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Congress of the United States House of Representatives

March 9, 2023

ES161861

COMMITTEE ON
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ON ASEAN, CO-CHAIR
NATO PARLIAMENTARY ASSEMBLY

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C., 20549

Dear Chair Gensler,

We are writing to express our concerns with the Securities and Exchange Commission's (the "SEC") recent proposal on open-end fund liquidity risk management programs and swing pricing.¹ This proposal is problematic and will negatively impact millions of American working families, including teachers, police officers, firefighters, and others who use mutual funds to save and invest for their futures.²

We are concerned that the rule will have far-reaching negative impacts without clear justification, adequate substantive economic analysis or supporting data. If finalized, the rule could upend mutual fund operations and create a system where shareholders are denied a safe, secure retirement option that has existed for almost 100 years. The rule will disproportionately impact main street investors who are planning for retirement, compared to more sophisticated investors who have the resources and means to deal with the cost and complexity of the rule.³

We are also concerned with the two new mandates included in the proposal. First, the rule mandates that funds stop taking orders (i.e., "hard close") at 4:00 p.m. Eastern Time or as early as 1:00 p.m. on the West Coast. Second, it mandates that all mutual funds use swing pricing. Both mandates are untested in the United States and may not be workable.

Investors saving for retirement through 401(k) plans do not hold their shares directly through a fund's transfer agent. Instead, they must place orders through the plan's designated recordkeeper. Historically, shareholders received that day's price as long as the order was placed with the recordkeeper by 4:00 p.m. ET. This sharply contrasts with the proposed approach where retirement plan recordkeepers will need to cut-off trading for participants several hours earlier (as early as 10:00 a.m. ET or 7:00 a.m. PT), to guarantee current day's price, which is unfair for those in the Pacific time zone.

¹ See Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting (File No. S7-26-22).

² See Investment Company Institute Factbook, 2022, p.116; available at https://www.icifactbook.org/pdf/2022_factbook_ch7.pdf.

³ See Comment letter of the SPARK Institute (arguing the proposed rule will turn millions of American savers into second class investors and result in millions in lost retirement earnings), available at <https://www.sec.gov/comments/s7-26-22/s72622-20157257-325506.pdf>.

Retirement plan participants will be at a clear disadvantage to shareholders who hold their shares directly with a fund.⁴ This is unacceptable and unfair to investors who are simply trying to save and invest their hard-earned money to meet their financial goals.

Moreover, this one-size-fits-all approach is likely impossible to implement. Fund managers and intermediaries, including broker-dealers and retirement plan recordkeepers, will have to rework their systems to achieve compliance. These costs, which would likely approach billions of dollars, will be borne by main street investors, who are most reliant on mutual funds to secure their financial futures.

It is unclear to us why the SEC wants to suddenly impose a swing pricing mandate. Cases of funds subject to this proposal failing to meet redemptions are exceedingly rare. In fact, the SEC did not grant any exemptive orders permitting such funds to suspend redemptions in 2008 during the financial crisis or in 2020 during the pandemic. Additionally, a recent Bank of International Settlements report showed that during March 2020 market turmoil outflows from European domiciled funds that used swing pricing had outflows that were as large as funds that didn't use swing pricing.⁵

Although swing pricing has been available to funds since 2016, no fund has opted to use it due to its operational difficulties. Consider the significance of this. Despite fierce competition in the mutual fund market, not a single fund sponsor has been successful in marketing a fund that utilizes swing pricing. If implemented, this proposal is also likely to confuse investors, who will question what price they are paying or receiving for their shares. Additionally, it will have the unintended effect of driving individuals away from mutual funds, which are widely regarded as a transparent and closely regulated investment option.

Finally, we must emphasize the potentially devastating impact that this proposed rule could have on middle-to-lower income individuals. According to some estimates, over two-thirds of U.S. households owning mutual funds had incomes less than \$150,000 last year, with one-third having incomes less than \$75,000. These individuals rely on mutual funds as a vital savings and retirement option, and any rule that discourages this option would jeopardize their long-term security.

It is clear that the SEC has presented this rule without due consideration for its impact on main street investors. The proposal fails to identify a real problem that it claims to solve, and its implementation would disproportionately harm those saving for retirement. Our constituents are deeply concerned about the future of their mutual fund products, and we share their concerns. We urge the SEC to carefully evaluate its next steps and ensure that any new rules are made with the best interests of all investors in mind.

We encourage Americans to prioritize saving and investing in diversified mutual funds. Failing to save or investing in undiversified assets can have negative consequences. Mutual funds should be easy to understand, with clear net asset value (NAV) calculations for buying and selling.

⁴ See Comment Letter of The ERISA Industry Committee, available at <https://www.sec.gov/comments/s7-26-22/s72622-20157258-325507.pdf>.

⁵ See BIS Quarterly Review, December 2021, available at https://www.bis.org/publ/qtrpdf/r_qt2112c.pdf.

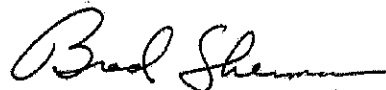
Complicated swing rules can resemble unnecessary fees and confuse investors, which goes against the purpose of mutual funds. Additionally, complex rules may lead investors to believe that the investment system is intentionally designed to take advantage of the average investor. We believe that simplicity is key to encouraging saving and diversified investing.

Thank you for your prompt attention to this important matter.

Sincerely,



Ann Wagner
Chairman
Subcommittee on Capital Markets
House Committee on Financial Services



Brad Sherman
Ranking Member
Subcommittee on Capital Markets
House Committee on Financial Services