

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76480; File No. S7-08-14)

November 19, 2015

ORDER GRANTING A CONDITIONAL EXEMPTION UNDER THE SECURITIES EXCHANGE ACT OF 1934 FROM THE CONFIRMATION REQUIREMENTS OF EXCHANGE ACT RULE 10b-10(a) FOR CERTAIN TRANSACTIONS IN MONEY MARKET FUNDS

I. Introduction

On July 23, 2014, the Securities and Exchange Commission (“Commission”) published a notice requesting comment on a proposal to grant a conditional exemption to broker-dealers, subject to certain conditions, from the immediate confirmation requirements of Rule 10b-10 of the Securities Exchange Act of 1934 (“Exchange Act”) for transactions effected in shares of institutional prime money market funds.¹ Concurrent with the issuance of the Notice, the Commission adopted amendments to Rule 2a-7 of the Investment Company Act of 1940 (“Investment Company Act”)² that, among other things, require institutional prime money market funds³ to sell and redeem fund shares based on the current market-based value of the securities held in their portfolios (*i.e.*, transact at a “floating” net asset value (“NAV”)).⁴ The Commission received two comments in response to the Notice.⁵ After careful consideration the

¹ See Notice of Proposed Exemptive Order Granting Permanent Exemptions Under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b-10 for Certain Money Market Funds, Exchange Act Release No. 72658 (July 23, 2014), 79 FR 44076 (July 29, 2014) (“Notice”).

² 17 CFR 270.2a-7.

³ “Institutional prime money market funds” are money market funds operating in accordance with Investment Company Act Rule 2a-7(c)(1)(ii), which include funds that are often referred to as (i) “tax exempt” or (ii) “municipal” funds that do not qualify as a “retail money market fund” as defined in Rule 2a-7(a)(25).

⁴ See Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9616, Investment Advisers Act Release No. 3879, Investment Company Act Release No. 31166 (July 23, 2014), 79 FR 47736, at section III.B (Aug. 14, 2014) (“Money Market Fund Reform Adopting Release”).

⁵ See Letters to Kevin M. O’Neill, Deputy Secretary, Commission, from J. Charles Cardona, President, The Dreyfus Corporation (Aug. 19, 2014) (“Dreyfus Letter”), <http://www.sec.gov/comments/s7-08-14/s70814-2.pdf>; and

Commission is granting the proposed exemption pursuant to Exchange Act Section 36(a)⁶ and Rule 10b-10(f),⁷ and providing certain clarifications to address comments received.

II. Proposal for Exemptions Pursuant to Notice

Exchange Act Rule 10b-10(a) generally requires broker-dealers to provide customers with specified information relating to their securities transactions at or before the completion of the transactions.⁸ Rule 10b-10(b), however, provides an exception from this requirement for certain transactions in money market funds that attempt to maintain a stable NAV when no sales load or redemption fee is charged.⁹ The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly, rather than immediate, basis, subject to the conditions set forth in paragraphs (2) and (3) of Rule 10b-10(b).¹⁰ Accordingly,

Dorothy Donohue, Acting General Counsel, Investment Company Institute (Aug. 15, 2014) (“ICI Letter”), <http://www.sec.gov/comments/s7-08-14/s70814-1.pdf>.

⁶ Section 36(a) of the Exchange Act generally authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from certain provisions of the Exchange Act or certain rules or regulations thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm.

⁷ Exchange Act Rule 10b-10(f) provides that the Commission may conditionally or unconditionally exempt any broker or dealer from the requirements of paragraphs (a) and (b) of Rule 10b-10 with regard to specific transactions or specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of the rule. 17 CFR 240.10b-10(f).

⁸ 17 CFR 240.10b-10(a).

⁹ 17 CFR 240.10b-10(b).

¹⁰ With respect to such money market funds, Exchange Act Rule 10b-10(b)(2) requires a broker-dealer to give or send to a customer within five business days after the end of each monthly period:

a written statement disclosing, each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer’s account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by [Rule 10b-10(a)] will be furnished upon written request: *Provided, however*, that the written statement may be delivered to some other person designated by the customer for distribution to the customer.

customers historically have received information about their transactions in shares of money market funds, including institutional prime money market funds, on a monthly basis.

