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Proposed Swing Pricing and Hard Close Requirements

On November 2, 2022, the SEC proposed amendments to its current rules for open-end funds regarding the purchase and redemption of fund shares. The proposed amendments are intended to mitigate dilution of shareholders' interests in a fund by requiring any open-end fund, other than a money market fund or exchange-traded fund, to use swing pricing to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. In addition, to help operationalize the proposed swing pricing requirement, and to improve order processing more generally, the Commission is proposing a "hard close" requirement for these funds.

Specifically, the proposal also would amend Rule 22c-1 under the Investment Company Act of 1940 to:

- Require a registered open-end fund, other than a money market funds or exchange traded fund (*ETF*) to adopt swing pricing policies and procedures (*Swing Pricing*) in order to adjust its current net asset value *(NAV*), when net redemptions or net purchases exceed a threshold so that the transaction price effectively passes on costs stemming from inflows or outflows to the investors engaged in that activity, rather than diluting other shareholders.
- Require that investor's order to purchase or redeem a fund's shares of a fund, other than a money market fund or ETF be eligible for a given day's price only if the fund, its transfer agent, or a registered clearing agency receives the order before the time as of which the fund calculates its NAV, typically 4 p.m. ET. (*Hard Close*)

The proposed Hard Close is designed to operationalize Swing Pricing by ensuring that funds receive timely flow information, help prevent late trading of fund shares, and improve order processing. The proposal would require additional disclosure related to Swing pricing and the hard close.

The Hard Close requirement would require fundamental changes to industry-wide practices concerning the delivery of shareholder transaction orders by intermediaries. Under current industry practice, fund intermediaries may gather orders to be executed at a particular day's NAV up until the time as of which the NAV is struck, typically corresponding to the 4:00 pm ET close of US stock exchanges. Intermediaries typically deliver those orders to the fund's transfer agent later that day or prior to the market open on the following day.

The comment period closed on February 14, 2023, and the SEC received over 3,000 comment letters. Commenters raised many concerns about the proposals, including the following:

- Swing Pricing eliminates transparency in NAV calculations.
- Swing Pricing adds complexity and risk to fund operations.
- Swing Pricing imposes additional expenses that will be borne by shareholders.
- Swing Pricing is not feasible in the current operating environment.
- Funds and intermediaries will need to make significant changes to their business practices to accommodate a Hard Close.
- A Hard Close will force intermediaries to set earlier internal cut-off times, which will cause investors to lose flexibility in submitting orders
- A Hard Close disadvantages retirement plan investors and variable annuity and variable life contract owners.
- The Hard Close will put mutual funds at a competitive disadvantage compared to ETFs and other pooled vehicles.

INVESTMENT MANAGEMENT UPDATE

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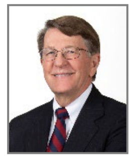

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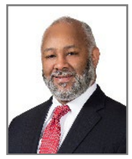

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