

March 26, 2020

Ms. Dalia Blass
Director – Division of Investment Management
Ms. Sarah ten Siethoff
Associate Director – Division of Investment Management
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for No-Action Relief for Affiliated Purchases of Debt Securities from Registered Open-End Investment Companies

Dear Ms. Blass and Ms. ten Siethoff:

The Investment Company Institute¹ seeks assurances from the staff of the Division of Investment Management (the “Staff”) that it will not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) against any registered open-end investment company that does not hold itself out as a money market fund and is not an exchange-traded fund (each, a “Fund”) under Section 17(a) of the U.S. Investment Company Act of 1940 (the “Act”), if an affiliated person (as defined in Section 2(a)(3) of the Act) of the Fund (or any affiliated person of such affiliated person) (each, a “Purchaser”) that is not a registered investment company purchases debt securities from the Fund, in general accordance with the requirements of Rule 17a-9(b) under the Act, as though the rule applied to Funds, and under the circumstances and subject to the conditions described below (the “Affiliated Purchases”). We are requesting this relief because of the significant securities market disruptions caused by outbreaks of the coronavirus disease (COVID-19), which was declared a national emergency by the U.S. Government, and are requesting this relief for only so long as this national emergency persists.

Background

Rule 17a-9 under the Act provides an exemption from the prohibitions under Section 17(a) to permit affiliated persons of a money market fund (or affiliated persons of such persons) to purchase securities from the money market fund. In 2010, in adopting amendments to Rule 17a-9, the

¹ The Investment Company Institute (“ICI”) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (“ETFs”), closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$25.2 trillion in the United States, serving more than 100 million US shareholders, and US\$7.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

Commission observed that the rule's conditions were designed "to protect shareholders' interests and prevent overreaching by advisers."² For example, Rule 17a-9(b)(2) would allow a money market fund to claw back certain amounts from an affiliated purchaser in certain circumstances. By its terms, however, Rule 17a-9 only applies to purchases by affiliated persons (or affiliated persons of such persons) from registered open-end investment companies that hold themselves out as money market funds. As a result, other open-end registered investment companies, are unable to benefit from the same relief, notwithstanding that the Commission broadly characterized the terms of Rule 17a-9 as being designed "to protect shareholders' interests and prevent overreaching by advisers."

We understand that, because of the COVID-19 outbreak, there is a short-term dislocation in the market for a variety of debt securities (including, without limitation, commercial paper, corporate debt securities, certificates of deposit, asset-backed debt securities and municipal obligations). These securities are held by registered open-end investment companies that do not hold themselves out as money market funds. We further understand that advisers (directly or through affiliates) may wish to purchase these securities from Funds to enhance the Funds' liquidity and to fund shareholder redemptions, in light of the significant securities market disruptions related to the COVID-19.

Conditions

The ICI believes that the limited relief outlined herein is important to enhance the liquidity of Funds during the ongoing and significant securities market disruptions related to the COVID-19 outbreak. This rationale for the requested relief is comparable to the rationale behind the numerous measures taken by the United States government and its agencies to ensure that the U.S. economy remains open, active and resilient to the temporary crisis, and particularly, that U.S. investors are not unnecessarily harmed by the temporary market dislocations.

Any Affiliated Purchases would be subject to the conditions below. We believe that these conditions are consistent with the policy objectives of Section 17(a) and Rule 17a-9 and that it is appropriate to extend the relief afforded by Rule 17a-9 to Funds under these exigent circumstances. We further believe that these conditions are in the best interests of Fund shareholders and are otherwise appropriate under the circumstances.

1. The purchase price is paid in cash.
2. The price of the purchased debt security is its fair market value under section 2(a)(41) of the Act, provided that this price is not materially different from the fair market value of the security indicated by a reliable third-party pricing service (the "Purchase Price").
3. In the event that the Purchaser thereafter sells the purchased security for a higher price than the purchase price paid to the Fund, the Purchaser shall promptly pay to the Fund the amount by which the subsequent sale price exceeds the purchase price paid to the Fund. If the Purchaser is subject to Sections 23A and 23B of the Federal Reserve Act, this condition does not apply to the extent that it would otherwise conflict with (i) applicable banking regulations

² See Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010).

or (ii) any applicable exemption from such regulations issued by the Board of Governors of the Federal Reserve System.

4. Within one business day of the purchase of the security, the Fund publicly posts on its website and informs the Staff via email to IM-EmergencyRelief@sec.gov stating the name of the Fund, the name of the Purchaser, the security(s) purchased (including a legal identifier if available), the amount purchased, and the total price paid.
5. The relief set forth herein shall be in effect on a temporary basis in response to the national emergency concerning the COVID-19 outbreak, which was proclaimed by the President of the United States on March 13, 2020, and will cease to be in effect upon notice from the Staff.

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The ICI appreciates the Staff's consideration of our request for relief. If you have any questions, please contact the undersigned at (202) 326-5813, Jane Heinrichs, Associate General Counsel, at (202) 371-5410, Julien Bourgeois of Dechert LLP at (202) 261-3451, Brenden Carroll of Dechert LLP at (202) 261-3458, or Matthew Barsamian of Dechert LLP at (202) 261-3392.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson
General Counsel