Given that share prices of institutional prime money market funds likely will fluctuate under the Commission's amendments to Investment Company Act Rule 2a-7,¹¹ absent an exemption, broker-dealers would not be able to continue to rely on the exception under Exchange Act Rule 10b-10(b) for transactions in money market funds operating in accordance with Rule 2a-7(c)(1)(ii).¹² Instead, broker-dealers would be required to provide immediate confirmations for such transactions in accordance with Rule 10b-10(a).

To address the potential burdens created by such a requirement, the Commission published the Notice proposing to exempt broker-dealers from the requirements of Exchange Act Rule 10b-10(a) when effecting transactions in money market funds operating in accordance with Investment Company Act Rule 2a-7(c)(1)(ii), for or with the account of a customer, where: (i) no sales load is deducted upon the purchase or redemption of shares in the money market fund, (ii) the broker-dealer complies with the provisions of Rule 10b-10(b)(2) and Rule 10b-10(b)(3) that are applicable to money market funds that attempt to maintain a stable NAV

17 CFR 240.10b-10(b)(2). Exchange Act Rule 10b-10(b)(3) requires the customer to be provided with prior notification in writing disclosing the intention to send the written information referred to in Rule 10b-10(b)(1) in lieu of an immediate confirmation. 17 CFR 240.10b-10(b)(3).

¹¹ 17 CFR 270.2a-7.

¹² See generally Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); see also Exchange Act Rule 10b-10(b)(1), 17 CFR 240.10b-10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable NAV).

As adopted, government and retail money market funds are exempt from the Investment Company Act Rule 2a-7(c)(1)(ii) floating NAV requirement, and therefore, will continue to maintain a stable NAV. See Money Market Fund Reform Adopting Release, *supra* note 4, at sections III.C.1 and III.C.2. Accordingly, for investor transactions in the exempt funds, broker-dealers would continue to qualify for the exception under Rule 10b-10 and be permitted to send monthly transaction reports.

referenced in Rule 10b-10(b)(1),¹³ and (iii) the broker-dealer has notified the customer of its ability to request delivery of an immediate confirmation consistent with the written notification requirements of Exchange Act Rule 10b-10(a) and has not received such a request from the customer.

III. Comments on Proposal

The Commission received two comments on the Notice, both expressing general support for the proposal.¹⁴ However, both commenters requested clarification regarding the third condition, which would require a broker-dealer to notify its customer of the customer's ability to request delivery of an immediate confirmation consistent with the written notification requirements of Exchange Act Rule 10b-10(a). Specifically, commenters questioned whether the notification may be made on a one-time basis or whether it would need to be made on a transaction-by-transaction basis.¹⁵ In response, the Commission is clarifying that these notifications may be made on a one-time basis.

IV. Discussion of the Exemption

The Commission finds that it is necessary and appropriate in the public interest, and consistent with the protection of investors to allow broker-dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Rule 2a-7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations as required under Exchange Act Rule 10b-10(a). In making this finding, the Commission considered several factors, as discussed more fully below as well as in the Notice.

¹³ The proposed conditions under “(i)” and “(ii)” are consistent with the confirmation delivery requirements in Exchange Act Rule 10b-10(b) for all transactions in investment company securities that attempt to maintain a stable NAV where no sales load or redemption fee is charged. 17 CFR 240.10b-10(b).

¹⁴ See Dreyfus Letter; ICI Letter, *supra* note 5.

¹⁵ Dreyfus Letter, at 1; ICI Letter, at 2.

First, the attributes of institutional prime money market funds mitigate the need for the protections intended by confirmation delivery under Rule 10b-10(a).¹⁶ For example, institutional prime money market funds will continue to be subject to the “risk limiting” provisions of Rule 2a-7, including those provisions governing the credit quality, liquidity, diversification, and maturity of fund investments.¹⁷ Under those “risk limiting” provisions, mutual funds that hold themselves out as money market funds – including institutional prime money market funds – may acquire only investments that are short-term, high-quality, dollar-denominated instruments.¹⁸ As a result, while the prices of institutional prime money market funds likely will fluctuate, they are not likely to exhibit regular day-to-day fluctuations, primarily due to the high quality and short duration of these funds’ underlying portfolio securities.¹⁹

Second, customers that need daily pricing information may obtain it through means other than confirmation statements.²⁰ For example, under the fund disclosure requirements of Investment Company Act Rule 2a-7(h)(10)(iii), customers – including institutional investors – will be able to access an institutional prime money market fund’s daily mark-to-market NAV per share through the fund’s website.²¹

Third, absent an exemption, broker-dealers are likely to incur significant costs associated with providing immediate, rather than monthly, confirmations for transactions in shares of

¹⁶ See Notice, 79 FR at 44077.

