

# STROOCK

September 10, 2009

*Submitted electronically*

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Money Market Fund Reform – Rel. No. IC-28807, File No. S7-11-09

Dear Ms. Murphy:

We respectfully submit this comment letter in respect of the above-referenced release (the "Proposing Release") proposing amendments to Rule 2a-7 (the "Rule") under the Investment Company Act of 1940, as amended.

Stroock & Stroock & Lavan LLP ("Stroock") represents over 400 investment companies or their boards, more than 60 of which are money market funds; in these money market funds, aggregate assets under management exceed \$335 billion (approximately 9% of the \$3.653 trillion in U.S. money market fund assets).<sup>1</sup> We are commenting on the proposed amendments only as they relate to certain duties of independent board members of money market funds. These comments reflect only the views of Stroock and do not necessarily reflect the views of any of our clients.

We commend the Securities and Exchange Commission (the "Commission") and its staff for proposing amendments with the stated goal of making money market funds more resilient to certain short-term market risks and providing greater protections for investors in a money market fund that is unable to maintain a stable net asset value per share. While we generally agree in concept with many of the proposals discussed in the Proposing Release, we believe that certain of these proposals would impose inappropriate responsibilities on fund boards. We note the review of fund director responsibilities undertaken by Andrew J. Donohue, Director of the Commission's Division of Investment Management, over the past few years.<sup>2</sup> In connection with this review, Director Donohue has stated that "the role of fund directors is to provide oversight and not management of a fund."<sup>3</sup> Director Donohue has observed that the increase of regulations requiring fund board action "risk[s] overburdening directors and detracting

---

<sup>1</sup> As of June 30, 2009, as reported by the Investment Company Institute ([http://www.ici.org/research/stats/trends/trends\\_07\\_09](http://www.ici.org/research/stats/trends/trends_07_09)).

<sup>2</sup> See Andrew J. Donohue, Director, Division of Investment Management, Securities and Exchange Commission, Investment Company Institute 2009 Mutual Funds and Investment Management Conference (Mar. 23, 2009).

<sup>3</sup> Donohue, Keynote Address at the Investment Company Directors Conference (Nov. 6, 2007).

them from their fundamental activities, which ... should be largely devoted to monitoring conflicts of interest and looking out for shareholder interests."<sup>4</sup> Former Commissioner Paul S. Atkins stated that the Commission should "encourag[e] independent directors to focus their efforts on the areas in which they can contribute the most" and "eliminate unnecessary obligations, think carefully before imposing new ones, and assist independent directors in complying with the remaining obligations."<sup>5</sup> We agree with these views, which are reflected in our comments below.

Specifically, we are concerned with the responsibilities that the proposals described in the Proposing Release would impose on fund boards in the four areas discussed below – the designation of three (or more) Nationally Recognized Statistical Rating Organizations ("NRSROs"), periodic stress testing of a fund's portfolio, the determination as to whether a fund is an "institutional fund" and processing of transactions at net asset value. We believe that these matters should be the primary responsibility of the fund's investment adviser, subject to the general oversight of the board.<sup>6</sup>

### Use of NRSROs

The Proposing Release states that the Commission is considering an approach under which a money market fund's board would designate three (or more) NRSROs that the fund would look to for all purposes under the Rule in order to determine whether a security is an "eligible security" (as defined in the Rule). In addition, the board would be required to determine, at least annually, that the NRSROs it has designated issue credit ratings that are sufficiently reliable for that use.

We believe that few boards are comprised of members with the requisite technical background and qualifications to perform the analyses and make the determinations contemplated by this approach, without hiring an outside consultant, and therefore do not believe that fund boards should be solely responsible for designating and annually reviewing NRSROs. We believe that there are more effective ways to address the Commission's concerns, including requiring the fund's adviser to designate the NRSROs and provide the board annually a written report describing the basis for its determination and the process employed. We believe that this approach is more consistent with the adviser's role of providing investment advice and related credit analysis and the board's role of oversight, as it would put the board in a position to be responsible for overseeing the adviser's process of selecting and evaluating the reliability of the credit ratings issued by the fund's NRSROs.

### Stress Testing

The Commission is proposing to require the board of each money market fund using the amortized cost method to adopt procedures providing for periodic stress testing of the fund's portfolio. The procedures would require testing of the fund's ability to maintain a stable net asset value per share based upon certain hypothetical events, including an increase in short-term interest rates, an increase in shareholder

---

<sup>4</sup> Donohue, Keynote Address at the Practising Law Institute Investment Management Institute (Apr. 12, 2007).

