March , 2023

Via Electronic Mail

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting, IC–34746; File No. S7–26–22[1]

Dear Ms. Countryman:

The Healthy Markets Association ("HMA")[2] writes to express our concerns with the Commission's Swing Pricing Proposal.

As a starting point, we agree with the concerns that the Swing Pricing Proposal attempts to address. The Commission should consider redemptions and liquidity risks for investment funds, particularly in light of the reality that open-end funds are increasingly engaged in more "complex investment strategies, including fixed income and alternative investment strategies focused on less liquid asset classes."[3]

As the Swing Pricing Proposal notes, "the ability of shareholders to redeem their shares in an investment company on demand is a defining feature of open-end investment funds."[4] This feature stands in sharp contrast to private funds, where investment advisers may dramatically restrict investors' abilities to redeem their investments, which may have profound negative impacts on the investors seeking to redeem.[5] At the same time, this critical investor protection feature of open-end funds also creates a potential risk when investors may seek to redeem their investments at a rate that overwhelms the ability of the fund and its adviser to provide the redeemers with cash.

[1] *Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting,* SEC, 87 Fed. Reg. 77172 (Dec. 16, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-24376.pdf ("Swing Pricing Proposal").
[2]HMA is a not-for-profit member organization of public pension funds, investment advisers, broker-dealers, exchanges, and market data firms focused on reducing conflicts of interest and improving the transparency, efficiency, and fairness of the capital markets. To learn more about HMA or our members, please see our website at http://healthymarkets.org/about.
[3] Swing Pricing Proposal, at 77173-74.
[4] Swing Pricing Proposal, at 77173.
[5] Testimony of Professor Gina-Gail S. Fletcher Before the House Committee on Financial Services, Subcommittee on Capital Markets, Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform, at 6, Feb. 8, 2023, *available at* https://docs.house.gov/meetings/BA/BA16/20230208/115288/HHRG-118-BA16-Wstate-FletcherG-20230208.pdf.

At the same time we have these concerns about funds having sufficient liquidity to meet redemption requests, we think it is also worth noting that nearly all open-end funds have managed to operate – even during times of extreme market volatility – without running into a significant redemption-induced liquidity problem. Even during rapid, severe, negative global economic shocks, such as the onset of the Covid-19 shutdowns in March 2020, the vast majority of open-end funds – even those that experienced heightened redemptions – did not have materially strained liquidity. Put simply, while fund liquidity to meet redemption requests is an important issue to address, it should be done in a way that (1) acknowledges the limited need for additional action and (2) protects – as opposed to injures – investors.

For example, since some money market funds (particularly those associated with G-SIBs) experienced heightened redemption activity, we believe that it would be appropriate for the Commission to de-couple weekly liquid asset levels from mandatory fees and gates in money market funds, as well as required enhanced liquidity risk management tools for funds that pose the greatest redemption and liquidity risks.[6]

We also appreciate the Commission's empowerment of funds to apply redemption deterrents and restrictions, for example, to impose fees on "quick" redemptions that may be hallmarks of "market timing" strategies.

And we applaud the Commission's 2016 amendments to Rule 22c-1 to permit open-end investment companies (other than money market funds and exchange-traded funds) to implement swing pricing.[7] It also adopted a number of related recordkeeping and disclosure requirements at that time.

We also acknowledge that part of the Swing Pricing Proposal would require more frequent reporting of portfolio holdings to the Commission and the public, and demand more regular assessments of and transparency into funds' liquidity risk management. Improving liquidity risk management should always be an objective.

In sharp contrast to those other reforms, the proposal for swing pricing and the "hard close" requirement needed to implement it, would directly harm investors and distort markets.

At the same time, these two changes would also impose significant burdens on investors, retirement plan sponsors,[8] market intermediaries, brokers, and investment advisers. It also would create significant distortions between competing firms. As the ERISA Industry Committee wrote to the Commission,

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[6] See, Letter from Tyler Gellasch, HMA to Vanessa Countryman, SEC, Apr. 12, 2022, *available at* https://healthymarkets.org/wp-content/uploads/2022/04/Letter-to-SEC-re-MMF-4-12-22-2-1.pdf.

[7] *Investment Company Swing Pricing*, SEC, 81 Fed. Reg. 82084 (Nov. 18, 2016), *available at* https://www.govinfo.gov/content/pkg/FR-2016-11-18/pdf/2016-25347.pdf.

[8] *See, e.g.*, Letter from Andrew Banducci, the ERISA Industry Committee, to Vanessa Countryman, SEC, Feb. 14, 2023, *available at* https://www.sec.gov/comments/s7-26-22/s72622-20157258-325507.pdf.

> retirement plan recordkeepers would be required to set an internal cut-off time for receiving purchase or redemption orders earlier than the time established by the fund. Investors using an intermediary, therefore, would be significantly disadvantaged relative to an investor submitting an order directly to the fund.[9]

We also question the presumptions regarding the valuations of securities. While trading values are important guideposts for liquidity and valuation purposes, a lack of observed trading prices in the fixed income context doesn't necessarily mean that a security is illiquid. While few of the many thousands of TRACE eligible securities trade during the year, that is not generally because they aren't tradeable at predictable prices. Rather, in most instances, it is because they are simply held in investment portfolios for predictable returns. The Commission should not automatically relegate or categorize these securities as illiquid.

Further, by taking the approach it has in the Proposal, the Commission seems to be perversely disincentivizing investment advisers from using as much information as possible to inform their liquidity and valuation practices.

Lastly, we disagree with suggestions that the Commission should exploit its observations that some funds sold securities at "discounts" to meet redemption requests in March 2020 to support the Swing Pricing Proposal.[10]

A large redemption in any type of fund – whether it is an open-end fund holding cash equities or an exchange traded product full of derivatives – can pose some liquidity challenges. The Commission should absolutely ensure that funds have policies, procedures, and practices that are reasonably designed to manage those challenges – to the benefit of investors.

That isn't what the Swing Pricing Proposal would do.

To the contrary, it would (1) discriminate against some types of market intermediaries, (2) impose significant administrative and processing burdens on the entire asset management community, (3) introduce layers of systemic trade processing risks, and (4) restrict investors' trading options and timeframes. This would all be in the name of preventing some investors in some subset funds that may face redemption risks from suffering some losses during a potential Black Swan event. This is true even if investors may be aware of the fully disclosed liquidity risks during such rare events.

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[9] Id., at 3.

[10] See, e.g., Kenechukwu Anadu, et. al., *Swing Pricing Calibration: A Simple Thought Exercise Using ETF Pricing Dynamics to Infer Swing Factors for Mutual Funds*, Federal Reserve Bank of Boston, Supervisory Research and Analysis Notes 2022, 22-6, *available at* https://www.bostonfed.org/publications/supervisory-research-and-analysis-notes/2022/swing-pricing-calibration.aspx.

Put simply, the massive costs on investors that would be incurred through the implementation of a hard close and swing pricing far outweigh the limited, hypothetical benefits of the proposed regime. We urge you to abandon the swing pricing and hard close elements of the proposal, and revise the remainder to focus on the actual issue the Commission is purportedly seeking to address – funds' liquidity risk management.

Thank you for your consideration. Please feel free to have your staff contact me by email at [redacted] or telephone at [redacted] for any follow up.

Sincerely,

Tyler Gellasch
President and CEO