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

8 March 2023

Re: Request for comment on Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting (Release No. IC-34746; File No. S7-26-22)

Dear Ms. Countryman:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or Commission) on its proposal related to swing pricing.

Our comments address the Commission's proposed amendments to Rules 22e-4 and 22c-1 under the Investment Company Act of 1940 that would require all open-end mutual funds (excluding money market funds and exchange-traded funds) to use swing pricing to adjust a fund's net asset value (NAV) per share to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. The proposal defines swing pricing as the process of adjusting a fund's current NAV per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity.

We recommend clarifying the auditor's role in evaluating the application of swing pricing. Our comments also address financial statement presentation and disclosures for swing pricing and certain alternatives to swing pricing and a hard close requirement, such as the application of dual pricing (i.e., using one price for incoming shareholders that reflects the cost of buying portfolio securities in the market and another for selling shareholders that reflects the proceeds the fund would receive from selling portfolio securities in the market) and simplified swing pricing (i.e., adjusting current NAV to reflect good faith estimates of spread costs on days the fund reasonably expects to have net redemptions based on estimated flows).

Auditor's role in evaluating the application of swing pricing

The proposed requirement to implement swing pricing policies and procedures would affect fund financial statements as it relates to the recognition of redemptions and purchases. Consequently, fund auditors would be expected to design and perform procedures to address the risk of misstatement related to redemption and purchase activity. In its 2016 adopting release for investment company swing pricing rules,[1] the Commission clarified that an auditor should not have any responsibility to assess the reasonableness of the swing factor if there is no indication of noncompliance with the regulatory requirement. However, the release further stated that, in the Commission's view, "verifying that the swing policies and procedures have been approved by the fund's board and consistently applied, in all material respects, by the fund throughout the period, including as of the balance sheet date, is within the scope of an auditor's engagement and expertise."

We believe that, with respect to the current proposal, it would be beneficial to clarify in any adopting release that an auditor's responsibility does not extend to assessing the reasonableness of a fund's swing pricing policies and procedures (or policies and procedures over dual pricing or any other alternative mechanism contemplated in the proposal). This includes determining whether the amount of a fund's swing factor was reasonable during the year, including at the balance sheet date. The proposal defines swing factor as the amount, expressed as a percentage of the fund's NAV and determined in accordance with the fund's swing pricing policies and procedures, by which a fund adjusts its NAV per share.

Instead, we believe that the extent of procedures performed by auditors should be limited to gaining an understanding of a fund's swing pricing (or dual pricing) policies and procedures and verifying that these policies and procedures have been approved by the fund's board and applied by the fund appropriately and consistently throughout the year.

We are concerned that, without such clarification, users of a fund's financial statements may mistakenly believe that the auditor has assessed the reasonableness of the fund's swing factor, the prices determined for dual pricing (if used as an alternative to swing pricing), or the estimated flows used to determine whether the thresholds to apply swing pricing have been met using simplified swing pricing (if used as an alternative to a hard close).

We do not believe auditors should have the responsibility to assess a fund's swing factor, prices set in dual pricing or estimated flows in a simplified swing pricing model because these items are regulatory measures not contemplated within the framework of US GAAP. The determination of a fund's swing factor, prices used in dual pricing or estimated flows in a simplified swing pricing model are judgments based upon policies developed by the fund's board of directors and those responsible for administering the fund's swing or dual pricing, not the auditor.

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[1] See Final Rule: Investment Company Swing Pricing (sec.gov).

Reporting NAV, capital share transactions and certain financial highlights in fund financial statements

The 2016 swing pricing adopting release provided guidance on financial statement presentation and disclosures for funds that choose to adopt optional swing pricing.[2] The current proposing release refers to this guidance in a question posed for comment in the *Alternatives to Swing Pricing and a Hard Close Requirement* section, but it does not refer to it in the body of the proposing release. For clarity, we recommend that any final rule reiterate the financial statement presentation and disclosure guidance in the 2016 swing pricing adopting release.

The Commission requested comments on whether the SEC should address the effects of two transaction prices on a fund's financial statements and performance reporting when a dual pricing framework is adopted. If a fund's NAV were adjusted pursuant to a fund's dual pricing policies and procedures, we recommend that the Commission address such effects similarly to how it addressed the effects of swing pricing in the 2016 swing pricing adopting release.

In response to the similar question on simplified swing pricing, we also recommend that the Commission address the effects of adopting this method on a fund's financial statements and performance reporting similarly to how it addressed the effects of swing pricing in the 2016 swing pricing adopting release.

We further recommend that information about the accuracy of a fund's estimated flows be located outside of the financial statements included in the annual and semiannual reports. Disclosure of such information would be more consistent with that of an operating policy, rather than an accounting and financial reporting policy.

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[2] The SEC provided the following guidance on financial statement presentation in the 2016 swing pricing adopting release:

1. Statement of assets and liabilities — Disclose NAV calculated in accordance with US GAAP (US GAAP NAV) and US GAAP NAV per share, though NAV per share as adjusted pursuant to swing pricing policies and procedures (swung NAV). Swung NAV per share may be disclosed on the statement of assets and liabilities or elsewhere in the financial statements if such disclosures are beneficial for investors and there is an explanation of the differences between swung NAV and US GAAP NAV as presented.
2. Statement of changes in net assets — Disclose dollar amounts based on the transactional NAVs used to process investor subscriptions and redemptions, including those processed using swung NAVs during the reporting period, in accordance with Regulation S-X.
3. Financial highlights — Disclose the (1) swung NAV per share, if applicable, as a separate line item below the ending US GAAP NAV per share and (2) per-share impact of amounts related to swing pricing below the total distributions per share line.
4. Performance reporting — Present the total return based on US GAAP NAV.
5. Footnote disclosure — In accordance with Regulation S-X Rule 6-03(m), disclose (1) the general methods used in determining whether the fund's NAV per share will swing, (2) whether the fund's NAV per share has swung during the year and (3) a general description of the effects of swing pricing on the fund's financial statements.

We would be pleased to discuss our comments with the Commission or its staff at its convenience.

Very truly yours,

Ernst & Young LLP

Copy to:

Mr. Jenson Wayne, Chief Accountant, Division of Investment Management
Mr. Paul Munter, Chief Accountant, Office of the Chief Accountant