<sup>5</sup> Paul S. Atkins, Commissioner, Securities and Exchange Commission, Remarks before the Independent Directors Council (Nov. 28, 2007).

<sup>6</sup> These matters would be subject to the adviser's reporting responsibilities to the board. We do not expect fund boards to be the passive recipient of these reports. We expect fund boards and their advisers to engage in active dialogue in the process of the board's review and acceptance of these reports.

redemptions, a downgrade of or default on a portfolio security and widening or narrowing of spreads between yields on an appropriate benchmark selected by the fund for overnight interest rates and commercial paper and other types of securities held by the fund. The proposal would require that stress tests be conducted at intervals that the board determines appropriate and reasonable in light of current market conditions. The proposed amendments also would leave to the fund's board the specifics of the scenarios or assumptions on which the tests are based, and would require that the board receive a report of the results of the testing, including: (i) the date(s) on which the fund portfolio was tested; and (ii) the magnitude of each hypothetical event that would cause the fund to "break the buck."

As discussed above in respect of NRSRO determinations, we do not believe that boards have the necessary technical background and qualifications to take responsibility for these procedures and that this is more appropriately an investment advisory function. As such, it is the adviser's responsibility to design a portfolio that conforms to the Rule and, therefore, to design portfolio stress tests, and to apply them, as deemed reasonable in light of current market conditions. We believe that instead of requiring a fund's board to adopt such procedures, the fund's adviser should be responsible for designing, performing and evaluating appropriate stress testing and for providing periodic written reports of the results of such testing to the board. If the Commission believes that stress testing should more actively involve additional parties, we propose that the Commission require the process of evaluating the design of the stress testing algorithm be performed by an independent audit function, similar to the testing required of funds' anti-money laundering programs.<sup>7</sup> The Department of the Treasury, in adopting this requirement, recognized that such testing should be performed by personnel knowledgeable regarding relevant requirements – employees of the fund, its affiliates or unaffiliated service providers.<sup>8</sup> Similarly, we believe that portfolio stress testing should be the responsibility of knowledgeable investment professionals.

#### "Institutional Funds" Determination

The Commission is proposing to require that a money market fund's board determine, no less frequently than once each calendar year, whether the fund is an "institutional fund" for purposes of meeting liquidity requirements as described in the Proposing Release. In particular, the fund's board would be required to determine whether the fund is intended to be offered to institutional investors or has the characteristics of a fund that is intended to be offered to institutional investors, based on: (i) the nature of the record owners of fund shares; (ii) the minimum amount required to be invested to establish an account; and (iii) the historical cash flows resulting, or expected cash flows that would result, from purchases and redemptions.

We believe that, if the final amendments to the Rule retain the concept of an "institutional fund," the fund's adviser is in the best position to consider these factors and determine whether the fund is an "institutional fund" because of the adviser's, and/or an affiliate's, typical operational and marketing roles. Therefore, we believe it would be more appropriate to require the fund's adviser to provide, and certify, a written report to the board annually, or more frequently if circumstances change, as to the adviser's

---

<sup>7</sup> Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds, Department of the Treasury Rel. No. RIN 1506-AA28 (Apr. 24, 2002).

<sup>8</sup> *Id.*

determination of the nature of the fund based on (i), (ii) and (iii) above, and that the fund's chief compliance officer also be required to review such report.

Processing of Transactions at Net Asset Value

The Commission is proposing to require that each money market fund's board determine in good faith, at least once each calendar year, that the fund (or its transfer agent) has the capacity to redeem and sell its securities at a price based on the current net asset value per share.

As with the determination of a fund as an "institutional fund," we believe that this determination is akin to an operational assessment. We believe that this undertaking is more appropriately assigned to the fund's adviser, administrator or other service provider knowledgeable about the mechanics employed in fund share purchases and redemptions. Therefore, we believe that the fund's adviser, or other knowledgeable service provider, should be required to determine whether the fund (or its transfer agent) has the capacity to redeem and sell its securities at a price based on the current net asset value per share and provide a written report certifying this determination to the board at least once each calendar year, and that the fund's chief compliance officer also be required to review such report.

\* \* \* \* \*

If you have any questions about our comments or would like any additional information, please contact Lewis G. Cole, Stuart H. Coleman or David Stephens of Stroock & Stroock & Lavan LLP at 212.806.5400.

Sincerely,

/s/ Stroock & Stroock & Lavan LLP  
Stroock & Stroock & Lavan LLP

cc: Lewis G. Cole, Esq.  
Stuart H. Coleman, Esq.  
David Stephens, Esq.