¹⁷ Investment Company Act Rule 2a-7(d), 17 CFR 270.2a-7(d) (risk-limiting conditions).

¹⁸ *Id.*; see also Money Market Fund Reform Adopting Release, 79 FR at 47775.

¹⁹ Money Market Fund Reform Adopting Release, 79 FR at 47779 n.491.

²⁰ *Id.*, at section III.E.9.c; see also Notice, 79 FR at 44078.

²¹ 17 CFR 270.2a-7(h)(10)(iii).

institutional prime money market funds. Such costs, in turn, would likely be passed along to investors.²²

However, given that there likely will be some price fluctuations in institutional prime money market funds, the Commission believes that it is also necessary and appropriate in the public interest and consistent with the protection of investors to condition the exemption on a broker-dealer providing immediate confirmations upon a customer's request. Accordingly, to be eligible for the exemption, a broker-dealer must (1) provide an initial written notification to the customer of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b-10(a), and (2) not receive any such request from the customer.²³ In addition, consistent with conditions applicable to confirmation delivery requirements provided in Exchange Act Rule 10b-10(b) for all transactions in investment company securities that attempt to maintain a stable NAV where no sales load or redemption fee is charged, the Commission is imposing the conditions that no sales load is deducted upon the purchase or redemption of shares in the institutional prime money market fund, and that the broker-dealer complies with the provisions of paragraphs (2) and (3) of Rule 10b-10(b) that are applicable to money market funds that attempt to maintain a stable NAV referenced in Rule 10b-10(b)(1).

²² An analysis of the costs and benefits of providing immediate trade confirmations requirements under Rule 10b-10 with respect to institutional prime money market funds is discussed in the Money Market Fund Reform Adopting Release. *See* Money Market Fund Reform Adopting Release, 79 FR at 47785-86; Notice, 79 FR at 44077-78.

²³ This Order has been modified from the proposal to specify that, to meet the notification condition, the broker-dealer must provide an "initial written notification to the customer of such account." The condition was modified to clarify that the notification may be made on a one-time basis for each applicable account and not on a transaction-by-transaction basis.

V. Conclusion

In light of the above, and in accordance with Exchange Act Section 36²⁴ and Rule 10b-10(f),²⁵ the Commission finds that conditionally exempting broker-dealers from the requirements of Exchange Act Rule 10b-10(a) for transactions in institutional prime money market funds is necessary and appropriate in the public interest, and consistent with the protection of investors.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act and Exchange Act Rule 10b-10(f), that broker-dealers shall be exempt from the written notification requirements under Exchange Act Rule 10b-10(a) when effecting transactions in money market funds operating in accordance with Investment Company Act Rule 2a-7(c)(1)(ii), for or with the account of a customer, where: (i) no sales load is deducted upon the purchase or redemption of shares in the money market fund, (ii) the broker-dealer complies with the provisions of Rule 10b-10(b)(2) and Rule 10b-10(b)(3) that are applicable to money market funds that attempt to maintain a stable NAV referenced in Rule 10b-10(b)(1), and (iii) the broker-dealer has provided an initial written notification to the customer of such account of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b-10(a) and has not received such a request from the customer.

VI. Paperwork Reduction Act

This Order contains “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The Commission has submitted the information to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507

²⁴ 15 U.S.C. 78mm.

²⁵ 17 CFR 240.10b-10(f).

and 5 CFR 1320.10. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number. The title of this collection is “Money Market Fund Reform / Exchange Act Rule 10b-10.” We are applying for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j).

A. Summary of Collection of Information

In addition to the conditions typically applicable under Rule 10b-10(b),²⁶ under the terms of this Order, to be exempt from the immediate confirmation requirements of Exchange Act Rule 10b-10(a) for purposes of an institutional prime money market fund, a broker-dealer must also (1) notify the customer of its ability to request delivery of an immediate confirmation, consistent with the written notification requirements of Rule 10b-10(a), and (2) not receive any such request from the customer.²⁷ The condition of notifying the customer of its ability to request delivery of an immediate confirmation creates a burden under the PRA, and must be satisfied by sending a notification to a customer on a one-time basis for each applicable account.

