Congress of the United States
Washington, DC 20515

September 5, 2023

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

Chair Gensler:

We write today to voice our concerns with the SEC's open-end fund liquidity proposal (RIN 3235-AM98), given its potential to harm retail investors and retirement savers. Mutual funds are the most widely used investment product and are trusted by over 100 million Americans to save for retirement and to invest for their future. A diverse array of market participants has questioned the need for the proposal and expressed concerns with its potential to increase costs, reduce returns, and limit choice for millions of investors. We respectfully request that the SEC withdraw this proposal.

Many market participants have noted the proposal is based on assumptions about the operation of open-ended funds that the historical record contradicts. For example, the SEC states that one of the proposal's key objectives is to ensure open-end funds are better equipped to face stressed conditions compared to their level of preparation for the redemptions and liquidity concerns resulting from the economic shock at the start of the COVID-19 pandemic. But the SEC also admits that funds were, in fact, adequately prepared for the liquidity concerns that actually materialized in the markets.

The proposal states that traditional long-term open-end funds performed well in March 2020 and "no funds sought to suspend redemptions during this period."[1] The SEC has not adequately identified a market failure, or a significant market threat, that this proposal would address. The events of March 2020 do not justify wholesale changes to mutual fund operations. Rather, they demonstrate the resilience of mutual funds and their ability to meet shareholder redemptions even during a time of unprecedented market volatility.

Without clear evidence to support the rationale behind this proposal, the purported benefits are speculative. In contrast, there is widespread agreement among commenters that the proposal will cause harm to millions of retirement savers and retail investors.

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[1] *See Federal Register* Doc. No. 2022-24376, *Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, pp. 77260; 77212; available at https://www.federalregister.gov/documents/2022/12/16/2022-24376/open-end-fund-liquidity-risk-management-programs-and-swing-pricing-form-n-port-reporting.*

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The clearest example is the proposal's requirement that mutual funds implement "swing pricing" and a "hard close" on trade placement. If adopted, this would require the majority of individual investors to place trades several hours earlier than a mandated 4:00 p.m. ET deadline. This earlier time period is necessary to receive that day's price because those investors' intermediaries (e.g., broker-dealers or retirement funds) would need additional time before sending orders to the fund.

This fundamental change to mutual fund operations would create a two-tiered market that would disadvantage retail and retirement investors. Forcing investors to accept the next day's price for trades placed after their intermediary's cut-off time would limit the investor's ability to react to shifts in the market on any given day. For investors living west of the eastern time zone, the requirement would be even more unfair. Because of time differences, they would be forced to submit trades to their intermediaries in the morning hours to ensure their trade is executed at that day's price. The SEC has acknowledged the negative impacts that this proposal will likely have on investors, not only in the proposal itself,[2] but also 20 years ago when it first proposed this concept, before it was eventually withdrawn in the face of near universal opposition.[3] The core tenets of the SEC's proposal remain just as concerning two decades later.

Many market participants have also raised concerns regarding the proposal's prescriptive requirements for how open-end funds manage their liquidity risk programs. For example, the proposal would redefine a myriad of assets that commonly appear in mutual fund form by classifying them as "illiquid" and subjecting them to a 15 percent cap of fund assets. These requirements would limit or prohibit open-end funds from using certain investment strategies, reducing choice, and likely returns, for fund shareholders, including many retirement savers. Of particular concern is the classification of bank loans as "illiquid." Bank loan strategies tend to perform well when interest rates are high, making them especially important in today's interest rate environment. By curtailing access to this strategy, the SEC would limit the ability of the more than 100 million Americans invested in mutual funds to customize their investments and retirement savings based on current market conditions.

While we agree the SEC should look at ways to ensure robust liquidity in extremely volatile market conditions, this proposal could have significant negative impacts on retail investors and retirement savers, while resulting in few if any benefits. Given the breadth of concerns expressed by such a diverse array of market participants, we encourage the SEC to withdraw this proposal. We appreciate the SEC's efforts to protect investors and markets, and for your attention to this matter.

Sincerely,

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[2] *Ibid, the SEC's statement that retirement savers would face "particular challenges with adhering to the proposed hard close requirement."*

[3] *See Comments on Proposed Rule: Amendments to Rules Governing Pricing of Mutual Fund Shares (SEC File No. S7-27-03); available at* https://www.sec.gov/rules/proposed/s72703.shtml (notable comments in opposition include letters from Senators Grassley and Baucus (https://www.sec.gov/rules/proposed/s72703/s72703-225.pdf) and Senators Portman, Cardin, et al (https://www.sec.gov/rules/proposed/s72703/s72703-227.pdf)).

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Subcommittee on Capital Markets
House Committee on Financial Services

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