

Congress of the United States
Washington, DC 20515

April 20, 2023

The Honorable Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler:

We are writing to express our concerns with the Securities and Exchange Commission's (SEC) recent swing pricing and hard close proposals.¹ Specifically, we are concerned with the impact the proposed hard close requirements to implement swing pricing will have on millions of retirement savers who invest in mutual funds through their employer-sponsored retirement plans.

Under current SEC rules, in general, all mutual fund investors who place orders by 4:00 pm ET will receive same-day pricing. This is the case even though investors who hold mutual funds through intermediaries, such as retirement plan participants, do not typically have their transaction data sent to the mutual funds until after the 4:00 pm ET market close. In the case of retirement plans, this is due to the fact that the plans need to know the mutual funds' net asset value in order to administer a number of transactions on behalf of retirement plan participants, including unique features that retirement plans are required to process, such as plan loans and hardship distributions.


However, the SEC's proposed hard close requirement would essentially create a two-tiered system that would disadvantage a significant percentage of investors. Under the proposed rule, investors who hold mutual funds directly could continue to place orders by 4:00 pm ET and receive same-day pricing. On the other hand, investors holding mutual funds through intermediaries, such as retirement plan participants, would need to submit their orders well before 4:00 pm ET in order to receive same-day pricing – and more likely would receive the next day's price. This is even more of a burden on retirement plan participants in the Western portions of the United States with the time zone differential and East Coast-based stock markets.

As you deliberate your next steps on this proposal, we ask that you keep in mind the special considerations of retirement plan participants. Congress has placed a large number of requirements on the administrators of retirement plans to ensure the security of Americans' retirement savings. Without providing retirement plans with flexibility in terms of timing as the current system does, retirement plan participants will be harmed through no fault of their own.


¹ Proposed Rule Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting (File No. S7-26-26), November 2, 2022.

Thank you for your consideration of this important issue. If you have any questions or need additional information, please contact Payson Peabody (Chairman Smith), Kara Getz (Ranking Member Neal), Drew Crouch (Chairman Wyden), and Jamie Cummins (Ranking Member Crapo).


Sincerely,




Jason Smith
Chairman
House Committee on Ways and Means



Richard E. Neal
Ranking Member
House Committee on Ways and Means



Ron Wyden
Chairman
Senate Committee on Finance



Mike Crapo
Ranking Member
Senate Committee on Finance