B. Proposed Use of Information

The notification condition in this Order will alert customers of their ability to request immediate confirmations, consistent with the terms of Exchange Act Rule 10b-10(a). The

²⁶ The Commission has previously estimated the PRA burdens associated with providing immediate confirmations and/or monthly statements to customers under Rule 10b-10 regarding securities transactions, including money market funds. *See* Submission for OMB Review; Comment Request, 78 FR 39023 (June 28, 2013). That submission, however, does not address the PRA burden associated with the notification condition set forth in this Order.

²⁷ If the conditions of this Order are satisfied, broker-dealers will be eligible to provide monthly statements for transactions in institutional prime money market funds in lieu of the immediate confirmation requirements of Exchange Act Rule 10b-10(a) – as has historically been the case for money market funds prior to the adoption of the money market fund reform amendments. When requested by a customer, the broker-dealer would be required under this Order to provide immediate confirmations in accordance with Exchange Act Rule 10b-10(a).

notification condition allows customers to obtain immediate confirmations should they choose to request them.

C. Respondents

As stated in the Money Market Fund Reform Adopting Release, based on FOCUS report data as of December 31, 2013, the Commission estimates that there are approximately 320 broker-dealers that clear customer transactions or carry customer funds and securities.²⁸ In the Money Market Fund Reform Adopting Release, the Commission also conservatively estimated that those broker-dealers are the respondents that would provide trade confirmations to customers in institutional prime money market funds.²⁹

D. Total Burden Estimates Relating to this Order

The Commission estimates that the initial one-time burden required to implement, modify, or reprogram existing systems to generate and transmit the required notifications to customers would be 36 hours for each of the 320 broker-dealers that clear customer transactions or carry customer funds and securities.³⁰ Thus, the Commission estimates that the initial burden for issuance of the notifications in accordance with this Order, including burdens to implement, modify, or reprogram existing systems to generate such notifications will be approximately 11,520 burden hours.³¹ The Commission anticipates that after broker-dealers incur the initial

²⁸ Money Market Fund Reform Adopting Release, 79 FR at 47785 & n.563.

²⁹ *Id.*

³⁰ In the Money Market Fund Reform Adopting Release, the Commission estimated that the initial one-time burden to implement, modify, or reprogram existing systems to generate immediate confirmations (rather than monthly statements) would be 355 burden hours for each of the 320 broker-dealers that clear customer transactions or carry customer funds and securities. *Id.* at 47785 & n.562. Given the non-repeat nature of the notification requirement and substantial savings in resources noted by commenters, the Commission estimates that the burdens to develop system changes to provide the notices to all applicable customers would be no more than 10% of the prior 355 burden hours estimate associated with requiring immediate confirmations.

³¹ This estimate is based on the following: 36 hours x 320 firms = 11,520 hours.

costs to establish systems to generate and transmit the notifications to existing customers, broker-dealers will be able to minimize any additional costs, such as by providing the notifications as part of a new account application.³² As a result, the Commission anticipates that any additional annual burdens arising from the notification condition will be minimal,³³ and conservatively estimates that broker-dealers will, on average, incur annual costs of 5% of those initial costs, or 576 burden hours.³⁴

E. The Collection of Information Is Required To Obtain a Benefit

The collection of information results from a condition of this Order and will be required for a broker-dealer to be exempt from the immediate confirmation requirements of Exchange Act Rule 10b-10(a).

F. Confidentiality

The notification would be provided by a broker-dealer directly to a customer and thus would not be kept confidential.

G. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission solicits comment to:

1. Evaluate whether the proposed collection is necessary for the proper performance of our functions, including whether the information shall have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

³² See, e.g., ICI Letter, *supra* note 5, at 2.

³³ As stated, *supra* note 26, other than the notification condition set forth in this Order, the Commission has previously estimated the additional burdens associated with providing immediate confirmations and/or monthly statements under Rule 10b-10. See Submission for OMB Review; Comment Request, 78 FR 39023 (June 28, 2013).

³⁴ This estimate is based on the following: 11,520 hours x 5% = 576 hours.

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-08-14. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7-08-14, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE, Washington, DC 20549. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication in the Federal Register, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By the Commission.

Brent J. Fields
Secretary