ORRICK

ORRICK, HERRINGTON & SUTCLIFFE LLP
666 FIFTH AVENUE
NEW YORK, NY 10103-0001
tel 212-506-5000
fax 212-506-5151
WWW.ORRICK.COM

November 18, 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 proposing amendments to Rule 2a-7 under the Investment Company Act of 1940, as amended.[1] For most of the past two decades, Orrick, Herrington & Sutcliffe LLP ("Orrick") has been ranked number one in the country as bond counsel and as underwriters' counsel, based on dollar volume of bonds issued, averaging a combined market share of over 12% of all municipal debt obligations issued each year. As bond counsel in 2008, Orrick closed 406 issues aggregating $40 billion in principal amount, as well as serving as underwriters' counsel for 171 issues aggregating $19.9 billion and as disclosure counsel for 68 issues aggregating $11.5 billion. These comments reflect only the views of Orrick and do not necessarily reflect the views of any of our clients.

Limitations on Securities Subject to a Conditional Demand Feature

We are commenting on only one aspect of the proposed amendments. We oppose the proposed change to Rule 2a-7(c)(3)(iii)(C) that requires that a security subject to a Conditional Demand Feature have an underlying security that has received a long-term rating only within the highest long-term rating category (or if applicable, a short-term rating only within the highest short-term rating category). The current rule allows the underlying security to have a long-term rating within one of the two highest categories.

[1] Pursuant to a conversation with the Staff, we understand that the Staff would accept this letter, despite it being submitted past the deadline.

A number of other comment letters have also opposed this proposed change, and have focused on its effect on tender option bonds.[2] We would like to focus on the deleterious effect that the proposed change will have on numerous existing variable rate demand bonds that have a Conditional Demand Feature, in addition to tender option bonds. We understand that Thomson estimates the total size of the variable rate demand bond market at $547 billion. We estimate that approximately 47% of variable rate demand bonds have a Conditional Demand Feature, for a total value of approximately $257 billion. Since we understand that a large number of these Conditional Demand Feature bonds have an underlying security with a rating in the second highest rating category, these bonds would no longer be eligible investments for money market funds if the proposed change is adopted. These bonds have been a useful investment option for money market funds, as well as providing a lower cost of funds to issuers. Despite the fact that the proposed change would instantly render ineligible a significant portion of the variable rate demand bond market, the proposing release does not consider the effect of the proposed change on money market funds or on issuers, or even discuss the proposed change at all.

In addition, the proposed change will effectively prohibit a number of new types of variable rate bonds that have a Conditional Demand Feature and that will be issued by municipalities. In order to understand the issue, it is helpful to describe briefly how these new variable rate bonds are structured. In one structure, a municipality issues a variable rate security with a nominal long-term maturity. The security has a dual put feature. In the first put, the holders can tender their bonds at specified intervals (and for some types of bonds, at any time.) Upon tender, a remarketing agent attempts to remarket the bonds for a specified period, such as 30 days. If the remarketing fails, then the holder retains the bonds until the second put, which is a mandatory tender back to the municipal issuer, and which must occur within 397 days of the holder's initial tender.[3] Other similar structures (permitting holders to tender their bonds periodically and requiring the issuer to pay tendering holders within 397 days of a failed remarketing) are being developed and can be expected to be developed in the future.

The mandatory tender back to the issuer is a Conditional Demand Feature. Accordingly, under the proposed amendment, the municipal issuer of the variable rate demand bonds needs a long-term rating in the highest long-term rating category.

---

[2] See, e.g., Comment Letter from the Investment Company Institute, September 8, 2009, at 20-21.
[3] One example of these types of bonds are the Citi Windows Variable Rate Demand Bonds, which were the subject of a May 28, 2009 no-action letter.

ORRICK

Although many municipal issuers have a rating in the second highest long-term rating category, very few municipal issuers have a rating in the highest long-term rating category. Therefore, the proposed amendment will effectively prohibit these new types of variable rate demand bonds, both those that have already been issued and similar bonds that are currently contemplated.

In the current market environment, these new types of variable rate demand bonds can play an important role. The bonds themselves will be rated in the highest short-term rating category, and will have unconditional liquidity due to the mandatory tender back to the issuer or the mandatory redemption by the issuer, who will have a rating in the second highest long-term rating category. Thus, the bonds offer minimal credit and liquidity risk. In addition, purchasers of the bonds will not need to be dependent on banks or bond insurers as a source of credit support to ensure liquidity. Accordingly, if these types of bonds are prohibited due to the proposed amendment, money market funds will have fewer investment options, especially tax-exempt money market funds.

Moreover, without these new types of bonds, municipal issuers will have a difficult time issuing variable rate bonds, since there have been very few replacements for bond insurers and bank credit and liquidity support. As variable rate bonds have historically provided municipal borrowers a lower cost of funds, municipalities will continue to face increased financing costs if they are unable to issue variable rate bonds.

The proposed amendment is also unnecessary for a number of other reasons. As these reasons have been addressed in other comment letters, we will discuss them only briefly. First, there is no meaningful reduction in risk for a money market fund by requiring the municipal issuer of the variable rate demand bonds to have the highest long-term rating. The difference between the second highest long-term rating for a municipal issuer and the highest long-term rating for a commercial issuer is negligible. Yet under the proposed amendment, a commercial issuer with the highest long-term rating could provide a Demand Feature, but a municipal issuer with almost the equivalent long-term rating could not.

Second, other provisions of the proposed amendments recognize that long-term securities in the second highest rating category can be suitable investments for money market funds. For example, the definition of Eligible Securities in the proposed amendments includes securities with a long-term rating in one of the two highest long-term rating categories. Third, the variable rate demand bonds are structured so that it is unlikely that the Conditional Demand Feature will ever need to be used. The bonds would have to fail to be remarketed during the remarketing period (which usually lasts for 30 days) in order for the Conditional Demand Feature, the mandatory tender back to the issuer, to be triggered.

To the extent that the proposed amendment is nevertheless adopted, we suggest that the adopting release specifically note that the Staff would consider granting no-action relief on a case-by-case basis for securities that pose minimal risk but narrowly miss the underlying security ratings requirement, such as where the municipal issuer of variable rate demand bonds is rated in the second highest long-term rating category, and the bonds themselves are rated in the highest short-term rating category.

* * * * *

If you have any questions about our comments or would like any additional information, please contact Peter Manbeck or Eileen Heitzler of Orrick, Herrington & Sutcliffe LLP at 212-506-5000.

Sincerely,

/s/ Orrick, Herrington & Sutcliffe LLP
Orrick, Herrington & Sutcliffe LLP