, vastly underestimates the disruption, harm, and cost that would result from such changes.

Invesco is highly concerned that the costs associated with implementing new processing systems would ultimately be borne by fund investors. Ultimately, fund shareholders would bear the costs of reconfiguring recordkeeping and trade processing systems; directly through recordkeeping charges or indirectly through additional fund-level charges. The proposed hard close and swing pricing amendments would require significant systems enhancements and rebuilds across all aspects of the mutual fund industry, including intermediaries, retirement plan recordkeepers, fund administrators, custodians, transfer agents, and DTCC.

The cost, resources, and effort to ensure systems are updated timely and accurately without impacting other areas of the industry would be enormous. These costs and disruptions must be weighed against the benefit of slight reductions in dilution.

The Proposal is wholly incompatible with the current trade processing system. Current omnibus trading depends on having the NAV available. Under a hard close, an intermediary could never process an investor's transaction knowing the price of the mutual fund at the time that the trade is processed. Many intermediary systems require receipt of the daily closing NAV to initiate transaction processing. This is because not all orders that intermediaries receive from their clients are in dollars—they also may be denominated in shares or percentages of holdings. Receipt of a fund's daily NAV is essential to process transactions based on shares and percentages. A unique version of omnibus intermediary processing occurs for tax-deferred qualified retirement plan accounts (e.g., 401(k) and 403(b) plans). Retirement plan

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

recordkeepers receive instructions from plan participants to buy or sell shares held in the plan. These instructions require the current day's NAV for conversion into purchase and redemption transactions

If, for example, a fund has a cut-off time of 4pm ET, then any transactions placed via an intermediary or plan recordkeeper not received by 4pm ET would not be processed or valued until the following day after the market closes. The intermediary or recordkeeper would then be required to process two separate "batches" of trades: one that summarizes trades to be sent to the fund prior to the fund's cut-off time, and one after prices are received to update the accounts of participants with trades and calculate current values. This is a significant change from the current system, under which only one "batch" job is run after prices are received. Moreover, transactions that can currently be processed relatively quickly could take up to multiple days to settle. A hard close would do more than simply "move the finish line" on processing trades – it would force transactions that happen in a single day to be spread out, involving many more steps than before.

In an attempt to prevent late trading, the Commission proposed a rule in December 2003 which would have mandated a hard close at the Market Close for mutual funds. The SEC declined to adopt the proposed rule, however, after receiving over 800 comments, the majority of which were in opposition to the rule.[18] In the Proposing Release, the Commission stated that "because technology has advanced since the Commission last considered a hard close in 2003, we generally do not believe . . . that intermediaries would need to establish cut-off times significantly earlier than the pricing time set by the fund."[19] This is not an accurate description of technology developments. While there have been developments in recordkeeping and trade processing technology since 2003, those developments have primarily been to improve, not dismantle, omnibus recordkeeping systems. The same operational difficulties that existed 20 years ago exist today. There is no technology now that would allow compliance with a hard close today without a major overhaul of the current system.

Because of the volume of transactions undertaken, the complexity of plan and fund rules applied, and the variety of reconciliations with trustees and funds, modifications to existing trade processing systems would be very costly. Additional administrative costs include those necessary to amend trading agreements and plan provisions and to communicate changes in plan procedures and plan terms.

If costs are significant enough, some recordkeepers and administrators may exit the business, which would reduce industry competition and ultimately increase plan administration costs. There has been significant consolidation in the recordkeeping industry because of the low margins, and if smaller recordkeepers cannot afford the systems changes, we will see much more consolidation.

Implementing a hard close would divert budget and other resources away from other shareholder-related issues. Recordkeepers would be required to expend time and money overhauling trade processing procedures (including updating service agreements to reflect a 4 p.m. close) in lieu of focusing on issues such as enhancing participant education and improving the general retirement plan experience.

---

[18] Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26,288, 68 Fed. Reg. 70,388 (Dec. 11, 2003).

[19] Proposing Release, supra note 5, at 77,213.

DocuSign Envelope ID: 5F94EB85-ED35-412E-8F5F-375426C5AE2D

Invesco acknowledges that Congress recently enacted two major pieces of retirement legislation, SECURE Act and SECURE 2.0 Act, which legislation requires major upgrades to the private retirement system. In order to implement those changes and to make available a variety of savings tools over the next few years, recordkeepers must focus their budgets and resources. The Proposal could strain the ability of recordkeepers to successfully implement all elements of the numerous regulatory changes.

V. Conclusion

Invesco respectfully and strongly opposes mandatory swing pricing for all mutual funds and a hard close for funds that implement swing pricing. A hard close requirement would be unworkable in the well-established U.S. mutual fund ecosystem and would disadvantage mutual fund investors, particularly retail investors, who purchase and redeem fund shares through intermediaries and retirement savings plans. The Proposal would have significant and detrimental implications stretching far beyond investment companies themselves. If the Commission determines, however, to proceed with amendments to the swing pricing rules, we strongly urge the Commission to allow more time for collaboration so as to identify a more appropriate mechanism for implementation.

* * *

Invesco appreciates the opportunity to comment on this proposed rulemaking by the Commission, as well as the Commission's consideration of our comments shared in this letter. We are available to discuss our comments or provide any additional information or assistance that the Commission might find useful.

Sincerely,

Invesco Ltd.

Melanie Ringold
Head of Legal, Americas