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March 20, 2023

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

**Re: Request for Comment on Open-End Fund Liquidity Risk Management Programs and  
Swing Pricing; Form N-PORT Reporting  
Release Nos. 33-11130; IC-34746; File No. S7-26-22**

Dear Ms. Countryman:

I take this opportunity to submit comments in response to the request by the United States Securities and Exchange Commission (the “Commission”) on potential open-end fund liquidity measures for open-end management investment companies (“mutual funds”) under the Investment Company Act of 1940. I have served as counsel to mutual funds and other registered investment companies, to advisers and to independent directors for over forty years, including at large complexes and small investment shops. I have unalloyed confidence in their appreciation of, and ability to adhere to, the regulations the Commission adopts in the interests of the investing public. (I have less confidence that “prudential” regulation can significantly change investors’ behavior.)

This letter principally comments on “swing pricing.” As applied to mutual funds, swing pricing turns out to be an operationally complex arrangement that requires application of daily estimates of the liquidity of every security in a fund’s portfolio and that burdens the calculation of daily net asset value (“NAV”) to the point of reducing the time by which some investors may seek redemption. It is being proposed on the theory that such a program -- one that allocates certain costs to redeeming shareholders in particular circumstances -- will dampen redemption activity in perceived crises like that at the beginning of the SARS-Cov2 pandemic.

I do not believe that swing pricing will affect redemptions in the way the Commission anticipates. When institutional investors themselves perceive that they may need to meet obligations coming due during the period of a crisis - including to meet potential collateral requirements - they will do whatever they can to liquify investments. Swing pricing may affect the costs they bear when they redeem fund shares, but it will not change their behavior. Retail investors are less likely to have immediate liquidity requirements; and historically their investments in have been a ballast to the markets in which mutual funds invest. Meanwhile, the costs of adopting and maintaining daily swing pricing mechanics will be borne by all shareholders all the time.

There is a better way. The proposal below would be cheaper, easier and more accurate than swing pricing (but, of course, requires refinement and analysis to develop and achieve).

- Certain large shareholders (not including participant directed defined contribution plans) should be required to accept redemption in kind of fund-determined securities that have an aggregate value of the redeemed shares calculated at the same value used for determination of the fund's NAV. This is fair because the larger a shareholder's investment, the more likely its sudden redemption will affect portfolio management of the fund in unanticipated, possibly adverse ways.
- The fund should be permitted to distribute those securities that under the circumstances the adviser deems appropriate so that the fund's remaining portfolio stays in keeping with its objectives and strategies. The fund should not have to dispose of its most liquid securities or be authorized to consider the interests (favorably or unfavorably) of the redeeming shareholders.
- The redeeming shareholder can (or must) authorize the adviser to sell the securities that it would be entitled to "receive" in kind and to provide the proceeds (either within seven days of the redemption date, as contemplated for redemptions in cash, or some longer period in that might reduce market impact).
- The sales are to be done in joint trades with the mutual fund as it sells its remaining positions, if any, in the same securities.

As a result, the large redeeming shareholder will suffer its share of the loss from the sales below the fair value of those securities in the fund's hands on the date of redemption, including market impacts over the course of the days required to complete the block trade. The fund will be able to maintain what the adviser believes to be the most advantageous ongoing portfolio of securities, and will bear the same losses and trading costs in proportion to any continued holdings of these positions. If on the redemption date the fund effectuates some sales of the securities being disposed of, the actual sale price of those securities will be incorporated into the day's net asset value and will be borne by other redeeming investors that day, as well as continuing shareholders. The true – not estimated – cost of carrying out large portfolio trades will be borne by the large redeeming shareholders.

No dual prices would need to be calculated by mutual funds. Funds and their boards would not need to consider applying standardized redemption fees: redemption costs obviously differ during periods of liquid market behavior and during liquidity (or other) crises. It would be unfair to charge shareholders generally liquidity fees that are too large (when markets are liquid) or too small (when a crisis hits). Asking fund directors – or their valuation designees – to estimate and calculate market behavior in the face of utterly unexpected circumstances is unfair. If advisers could actually do so, their clients' returns would always be positive; and directors are unlikely to have any skills at estimating the value of individual securities whatsoever.

Again, large institutional investors should be expected to seek liquidity in a crisis. It should not be assumed that bearing costs will make them less risk averse in a panic – just look at the venture companies that withdrew assets from Silicon Valley Bank, a bank that specifically catered to them. These institutions should be charged appropriate costs for the risks their large investments contribute, but using actual costs is fairer to all concerned than using historically-based estimates – ones that

give undue weight to more recent price trends and cannot reflect the curves that spin out unexpectedly from a new liquidity event. For the foregoing reasons, I urge the Commission to consider alternatives to swing pricing as proposed, including my own suggestions.

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Please feel free to contact me at my office at Carter Ledyard & Milburn LLP, at my email address of [REDACTED] or by telephone at [REDACTED] with any questions about this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ronald M. Feiman".

Ronald M. Feiman